



**NATIVE AMERICAN RIGHTS FUND**  
ANNUAL REPORT 2015

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## IN MEMORY OF ROSE MARIE CUNY

This Annual Report is dedicated to the memory of Rose Cuny who walked into the Spirit World on February 17, 2015

Rose Marie Cuny was hired at NARF in 1980 as our receptionist. She was quickly promoted to Legal Secretary in 1981 and then to Office Manager in 1984. During her time here at NARF, Rose received almost 30 certificates for advancing her education and also in recognition of her dedication to the causes that we fought so hard for. Rose spent over half of her life working for NARF. Rose was an integral part of NARF's successes. Rose devoted herself to achieving justice and in protecting our peoples' way of life.



When one thinks about NARF and Rose, one cannot separate the two. Rose became the heart and soul of NARF. She fought hard to make sure NARF stayed true to its course, kept our "Indian" identity intact and that we stayed true to our commitment to our peoples. We believe a major reason for this was that Rose deeply loved her Indian people and her Lakota ways. Rose's Indian name was "He Sapa Glunica Wi." She was proud of that name and strived to live up to it. NARF became the vehicle in which she could do just that by working tirelessly to help all Indian people.

If anyone was in need, whether it be a coworker or a member of the Indian community, Rose was always the first one to step up to help organize ways to help an individual or a family. She would never accept no as an answer. She made each one of us better human beings. She helped each one of us to understand the importance of sharing whatever we may have to help someone else in their time of need. If you fell, she would be the first one to offer her hand to pick you up. But make no mistake, if you deserved it, she would knock you down and then explain to you why you deserved it.

Wherever Rose travelled, she made life-long friends. To this day, everywhere we go we are given condolence on Rose's passing and told how important Rose was to them and that they will always remember her. That's the kind of impact that Rose had on everyone she would meet including all of us here at NARF. NARF will always be better because we had Rose as our guide and our conscience. We celebrate her life, her contributions for the greater good. Her memory will forever be carried by each one of us. We are grateful that she chose NARF as her second home.

This is what Rose has taught us here at NARF – our families and our people always come first. If we trust, the Spirits will always surround us and help guide us. Now, Rose surrounds us.

Wopila tanka.



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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.

**Cover and Art:** Bernie Granados' tribute to Merlin Eagle who was born in Oak Creek Canyon, Arizona where Merlin learned to talk to the "the thin people" or those on the other side. He was a gifted craftsman, writer, poet, and now, spirit warrior.

Bernie Granados Jr. is a multi-talented artist who works in a wide variety of mediums, including embossed acrylic paintings, watercolor, prismapencil, pen and ink drawings, masks, illustration, and bronze.

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Drawing from his Apache and Zacatec roots, Mr. Granados produces paintings, sculptures, masks, prints, and miniatures featuring beautiful images of horses, buffalo, and ancient ancestral figures inspired by personal visions and cave art throughout America. He finds inspiration in Nature's force and beauty, his smarter-than-human quarter horses, his fellow artists, and his love and respect for the Creator. Mr. Granados is a gifted teacher who headed the Fine Arts Department of the Intertribal Pre-University Summer Program at University of California Irvine and taught at the Los Angeles High School of the Arts. He is listed in the Biographical Directory of Native American Painters. He was the featured artist for the Native American Rights Fund "Visions of the Future" Gala. He has had many one-man shows over the years. He has created set designs, fine art, and hand props for film and stage and has worked in the film industry for over 36 years. Today Mr. Granados' ongoing passion is helping native youth cultivate their artistic talent and knowledge.

Bernie has been proud to support NARF, with his art, over a period of many years. You can see the artist's work at [www.elstudioranados.com](http://www.elstudioranados.com), and [clearedart.com](http://clearedart.com), his fine-arts-for-film site [www.adobespaceship.com](http://www.adobespaceship.com) is a site promoting filming on native lands. Telephone: 818-240-4421. Please leave a message.

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# Introduction

In the year 2015, the Native American Rights Fund (NARF) realized its 45th year of existence. From the vantage point of these 45 years, we can see how the dynamic of NARF's work has played out. It can be truly said that starting in 1970 and today, NARF's role has been a significant contributor to the modern tribal movement. Through NARF's priorities, established by its first Steering Committee and still in force today – *Preservation of tribal existence; Protection of tribal natural resources; Promotion of Native American human rights; Accountability of governments to Native Americans; and, the Development of Indian law and educating the public about Indian rights, laws, and issues* – NARF's victories and work have made a major difference in Indian country.

The extraordinary 1974 ruling by Judge George Boldt in *United States v. Washington*—which mid-19th century treaties guaranteed to tribes the right to harvest 50% of the salmon in Northwest Washington—has turned out to be even more historic than the decision seemed at the time. This dynamic was at work in *United States v. Michigan*, where NARF played a sturdy role in that case and in the tribal revival in the Upper Great Lakes area. So, too, with Menominee Restoration in 1973, which led directly to the restoration of all terminated tribes; the recognition of non-recognized tribes; and the formation by all of those tribes of active and effective sovereign tribal governments.

Many of the revived Eastern tribes have built their modern operations upon the Eastern land claims cases, where NARF broke new ground. At Pyramid Lake in Nevada, the Pyramid Lake Paiutes and its leaders achieved true comprehensive watershed restoration throughout the Truckee and Carson watersheds, and then put together an expanded tribal government in the fashion seen in the Northwest, but it never could have happened without the all-out commitment to the litigation by the Native American Rights Fund.

By the mid-1980s, NARF was hard at work combatting the scourges of excavation and theft of traditional cultural objects and human remains. Numerous lawsuits and negotiations finally funneled into the Native American Graves Protection and Repatriation Act of 1990, one of the most luminous accomplishments for NARF and all of Indian country. NARF has continued its sacred obligation to represent tribes with limited resources and significant legal needs while maintaining its centrality in the national Indian law community. For

example, NARF long had a practice of filing amicus briefs in every Supreme Court case involving Indians but since 2001 we have had the Tribal Supreme Court Project, where NARF continues this practice with the National Congress of American Indians (NCAI). No, we haven't had a lot of great results recently, but that is due to the Court, not us.

NARF's consistent, long-time commitment to foundational issues in Indian Law, and in Indian country generally, can also be seen in NARF's efforts in education. The reality was and is that a majority of Indian children are educated in state schools, many of them off the reservations. Early on, recognizing the connection between sovereignty and education, NARF was a strong supporter of the movement for Indian-controlled schools, a grassroots effort to increase the number of Indian people on state school boards. Over time, the mission was expanded and for the past several years NARF has been a leader in achieving considerable success in creating tribal education codes that apply both on the reservations and in state schools.

NARF has taken a leadership role in yet another foundational and complex area, the settlement of tribal water rights cases. From the beginning, tribes looked to NARF for leadership. In the 1980s, NARF made contact with the Western Governors Association and the Western States Water Council and they joined in an effort to set a context for settlements, in recognition of the fact that, for all water users, including tribes, settlement can often be the preferred option over litigation. This partnership continues today.

Native people know their homelands and, far more than most, understand the destructive impacts of climate change. Tribal villages in Alaska, northwest Washington, and elsewhere have already been affected by rising ocean waters. All across the country, Indian people are seeing and feeling the impacts on forests, rivers, rangeland and animals. NARF is working to assure that tribes will be treated as sovereigns in state and federal assessments and planning for public land and water resources. The climate change work dovetails with NARF's involvement in international issues where, since 1999, has been active in the adoption and implementation of the United Nations Declaration on the Rights of Indigenous Peoples representing NCAI. Among other things, NARF has steadfastly participated in the elaborate United Nations Framework Convention on Climate Change process representing NCAI.



Progress has been painfully slow but the stakes are high and NARF will continue to press for full recognition of the special circumstances and rights of American Indians and other indigenous peoples.

The specifics vary across Indian country but every tribe is burdened in some significant way by the weight of history. Alaska is as bad as it gets. The NARF Alaska office has taken on about every issue you can name in that big state, from voting rights to the Indian Child Welfare Act to fishing and hunting rights to land into trust. And, somehow, ultimately, after the Supreme Court's Venetie decision—about as wrong-headed and devastating as court opinions get—they have, impossibly, piece by painstaking piece, made significant progress in resurrecting the sovereignty that seemed lost forever.

### **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 as has the Chorus Foundation. 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 Mission Indians, the Muckleshoot Tribe, 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 on-going generous pro bono contributions by the many attorneys who have devoted their time and expertise to our causes and the Tribal Supreme Court Project. Their many hours of work made it possible for NARF to present the best positions possible and to move forward in insuring NARF's and Indian country's success.

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# Executive Director's Report

2015 was a year of celebration as the Native American Rights Fund observed our 45th anniversary. We have had many successes in asserting and protecting Indian rights over the last 45 years and continued to achieve more important victories and accomplishments for Native people during the year.

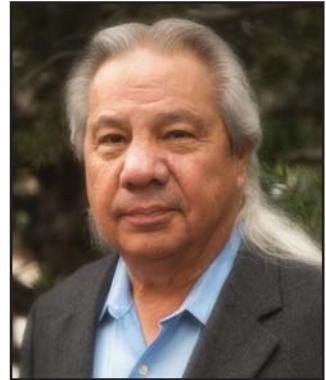
The Pamunkey Indian Tribe of Virginia received a final determination from the Department of the Interior acknowledging their existence as an Indian tribe. We have been representing the Tribe on this issue since 1988. The Agua Caliente Band of Cahuilla Indians of California received a favorable ruling from a federal district court upholding their reserved right to groundwater under their reservation around Palm Springs. We are pleased to be representing them in their fight to stop the depletion and pollution of groundwater in that area.

In Alaska, we were able to reach a settlement in a case on behalf of an Alaska Native family against the Catholic Church that resolved a property dispute that will allow the family year round access to their fish camp which provides their subsistence. On behalf of the Native village of Saxman, we were able to preserve through litigation their rural designation which allows them to maintain their subsistence hunting and fishing rights under federal law.

At the United Nations Framework Convention on Climate Change in Paris, we continued our representation of the National Congress of American Indians on climate change issues and assisted in securing language in the Agreement and Decision referencing indigenous peoples. The rights of indigenous peoples must be acknowledged when states take action on climate change and the traditional knowledge of indigenous peoples shall help guide the science used to address climate change.

Our work on behalf of the Tribal Education Departments National Assembly continued and was successful in securing further funding for tribal education departments to participate in the State Tribal Education Partnerships program in public schools and the Sovereignty in Education program in federal Bureau of Indian Education schools. We were also able to help tribal departments of education be included in the new Every Student Succeeds Act so that they can continue their work to advance tribal self-determination in education.

A legal challenge to the new revisions of the federal Guidelines for State Courts and Agencies in Child Custody Proceedings was dismissed by a federal district court in Virginia. We had filed an amicus curiae brief in the case on behalf of several national Native organizations seeking to uphold the Guidelines which will help to implement the Indian Child Welfare Act. The Act was passed by Congress in 1978 to help stop the unwarranted removal of Indian children from their Indian families and tribes and the misguided placement of those children in non-Indian homes.



After extensive litigation and negotiations, a federal district court in Alaska approved a settlement in our Alaska Native voting rights case providing for a comprehensive Native language assistance program, the appointment of federal election observers, translation of all pre-election information into Native languages, the creation of a new state-level position specifically devoted to language assistance and continued court oversight and reporting. In addition, we helped to start a national Native American Voting Rights Coalition consisting of Native voting rights advocates, lawyers, experts and tribal advocates to coordinate Native voting rights protection efforts across Indian country.

Finally, we prevailed in a new tribal trust funds mismanagement case against the federal government when a federal district court ruled against the government's motion to dismiss for lack of jurisdiction. As a result, the parties have agreed to stay further litigation and proceed with settlement negotiations.

All of these successful efforts would not have been possible without the support of all of the funders of our non-profit organization. We thank you for your grants and contributions and hope that your support will continue into 2016 and beyond to enable us to make more progress on behalf of Native Americans.

**John E. Echohawk**  
Executive Director

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# Chairman's Message

Aloha mai kākou,

In November, NARF and its supporters commemorated NARF's forty-fifth year of service to Indian tribes, organizations and individuals on important legal issues. This significant milestone was celebrated with a series of well attended events. On behalf of the staff and the Board, I do humbly extend to each of you who shared this special occasion with us our deep gratitude and thanks. We also extend this same gratitude and thanks to all who support NARF's necessary work through your continuing financial and in-kind contributions. Its' success, as evidenced by the recent Paris Agreement, the first ever universally binding accord on climate change adopted under the United Nations Framework Convention on Climate Change that for the first time includes language that takes into account indigenous peoples and their knowledge systems, was achieved through the dedicated, unwavering work of its staff, would simply not be possible without the support you continue to provide.



NARF has proposed an ambitious new project: gathering voting rights advocates, lawyers, experts, and tribal advocates into one room to discuss current problems with voting in Indian Country and begin to develop solutions to these problems. With the completion of the initial meeting, the participants have developed an ongoing project called the Native American Voting Rights Coalition (NAVRC). It meets on a monthly basis, as do its subgroups on redistricting, litigation, capacity building and data gathering. The NAVRC is actively working on its 2016 work as well as fundraising for the group itself.

The results achieved by NARF on the 50+ cases and/or projects, as recorded in this report, is again only possible with and through your continued support. And so, on behalf of the staff and Board of NARF, thank you again for your support. So that NARF may continue its valuable work, I encourage each of you to continue with your giving and support.

Mahalo,

**Moses K. N. Haia III**  
Chairman, Board of Directors

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## Board of Directors



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

### NARF's Board of Directors:

First row (left to right):

**Robert McGhee**, Vice-Chairman  
(Poarch Band of Creek Indians),

**Moses Haia**, Chairman, (Native Hawaiian),  
**Virginia Cross**, outgoing Board member  
(Muckleshoot Indian Tribe),

**Julie Roberts-Hyslop** (Native Village of Tanana).

Second Row (left to right):

**Tex Hall**, Board Treasurer (Three Affiliated Tribes),  
**Kurt BlueDog** (Sisseton-Wahpeton Sioux),

**Michael Smith** (Chickasaw Nation),  
**Peter Pino**, (Zia Pueblo),  
**Anita Mitchell**, incoming new Board member  
(Muckleshoot Indian Tribe).

(Not Pictured):

**Larry Olinger** (Agua Caliente Band of Cahuilla Indians),  
**Gary Hayes** (Ute Mountain Ute Tribe);  
**Stephen Lewis**, (Gila River Indian Community),  
**Richard Peterson** (Central Council of the Tlingit and Haida Indian Tribes),  
**Jefferson Keel** (Chickasaw Nation).

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# 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 29 volunteers on the Committee are committed to upholding the rights of Native Americans.

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**Randy Bardwell** (Pechanga Band of Luiseno Mission Indians)

**Jaime Barrientoz** (Grand Traverse Band of Ottawa & Chippewa Indians)

**John Bevan**

**Wallace Coffey** (Comanche Nation)

**Ada Deer** (Menominee)

**Harvey A. Dennenberg**

**Lucille A. Echohawk** (Pawnee)

**Jane Fonda**

**Eric Ginsburg**

**Jeff Ginsburg**

**Rodney Grant** (Omaha)

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

**Billy Mills** (Oglala Lakota)

**Amado Pena Jr.** (Yaqui/Chicano)

**Wayne Ross**

**Nancy Starling-Ross**

**Marc Rudick**

**Pam Rudick**

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

**Andrew Teller** (Isleta Pueblo)

**Verna Teller** (Isleta Pueblo)

**Rebecca Tsosie** (Pasqua Yaqui)

**Tzo-Nah** (Shoshone-Bannock)

**Aíne Ungar**

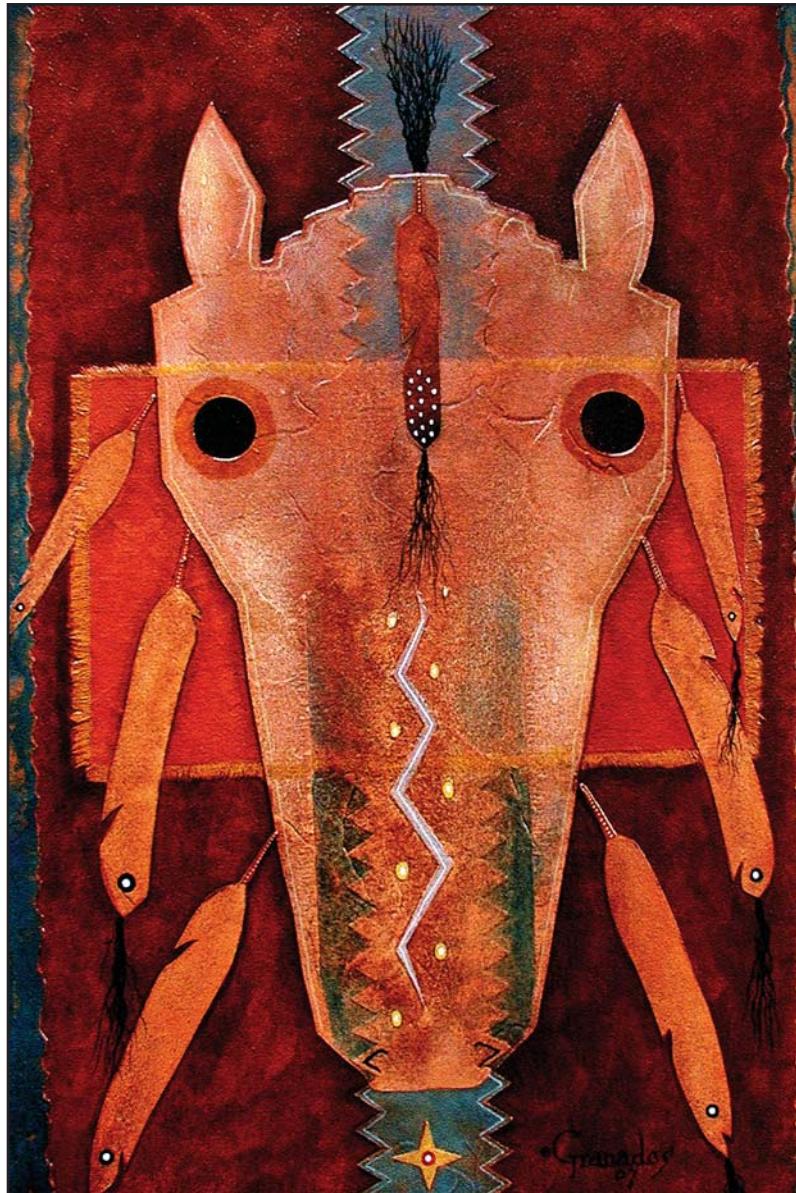
**Rt. Rev. William C. Wantland** (Seminole)

**W. Richard West, Jr.** (Southern Cheyenne)

**Randy Willis** (Oglala Lakota)

**Teresa Willis** (Umatilla)

**Mary T. Wynne** (Rosebud Sioux)





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# The Preservation of Tribal Existence

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

Specifically, NARF's legal representation centers on sovereignty and jurisdiction issues 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 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

*"When asked by an anthropologist what the Indians called America before the white men came, an Indian said simply "Ours." Vine Deloria, Jr.*

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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 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.

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## The Preservation of Tribal Existence



The October 2015 Term of the Supreme Court of the United States is shaping up as the busiest term for the Tribal Supreme Court Project in its history, and has the potential to become a "watershed" term for the future development of Indian law. The Supreme Court will hear oral argument on January 20, 2016, its third Indian law case of the October Term 2015. In *Nebraska v. Parker*, the Court will consider whether changing demographics and justifiable expectations of non-Indians should be given greater weight in its analysis of whether Indian reservation boundaries have been diminished or disestablished. This case has the potential to re-define the manner in which courts will view tribal regulatory authority over non-Indian communities located within the reservation. On the same day, the Court will also hear argument in *Sturgeon v. Masica*, an Indian law-related case decided by U.S. Court of Appeals for the Ninth Circuit which held that the Alaska National Interest Lands Conservation Act of 1980 did not prevent the National Park Service from imposing its generally applicable regulations on non-federal lands within conservation system units in Alaska. A reversal of the Ninth

Circuit could have a significant negative impact on the *Katie John* Native subsistence rights case.

On December 7, 2015, the Court heard oral argument in *Dollar General v. Mississippi Band of Choctaw Indians* to decide, once again, the scope of tribal civil jurisdiction over non-Indians who come on to the reservation to do business with the Tribe and its members. The scope of tribal inherent sovereign authority over non-Indians and the source of Congress' authority over Indian affairs were taken up by the Court where at least four Justices openly questioned the protections in place for non-Indians in tribal courts, and the source of Congress' authority in these matters under the U.S. Constitution. It is difficult to discern from oral argument how the Justices may vote and ultimately decide this case, but the outcome has significant implications for all of Indian country. And on December 1, 2015, the Court heard oral argument in *Menominee Indian Tribe v. United States*, its first Indian law case of the term, to resolve a conflict between the U.S. Courts of Appeals for the DC Circuit and the Federal Circuit regarding the appropriate

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standard for obtaining equitable tolling of the statute of limitations for filing claims against the Indian Health Service for unpaid contract support costs.

On December 14, 2015, the Court granted review in the fourth Indian law case of this term, accepting the petition filed by the United States in *U.S. v. Bryant* that involves the question of whether tribal court criminal convictions for domestic violence may be used in federal court prosecutions as a habitual offender under 18 USC §117 only if the tribal court guarantees a right to counsel. The Ninth Circuit, in conflict with the Eighth and Tenth Circuits, concluded that it is constitutionally impermissible to use uncounseled convictions to establish an element of the offense in a subsequent prosecution under § 117(a).

And other petitions are awaiting consideration. For example, it appears that the Court is holding the petition filed in *Jensen v. EXC, Inc.* as it considers the question of tribal civil jurisdiction over torts committed by non-Indians in *Dollar General*. And in relation to the question of reservation diminishment/disestablishment, petitions were filed by Wasatch County and Uintah County against the Ute Indian Tribe on November 13, 2015, based on the Court's 1994 decision in *Hagen v. Utah*. In a separate federal criminal prosecution, a petition was filed on November 19, 2015, in *Zepeda v. United States* which seek review of an en banc decision of the Ninth Circuit regarding how courts are to determine who is "Indian" under the Indian Major Crimes Act, and whether the consideration of "some quantum of Indian blood" impermissibly discriminates on the basis of race.

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 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.

The Judicial Selection Project is about research and education: to educate the federal judiciary about tribal issues; to educate tribal leaders about the federal judiciary and the judicial nomination process; and to reach out

to elected officials and the public at large about the need for judges in the federal courts who understand the unique legal status of Indian tribes. The research objective of the Project evaluates the records of judicial nominees on their knowledge of Indian issues. The analysis and conclusions are shared with tribal leaders and federal decision-makers in relation to their decision whether to support or oppose a particular nomination. The Project works with the U.S. Senate Judiciary Committee to ensure that all nominees are asked about their experience with Indian tribes and their understanding of federal Indian law during confirmation proceedings.

As the Obama Administration looks to its final year in office, additional inquiries have been made in relation to 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. In particular, current vacancies on the U.S. District Courts for the Western District of Oklahoma and for the Western District of Washington are getting attention. However, it is doubtful that even if the President put forward nominations at this time that the Republican-controlled Senate will hold hearings and vote to confirm his nominees. Nonetheless, the Project is moving forward with vetting candidates in anticipation of a new Administration—Democrat or Republican—taking office in January 2017. Although successful in its work with the White House and U.S. Senate to ensure the nomination and confirmation of Diane J. Humetewa to the U.S. District Court for the District of Arizona in 2014, the Project needs to continue to work with its partners—NCAI and the National Native American Bar Association—to ensure the consideration of qualified Native judicial candidates.

## Federal Recognition of Tribal Status

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

In 1997, the Branch of Acknowledgment and Research (BAR) placed the Little Shell Tribe of Chippewa Indians of Montana federal recognition petition on active review

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The Preservation of Tribal Existence



status. In 2000 the Assistant Secretary for Indian Affairs (AS-IA) published a Preliminary Determination in favor of recognition. 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 2005. In October 2009, the Acting AS-IA 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 AS-IA 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.

In an important development after the IBIA decision, in June 2013 the AS-IA made an announcement of "Consideration of Revision to Acknowledgment Regulations" along with preliminary discussion draft regulations which propose major changes in the regulations. In light of this announcement, NARF urged the SOI to request the AS-IA to suspend consideration of the Final Determination pending completion of the revision process as the proposed amendments are very significant. In January 2014, the AS-IA granted the Little Shell Tribe's request to place their petition on suspension pending completion of the process to amend the acknowledgment regulations.

In May 2014 the AS-IA issued proposed regulations for comment. Several consultations and public hearings on the proposed regulations were held around the country and comments on the proposed regulations were submitted on behalf of the Tribe in September 2014. The final rule was published in July 2015. In the meantime, the Tribe continues to pursue legislative recognition and the Tribe's recognition bill was reported out of the Senate Committee on Indian Affairs by voice vote in March 2015. In addition, a hearing was held on

the House bill in October 2015 in the House Natural Resources Committee.

In an historic day for the Pamunkey Indian Tribe, in July 2015, after decades of research and participation in the federal acknowledgment regulatory process, the Assistant Secretary – Indian Affairs, U.S. Department of the Interior published a Final Determination acknowledging that the Tribe exists as an Indian tribe within the meaning of Federal law. A request for reconsideration, however, was filed on October 6, 2015, with the Indian Board of Indian Appeals (IBIA), an independent appellate review body within the Department's Office of Hearings and Appeals. The case will now proceed through the administrative review process with the issue of standing having been briefed and the parties awaiting a ruling in 2016 by the IBIA.

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. NARF has represented the Tribe in this effort since 1988 and now is co-counsel on this matter.



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# 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 (EST) of the Wind River Indian Reservation to analyze the Surplus Land Act of March 3, 1905, and other legislation and cases, to determine their implications for the boundaries of the Reservation.

The EST and Northern Arapaho Tribes cooperated in an application to the U.S. Environmental Protection Agency (EPA) for delegation of "treatment in the same manner as a state" in the administration of certain Clean Air Act programs. EPA issued its approval of their application in December 2013. In its approval decision, EPA determined that the boundaries of the Reservation were not altered by the 1905 Surplus Land Act. The State of Wyoming filed a Petition for Reconsideration and Stay with EPA in January 2014. That Petition for a stay was granted in part by EPA as to lands over which jurisdiction is in dispute. Wyoming then filed a Petition for Review in February 2014, with the US Court of Appeals for the Tenth Circuit which was followed in due course by separate Petitions for Review from Devon Energy and the Wyoming Farm Bureau. The Court of Appeals consolidated the three petitions into one case. The City of Riverton and Fremont County have filed motions for Intervention on the side of the Petitioners. Those motions are pending. The Northern Arapahoe Tribe filed a Motion for Intervention which the Court granted, and the EST filed a Notice of Intervention which the Court also granted. The Tribes were unsuccessful in urging the parties to sit down to negotiations in mediation or other settings to address the broad range of issues

*"The Earth was created by the assistance of the sun, and it should be left as it was. The country was made without lines of demarcation, and it is no man's business to divide it. I see whites all over the country gaining wealth, and see their desire to give us lands which are worthless. The earth and myself are of one mind. The measure of the land and the measure of our bodies are the same. Say to us if you can say it, that you were sent by the Creative Power to talk to us. Perhaps you think the Creator sent you here to dispose of us as you see fit. If I thought that you were sent by the Creator I might be induced to think you had a right to dispose of me. Do not misunderstand me, but understand me fully with reference to my affection to the land. I never said the land was mine to do with it as I chose. The one who has the right to dispose of it is the one who created it. I claim a right to live on my land, and accord you the privilege to live on yours." Heinmot Tooyalaket (Chief Joseph, Nez Perce)*

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facing all of the parties. The State, City of Riverton, County of Fremont and Wyoming Farm Bureau have all filed their briefs. EPA filed its brief in May 2015. An amicus brief of law professors in support of EST was filed in April 2015. The Reply briefs of the State, City of Riverton, Fremont County and the Wyoming Farm Bureau have all been filed. The Joint Appendix was filed

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## The Protection of Tribal Natural Resources



in July 2015 and conformed briefs were filed in August 2015. Oral argument was held in November 2015. Supplemental briefs on "Mootness" were filed by all parties in December 2015.

NARF represents the Hualapai Indian Tribe of Arizona in preparing and submitting five applications for the transfer into trust status of 8 parcels of land owned in fee by the Tribe. The Tribe is located on the south rim of the Grand Canyon in Arizona, and claims a boundary that runs to the center of the Colorado River. The applications have been submitted to the BIA which is preparing them for review by the U.S. Interior Department's Solicitor for Preliminary Title Opinions (PTO) and Final Title Opinions. The Field Solicitor in Phoenix has issued a PTO on two of the applications. Another application is ready for submission for a Final Title Opinion.

In July 2014 NARF filed an amicus brief on behalf of NCAI in the U.S. Court of Appeals for the Tenth Circuit

supporting the Jemez Pueblo's claim of aboriginal title to land purchased by the United States and put into the Valles Caldera National Preserve in New Mexico. The district court denied the Pueblo's claim, holding that the Indians Claims Commission Act transmuted all aboriginal title claims into monetary claims and the Pueblo should have sued under that Act for loss of its aboriginal title. Oral argument in the appeal was held in November 2014. In June 2015, the Court of Appeals issued a favorable decision remanding the case to the district court where the Pueblo will have an opportunity to prove up its aboriginal title. The United States has filed a petition for rehearing en banc and the Pueblo was asked to, and did respond. The Court denied the petition for rehearing in November 2015. It is unclear if the United States will petition the Supreme Court for a grant of certiorari.

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

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represented by NARF, brought suit in the U.S. District Court for the District of Columbia seeking judicial review of 25 C.F.R. Part 151 as it pertains to federally-recognized Tribes in Alaska. This federal 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 full briefing, but nearly three years of no action by the federal court, the case was transferred to Judge Rudolph Contreras. In March 2013, an Order was issued by Judge Contreras, granting Plaintiffs complete relief on all of their claims – a major victory for Alaska Tribes. Briefing on remedies was concluded and a Memorandum Order was entered in September 2013 denying the State of Alaska's motion for reconsideration, and severing and vacating Part 1 of 25 C.F.R. 151. The State filed its motion of appeal.

In May 2014, the Department of the Interior published a new proposed rule addressing the acquisition of land into trust in Alaska. Specifically, the proposed rule deleted the provision that excluded trust acquisitions in the State of Alaska. Following the notice of rule-making, the State of Alaska filed a motion to stay the rule-making pending appeal. In June 2014, the court issued an order granting in part and denying in part Alaska's motion to stay pending appeal. The court found that the state would suffer no harm from allowing the rule-making to proceed but granted the stay in part to prevent the Interior Department from considering specific applications or taking lands into trust in Alaska until resolution of the appeal. In December 2014, the Interior Department published its final rule rescinding the "Alaska Exception", which became effective in January 2015. In January 2015, the State of Alaska moved to suspend briefing in this appeal, to "explore a range of policy options on this issue and related tribal issues in Alaska, including potential alternatives to continuing this litigation." The Court granted the stay, as well as an additional, 30-day extension of time. In August 2015, the State of Alaska filed its Appellate brief. Federal Appellees filed a motion to dismiss in October 2015, on the ground that the Secretary's rescission of the "Alaska "Exception" moots the case. In December 2015, NARF and the Department of the Interior each filed their response briefs. Alaska filed its reply brief shortly before the Christmas holiday. With briefing now closed, the Court set March 4, 2016 as the date for oral argument in the case.

## 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, together with co-counsel, represents the Agua Caliente Band of Cahuilla Indians in a lawsuit filed in May 2013 in the U.S. District Court for the Central District of California, asking the court to declare the existence of the Tribe's water rights as the senior rights in the Coachella Valley under federal law, to quantify these rights, and to prevent Coachella Valley Water District and Desert Water Agency from further injuring the Tribe, its members and residents in surrounding communities throughout the Valley by impairing the quantity and quality of water in the aquifer.

The water districts import and then fail to adequately treat substantially lower quality water from the Colorado River before injecting that water into the aquifer. The recharge water, which contains higher total dissolved

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## The Protection of Tribal Natural Resources

solids, nitrates, pesticides, and other contaminants, is reinjected into the Coachella Valley aquifer at a facility close to the Tribe's lands. Thus, the groundwater in the Western Coachella Valley, including the water below the Agua Caliente Reservation, which includes the cities of Palm Springs, Cathedral City, Rancho Mirage, and Thousand Palms, is being polluted at a faster rate than the aquifer down-valley.

In February 2014 the court set a discovery and pre-trial motion practice schedule in the case. The parties completed discovery in Phase I of the case in summer 2014. The United States moved to intervene in the case in May 2014, and the court granted the US' intervention, a significant achievement for the Tribe and its attorneys. Summary judgment motions were filed in Phase I of the case in October 2014, and briefed through January 2015. Oral argument was heard in March 2015 and the court issued its ruling at the end of March 2015. The court ruled largely in the Tribe's favor, holding that the Tribe has a reserved right to water, and that groundwater is a water source available to fulfill that right; the court also denied the Tribe's motion for summary judgment on its claim for aboriginal title to groundwater. The water districts filed a petition with the U.S. Court of Appeals for the Ninth Circuit for interlocutory review of the portion of the court's order addressing the Tribe's reserved right to groundwater. The Tribe opposed interlocutory review but in June 2015, the Ninth Circuit granted the water districts' petition for interlocutory review. Briefing before the Ninth Circuit is underway, with the water districts' opening brief filed in October 2015, and the Tribe's and United States' briefs due in February 2016. Oral argument will likely take place in early 2016. The water agencies moved to stay proceedings before the district court while the Ninth Circuit reviews the court's decision on the Tribe's reserved right to groundwater and the district court granted their motion in part in September 2015. However, Phase 2 is moving forward on a limited basis, with the court agreeing to hear arguments on the issue of whether the equitable defenses raised by the water agencies apply to tribal water rights claims. Briefing on that issue was completed in November 2015 and oral argument was heard in December 2015. At oral argument, the judge stated that he was inclined to rule in the Tribe's favor on two of the equitable defense issues: laches and balancing of the equities. However, the judge ordered supplemental briefing on the third issue before the court: whether the unclean hands doctrine could, as a matter of law, apply to this type of claim.

NARF is awaiting the court's ruling on the equitable defenses. The remainder of Phase 2 issues were stayed by the court pending the Ninth Circuit's resolution of the water agencies' appeal.

NARF represented the Nez Perce Tribe in Idaho in its water rights claims in the Snake River Basin Adjudication (SRBA) both litigation and settlement phases for over 16 years. In 2004 Congress enacted and the President signed the Snake River Settlement Act. NARF's work with the Tribe has now turned to development of water rights claims in the Palouse River Basin Adjudication (PRBA). The State of Idaho will commence the PRBA in 2016.

In the Klamath Basin tribal water rights case, the Klamath County Circuit Court has issued two new Case Management Orders related to the first sub-phase of the Klamath Basin Adjudication proceedings (Phase 1A), concerning the resolution of jurisdictional and other threshold legal issues. Under these Case Management Orders, Parties have until January 2016 to submit comments on the Court's proposed list of jurisdictional and other threshold legal issues for resolution in Phase 1A. February 2016 is the deadline for parties to file responses to any such comments. A full briefing and hearing schedule on these issues is expected to be issued by the Court in spring 2016. Following resolution of these preliminary legal issues, the Court will begin to proceed with sequential scheduling and conducting of briefing and hearings for the remainder of the other phases of the Adjudication.

Federal legislation to implement the three Klamath Basin water agreements – the Klamath Basin Restoration Agreement (KBRA), the Klamath Hydroelectric Settlement Agreement (KHSA), and the Upper Klamath Basin Comprehensive Agreement (UKBCA) – was introduced in the Senate (S 133) in January 2015 and referred to the Committee on Energy and Natural Resources. A sister House bill has not been introduced. The KBRA, the fishery restoration and water management agreement, however, terminated in December 2015 because federal authorizing legislation was not timely enacted per the terms of the Agreement. The KHSA and the UKBCA remain in effect but are interdependent with the recently terminated KBRA. The parties will confer to determine the fate of the two remaining agreements and consider whether the goals of the KBRA can still be achieved.



After almost 30 years of advocacy, the Tule River Indian Tribe, 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 of California. 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 Tule River Reservation.

New Federal Negotiation Team members were appointed by the Secretary's Indian Water Rights Office in 2014. The Tribal Water Team met in February 2015 with the Federal Negotiation Team to discuss the various alternatives that will be analyzed and the Negotiation Teams' response that the Tribe's Settlement is too expensive. Currently, the Tribal Water Team is assisting the

Federal Negotiation Team in developing an appraisal level study of several alternatives that were identified in the February 2015 meeting. The Federal Team promised to be done with the study by November 2015 so that the Tribe and Federal Negotiation Team can proceed to negotiate an appropriate settlement to present to Congress for introduction early 2016. Regrettably, the Federal Negotiation Team advised the Tribe in November of 2015 that, despite utilizing the past two years to look at any and all alternatives, it will have to go back and analyze further alternatives.

According to the Environmental Protection Agency, the 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 and the Tribe is not even able to provide local schools with reliable,

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safe running water. The fire department cannot provide adequate fire protection due to the water shortage. The proposed Reservoir Project is the most cost effective and reliable means by which the Tribe can improve the water supply.

In June 2006, the Kickapoo Tribe in Kansas, represented by NARF, filed a federal court lawsuit in an effort to enforce express promises made to the Tribe to build a Reservoir Project. The Nemaha Brown Watershed Joint Board #7, the Natural Resources Conservation Service of the U.S. Department of Agriculture, and the State of Kansas made these promises to the Tribe over a decade ago. In the intervening years these parties have been

actively developing the water resources of the watershed, resulting in the near depletion of the Tribe's senior federal water rights in the drainage. The U.S., the State and the local watershed district all concede the existence of the Tribe's senior Indian reserved water rights; the real issue is the amount of water needed to satisfy the Tribe's rights, and the source or sources of that water. The Tribe and the US have also discussed funding to quantify the Tribe's water rights.

The watershed district rejected a Condemnation Agreement that the State and Tribe had approved. That agreement would have created the mechanism for condemning property for the water storage project. After a

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return to litigation, the federal court entered summary judgment in favor of the watershed district on the question of whether a 1994 agreement obligated the district to make its condemnation power available to aid the Tribe in acquiring the land for the water storage project area. The Tribe is now evaluating its options, including discussions with the Interior and Agriculture Departments and the State of Kansas to find an alternative means of securing the land rights for the project. Additionally, the State, the US and the Tribe are continuing active negotiations of settlement of the Tribe's federally reserved water rights.

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

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

In the subsistence case of *Stickwan v. Catholic Church*, NARF represented the Stickwan family from Tazlina in the establishment of a prescriptive easement to protect a historic customary and traditional fishing site on property owned by the Catholic Church that is slated to be sold. The Church received the land in a special legislative land grant in 1952 with a reservation that land would be used as a mission school for Indians. A complaint on behalf of the family was filed in April 2014. After nearly a year of negotiations, the parties reached a settlement agreement in which the Stickwan family will receive full fee simple title to the land underlying their family's fish camp. In addition, the Church will convey two perpetual access easements to the Stickwans for continued year round access to their fish camp and Native allotment.

The Alaska National Interest Lands Conservation Act (ANILCA) provides a subsistence harvest priority to Alaska's "rural" residents. ANILCA itself, however, does not define which individuals or communities qualify as "rural." The Organized Village of Saxman is a coastal community of 411 residents. The population is overwhelmingly Alaska Native. Saxman has its own federally recognized tribal government, its own state recognized municipality, and its own ANCSA village corporation. Saxman is, however, connected to the city of Ketchikan by a two-mile long road.

In 2007, the Federal Subsistence Board (FSB) promulgated a final rule revoking Saxman's rural community status. The FSB reasoned that Saxman's close proximity to Ketchikan justified aggregating the two communities as one non-rural community. The Saxman IRA Council pursued its administrative remedies in order to reinstate its rural status. Implementation of the 2007 Final Rule was delayed by the Secretary of the Interior as the FSB engaged in an overhaul of the rural determination criteria used to designate communities "rural or non-rural" under ANILCA.

In June 2014, NARF filed a complaint for declaratory and injunctive relief in Alaska's federal district court challenging the merits of the FSB's 2007 decision to classify Saxman as non-rural. Soon after the Complaint was filed, the Deputy Secretary of the Interior announced the initiation of administrative rule-making aimed at requiring "the Federal Subsistence Board to use more flexible criteria to designate rural communities" during the rural/non-rural determination process. Subsequently, NARF and the U.S. Department of Justice jointly moved to stay the litigation during the pendency of the administrative rule-making. The court granted the stay in December 2014. In January 2015, a proposed rule for the rural determination process was published in the Federal Register. NARF assisted the Organized Village of Saxman IRA in drafting written comments on the proposed rule and appeared with Saxman officials at public hearings. In May 2015, Senator Murkowski and Congressman Young introduced bills which would legislatively reinstate Saxman as a rural community. The FSB voted unanimously to adopt the proposed administrative rule favoring Saxman's rural status. The proposed rule and updated community list were published in the Federal Register in November 2015. With the rule now in effect, NARF will soon move to dismiss the federal lawsuit. NARF will continue working with Saxman on issues surrounding the FSB and federal subsistence management program – including future policy issues surrounding rural community status.

The Bering Sea Elders Group (BSEG) is an alliance of thirty-nine Yup'ik and Inupiaq villages that seeks to protect the sensitive ecosystem of the Bering Sea, 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. Subsistence is the inherently sustainable Native philosophy of taking only what you need.

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## The Protection of Tribal Natural Resources

There are often no roads and no stores in rural Alaska, and so no other group of people in the United States continues to be as intimately connected to the land and water and as dependent upon its vast natural resources as Alaska's indigenous peoples.

NARF has been working with BSEG in its negotiations with the bottom trawl industry over the course of the last few years. These negotiations have resulted in the creation of a Working Group which is a co-management body with equal representation between the bottom trawl industry and representatives from Native villages that are close to the industry's primary fishing grounds. The most recent Working Group meeting was held in early November 2015.

In *John Sturgeon v. Sue Masica et al.*, the federal courts upheld the right of the National Park Service to prohibit the use of a hovercraft on a river inside a National Park or Preserve (here, the Yukon-Charley Rivers National Preserve). The hovercraft was being used on the Nation River, which is a navigable river inside the Yukon-Charley Preserve. The lower federal courts ruled in favor of the federal government on the basis that nationwide park and preserve rules generally apply to all lands and waters that are inside a park or preserve. Yet, a key provision of the 1980 Alaska National Interest Lands Conservation Act (ANILCA) was intended to exempt those kinds of lands from precisely these kinds of federal park rules. ANILCA specifically declares that state, Alaska Native and private lands are not subject to "regulations applicable solely to public lands within such units," while federal laws and regulations of general applicability to private and public lands alike — like the hovercraft ban — wouldn't be affected by the exemption. The Ninth Circuit's ruling rejected an interpretation of the ANILCA provision that exempted state and Alaska Native corporate lands from the scope of regulations.

Because the Ninth Circuit's ruling resulted in ANCSA lands being subject to Park regulations, ANCSA corporations joined Mr. Sturgeon and the state of Alaska in petitioning Supreme Court review. The Court granted review in October 2015. NARF elected to file an amicus brief on behalf of subsistence users in support of the federal government at the Supreme Court level because of concern that the case may inadvertently implicate subsistence fishing rights established by the *Katie John* litigation.

In *Katie John*, the federal courts ruled that the government owns a federal interest in navigable rivers running inside parks and preserves under the reserved water rights doctrine. On that basis the courts upheld the right of the federal government to protect subsistence fishing in those rivers. The same, one would think, would be the case here—since the government owns an interest in navigable waters inside a preserve, the government can regulate other uses of those waters. But Mr. Sturgeon and the State of Alaska argued in *Sturgeon* that the State owned the submerged lands and navigable waters that run through parks and thus the federal government has no interest in navigable waters inside parks and preserves. If the Supreme Court were to agree, the basis for federal regulation of subsistence fishing could be undermined. Oral argument is scheduled to be held in January 2016.

Alaska's Bristol Bay region is home to the largest wild salmon runs in the world. It is also home to the Yup'ik, Dena'ina, and Alutiiq people who depend on the sustainable salmon runs for their subsistence. In April 2013, NARF assisted in the creation of the United Tribes of Bristol Bay (UTBB). UTBB is a consortium of federally-recognized tribes in the region. It was formed in order for tribes to directly address regional large-scale mining proposals threatening salmon rearing streams – such as the proposed Pebble Mine, which would sit on the headwaters of the largest salmon-producing river in Bristol Bay. Exercising its delegated governmental authority, with NARF as legal counsel, UTBB has actively engaged the federal government in direct government-to-government consultation on large scale mining in Bristol Bay.

EPA released its Watershed Assessment in January 2014. The assessment is a science- based document that supports the use of 404(c) authority by EPA to prohibit or restrict hard rock mining in the Bristol Bay watershed. In February 2014, EPA gave their 15-day notification that it would initiate a 404(c) process for the Pebble Mine. The State of Alaska immediately filed a statement requesting a stay to allow the developer to submit a permit under the NEPA process. EPA granted the State and the Corp. of Engineers a thirty day extension to respond to the notification of 404(c) process. Public hearings commenced over the 2014 summer season.

In February 2014, EPA gave its 15-day notification that it would initiate a Clean Water Act 404(c) process for the Pebble Mine. The State of Alaska immediately



filed a statement requesting a stay to allow the developer to submit a permit under the NEPA process. EPA granted the State and the Corp. of Engineers a thirty day extension to respond to the notification of 404(c) process. In May 2014, Pebble Limited Partnership (PLP) filed suit against EPA and the Region 10 Administrator challenging EPA's Section 404(c) review process as exceeding its statutory authority under the Clean Water Act. The State of Alaska filed a motion to intervene as a plaintiff which was granted in June 2014. Both parties moved for a preliminary injunction. UTBB, represented by NARF, filed a motion to intervene as Intervenor-Defendants. In September 2014 Judge Holland heard oral argument, and then ruled from the bench dismissing PLP and the State of Alaska's Motion for a Preliminary Injunction on the ground that the agency action was not final. PLP filed a motion to appeal and oral argument was held in May 2015. Two weeks later, the Ninth Circuit issued a per curiam opinion affirming Judge Holland in all respects – effectively ending the case in favor of NARF's clients.

In September 2014, PLP filed another complaint against EPA for declaratory and injunctive relief under the Federal Advisory Committee Act (FACA). The FACA imposes requirements on federal agencies when they establish or utilize any "advisory committee." In November 2014, Judge Holland held oral argument on PLP's motion for preliminary injunction and again issued a ruling from the bench he stated that he was unpersuaded that PLP was likely to succeed on the merits of the case, but granted the preliminary injunction, thereby halting EPA's work on the 404(c) process in Bristol Bay. Judge Holland held oral argument in May 2015 and issued a written ruling a week after, ruling again that PLP's claims as to whether EPA created the anti-mine coalition and the anti-mine scientists were meritless. Judge Holland dismissed half of the claims in PLP's amended complaint, but denied the motion to dismiss on others, holding that PLP had stated plausible claims on whether EPA had "utilized" the "expertise" of alleged FACs. In October 2015, however, Judge Holland issued a broad order quashing Pebble's subpoenas, specifically finding that the Company's efforts pushed the federal

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discovery rules to their very limits. Since Judge Holland's issued his order, Pebble has withdrawn its remaining subpoenas, but has made statements in the media that it intends to reissue others at a later date. The case is continuing through the discovery phase, which is not slated to be completed until June 2016. In the interim, Judge Holland's preliminary injunction remains in effect.

NARF is representing the Native Village of Tyonek (NVT) as a co-operating agency in the development of a Supplemental Environmental Impact Statement (SEIS) in

response to a permit proposal by PacRim to mine coal from the Beluga coal fields in the Cook Inlet. NARF continues to be actively engaged in a multifaceted approach to assist NVT in its opposition to the proposed Chuitna Coal Project.

NARF helped the Tribe acquire 160 acres of land that was formerly owned by the Nature Conservancy. The Nature Conservancy Board of Directors agreed to the "Land Transfer" in order to assist NVT in protecting ancient cultural sites, which have been found on the

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land. The transfer agreement was completed in March 2015 and the deed of final conveyance was registered with the title agency. The Alaska State Historic Preservation Office then made a determination that the boundary of the Chuit'na Archeological District be expanded to include the former Nature Conservancy land. NARF continues to retain experts to analyze SEIS component parts. Experts have been retained to respond to each draft chapter of the draft SEIS, all appendices and related studies within the SEIS.

## **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 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.

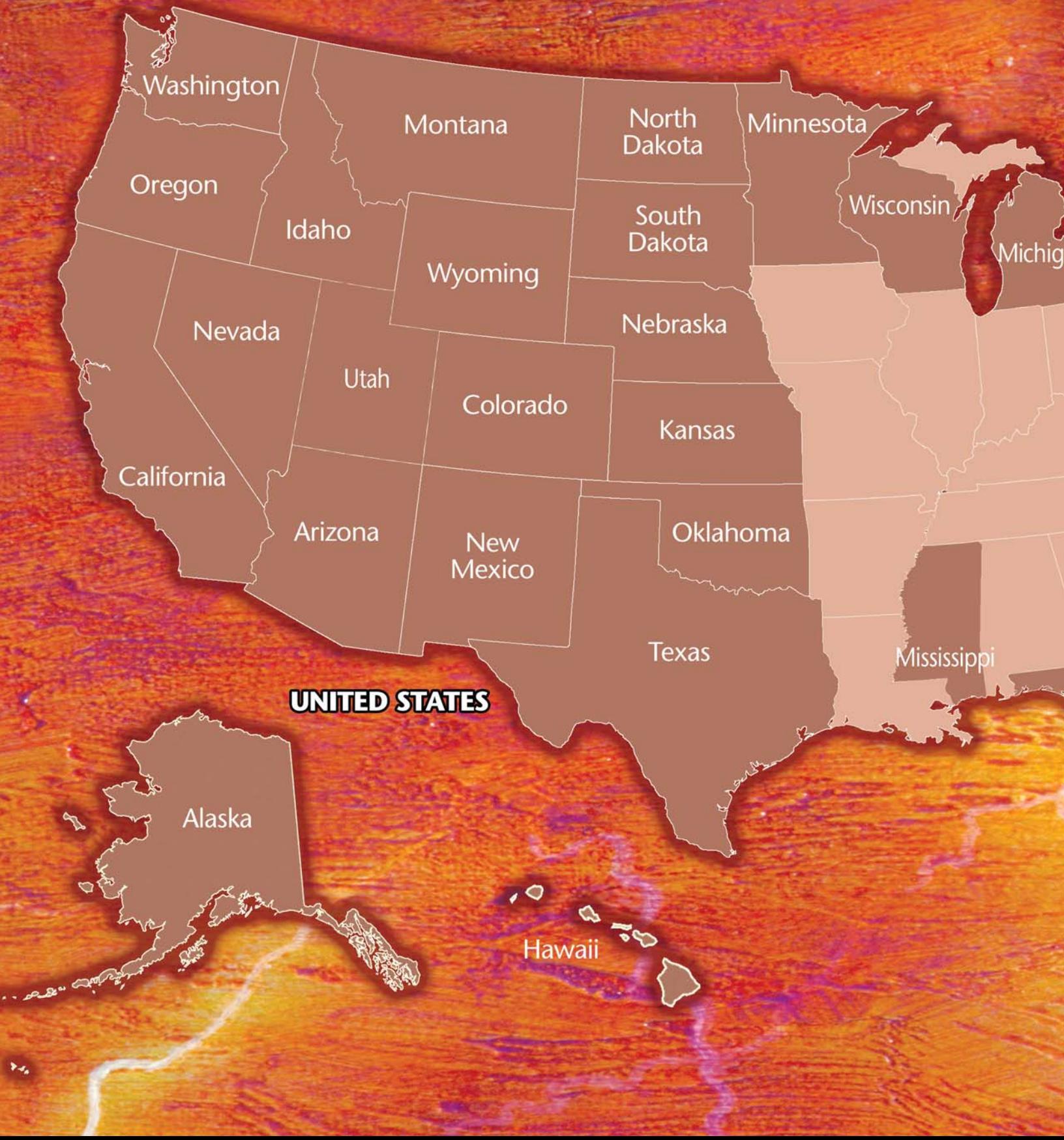
After several years of fruitful partnership, NARF has recently begun representing NCAI climate change matters. Climate change is one of the most challenging issues facing the world today. Its effects on indigenous peoples throughout the world are acute and will only get worse. The effects are especially pronounced in

Alaska where as many as 184 Alaska Native villages are threatened with removal.

On the international stage, the first meetings on the specifics of the new "protocol to be adopted by December 2015, were held in Bonn, Germany in April/May and June, 2013. At the March 2014 meeting of the United Nations Framework Convention on Climate Change in Bonn, an open-ended consultation occurred where countries exchanged views on the elements of the 2015 agreement. No text was produced and developing countries expressed their view that more formal negotiations that allowed for the tabling of text were due. In the June 2014 session, it was anticipated that draft text would be tabled but this did not happen, as more discussion occurred on the elements of a draft text. An additional session was held in Bonn in October 2014. In anticipation of the COP 20, a meeting was held in Lima, Peru in late November 2014.

In December 2015, the Paris Agreement, the first ever universally binding accord on climate change, was adopted under the United Nations Framework Convention on Climate Change (UNFCCC) and achieves the universality which was missing from the last attempt at such an agreement – the Kyoto Protocol. The International Indigenous Peoples Forum on Climate Change (IIPFCC or indigenous caucus), which NARF has participated in, has been involved in the UNFCCC process for years. It is clear that without the presence of Indigenous Peoples' representatives, the Agreement and Decision would have had no reference to them. While the indigenous caucus did not achieve all that it sought, it did achieve some very significant references which can be built on going forward. The language in the Agreement states that when taking action on climate change the rights of indigenous peoples must be acknowledged and that traditional knowledge, knowledge of indigenous peoples and local knowledge systems shall help guide the science used to address climate change. This language recognizes the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples, related to addressing and responding to climate change, and establishes a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner.

# **MAJOR ACTIVITIES 2015 - NARF CASE MAP**







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# 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.

In NARF's Sacred Places Project, NARF has partnered with the National Congress of American Indians and the Morningstar Institute to help ensure that various federal agencies with jurisdiction over federal lands are held accountable to their obligation to protect sacred places and provide meaningful access to tribal people wishing to use those places for traditional purposes. These efforts will include providing best practices analysis, as well as raising awareness of issues and different approaches that can be used to protect sacred places held by the federal government. To the extent possible, analysis and practices learned from federal lands will also be compared for use on private and state-held lands.

NARF has a long history in the protection of Native religion and cultural property, including sacred sites. NARF's Sacred Places Project focuses on monitoring legal issues impacting sacred places for Native peoples, collaborating with various groups that are already working to protect sacred places, monitoring and participating in litigation to protect sacred places, and advocating for greater protection and access for sacred places at the congressional and administrative levels. A website will be developed to act as a clearinghouse of information regarding sacred places protection laws and cases.

NARF provides input to the federal Departments of the Interior, Agriculture, Defense, and Energy, which signed a Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites to improve the

*"Humankind has not woven the web of life. We are but one thread within it. Whatever we do to the web, we do to ourselves. All things are bound together. All things connect."*  
Chief Seattle, 1854

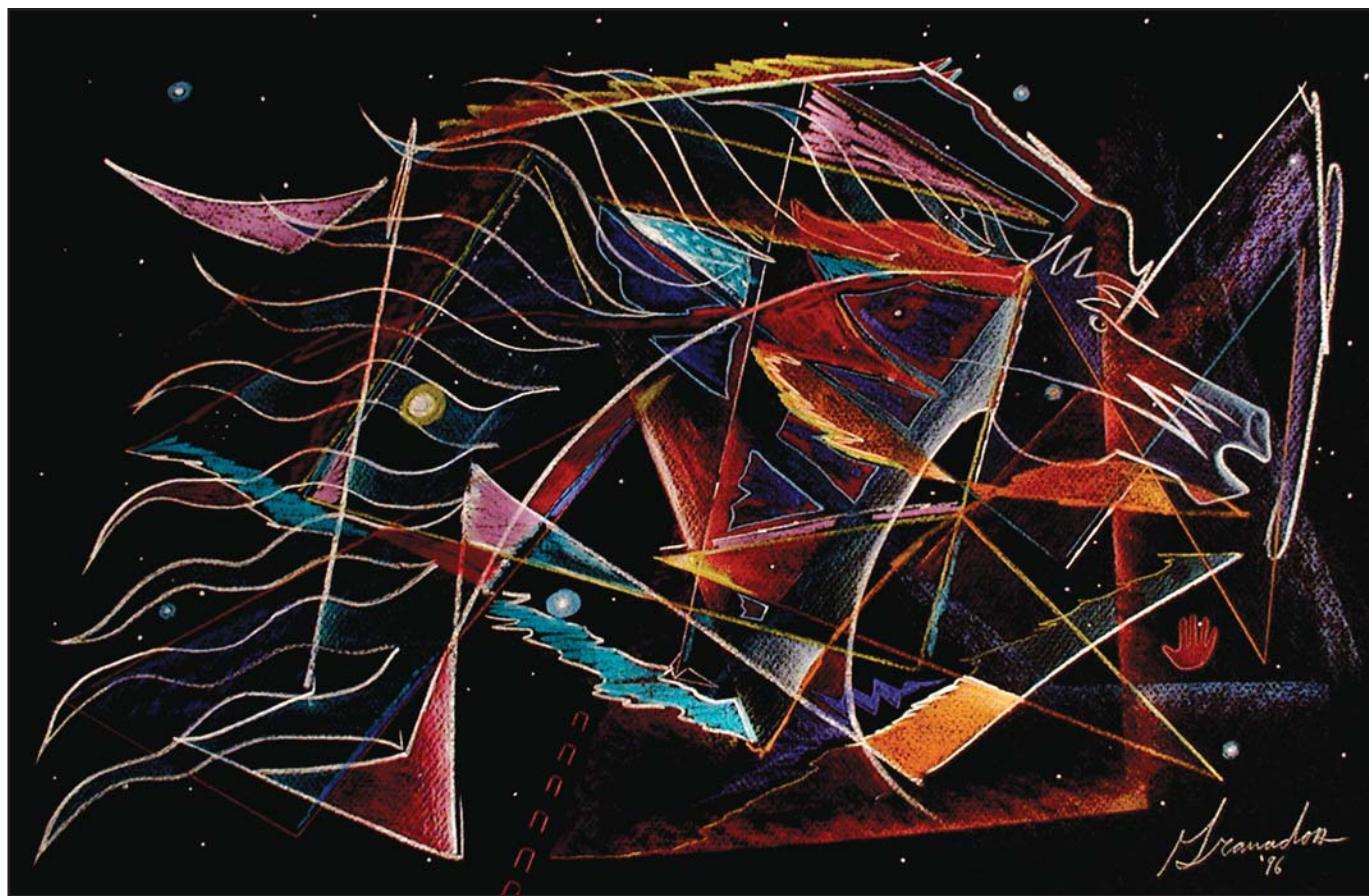
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protection of, and tribal access to, Indian sacred sites through enhanced and improved interdepartmental coordination and collaboration. The MOU was followed in March 2013 with an "Action Plan" calling for establishment of working groups to perform various listed activities to facilitate better coordination and access. NARF continues to provide input to the working groups on best practices and suggestions. It is hoped that the working group will have a series of consultations on some proposals they have received for better protecting and providing access to sacred sites.

NARF, representing the Indian Peaks Band of Paiute Indians, the San Juan Southern Paiute Tribe, and the Morningstar Institute, filed an amicus brief in *Yount v. Jewell*, a case in federal district court of Arizona about the Northern Arizona Withdrawal. In 2012, then-Interior Secretary Salazar announced that he was withdrawing over a million acres of Bureau of Land Management and Forest Service land around the Grand Canyon from future uranium mining claims. The Northern Arizona Withdrawal would prohibit future mining claims from being perfected as of January 2012, but would permit claims that were valid as of that date to go forward. Several mining companies and individuals challenged the Withdrawal on many grounds, including that the Withdrawal violated the Establishment Clause of the U.S. Constitution because it relied on American Indian spiritual beliefs and therefore constituted an impermissible establishment of religion. NARF's amicus brief addressed the Establishment Clause argument as well as the other American Indian cultural arguments that the mining companies raised. The amicus brief was in support of the United States, the Havasupai Tribe, and other environmental groups that intervened in the

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matter. Oral argument was held in September 2014, and in a comprehensive opinion the court upheld the Northern Arizona Withdrawal, preventing new future mining claims. The Court gave little attention to the Plaintiff's Establishment Clause and American Indian arguments indicating they were without merit. The mining companies have appealed this decision to the U.S. Court of Appeals for the Ninth Circuit. NARF, representing the Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe, Kaibab Band of Paiute Indians, Hualapai Tribe of the Hualapai Reservation, Northwestern Band of the Shoshone Nation, the Morning Star Institute, and the National Congress of American Indians again filed an amicus brief in the Ninth Circuit. The brief asked the Court of Appeals to uphold the withdrawal and countered arguments made against tribal interests by the mining companies and other amicus parties.

In May of 2015, environmentalists and historic preservation advocates secured a victory when a Utah federal district court judge in *Southwest Utah Wilderness Alliance v. Schneider* ordered the Bureau of Land Management

(BLM) to conduct on-the-ground surveys to identify cultural artifacts in need of protection on more than 4,000 miles of dirt roads and trails where BLM has permitted off-road vehicles to be driven. BLM challenged that decision in the Tenth Circuit Court of Appeals. NARF, representing the Paiute Indian Tribe of Utah, Indian Peaks Band of Paiutes, the Southern Ute Indian Tribe, and the Morning Star Institute, filed an amicus brief in support of the environmentalists and requested that the surveys be conducted. The Tenth Circuit confirmed that BLM must comply in December of 2015. "This region is home to an abundance of archaeological resources, including caves, rock shelters and rock art, that provide a window in to the lives of the early inhabitants of the Colorado Plateau," said Kevin Jones, former Utah State archaeologist. "Off-road vehicles pose a serious threat to these irreplaceable resources." Less than five percent of the public lands managed by the Richfield Field Office have been surveyed for cultural resources. BLM is now required to survey the routes designated for off-highway vehicle use within three years.

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In September 2014, NARF filed an amicus brief on behalf of the Blackfeet Tribe of the Blackfeet Reservation in the federal district court case of *Solonex v. Jewell*. The energy company is challenging the government's process and decision to limit oil and gas development that would threaten the Tribe's sacred sites. Most recently the court ordered the federal government to decide by November 2015 whether it would seek to cancel or to lift a suspension on Solonex's gas permit on lands sacred to the Blackfeet Nation. The United States decided to cancel the oil and gas lease but the litigation continues.

NARF has represented the Native American Church of North America (NACNA) and its member chapters for four decades in the litigation and legislative arenas. NARF represented NACNA and its several dozen local membership chapters throughout the United States to successfully enact federal legislation in 1994 that finally created national protection for the traditional, indigenous use of Peyote by Native peoples. For the past two years, NARF has been working with the NACNA on a project to research the impact of peyote decline on Native American Church members and to develop and support access to and the use of peyote for NACNA.

Because importation from Mexico, where most of the naturally occurring peyote grows, is presently not legal, and because artificial cultivation is difficult and extraordinarily expensive, North American peyotists currently depend on the only region where Peyote abundance occurs in the United States, the Rio Grande River Valley in south Texas. In recent years it has become increasingly apparent that the domestic supply of peyote is under threat of unsustainability due to a myriad of factors. The decline in the availability of peyote is attributed to four major factors: growing Indian demand; exploitation and commercialization by non-Indian people; damage from private landowner land use practices including cattle ranching; and damage from incorrect harvesting practices and over-harvesting of the peyote cactus. There is a limited amount of available, published scholastic sources that support this hypothesis. NARF's Peyote Research Project team met in the Spring of 2015 and most recently in September 2015, and has developed a specific plan to guide its work through 2016. Near term action will focus on Texas and developing a relationship with private landowners to heighten the awareness of the need to protect the sacrament.

## Indian Education

During the 19th and into the 20th century, pursuant to federal policy, Native American children were forcibly abducted from their homes to attend Christian and government-run boarding schools. The purpose was to "civilize" the Indian 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 human beings with none of the acculturated skills – community, parenting, extended family, language, cultural practices – gained by 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, Australia – there has been no official U.S. proposal for healing or reconciliation.

The National Native American Boarding School Healing Coalition (NABS or the "Coalition") is primarily conducting education and outreach with three general areas of focus at this time: (1) Indian Country, (2) Congress, and (3) Churches. Outreach in Indian country has included presentations at regional tribal organization meetings, as well as working with Indian Country media whenever available. To date, 19 resolutions have been passed by tribes and tribal organizations to support the project. These can be seen on the project website at <http://www.boardingschoolhealing.org/statements-resolutions>.

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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), 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.

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 and 2015 Appropriations Bills to be distributed by the U.S. Department of Education 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 located on Indian reservations. The first round of 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. The second round of grant awardees was announced late 2015 and they are the Confederated Salish and Kootenai Tribes, the Muscogee (Creek) Nation, the Nez Perce Tribe, the Coeur d’Alene Tribe, and the Chickasaw Nation and Cheyenne and Arapaho Consortium. TEDNA has since worked to ensure continued funding for the STEP program and to make it a permanent program as part of the reauthorization by Congress of the Elementary and Secondary Education Act (ESEA).

In FY 2015, the U.S. Department of the Interior’s Bureau of Indian Education announced its new direct funding for TEDs, the Sovereignty in Education (SIE) Program. Six tribes have been awarded grants under this pilot program. An additional \$1 million was set aside for another round of the SIE program for 2016. Additionally, for FY 2016, Congress has appropriated an

additional \$2 million for TEDs to be distributed by Bureau of Indian Education via a competitive grant under its 1988 statutory authorization which has never before been funded. In November 2015, the following TEDs were provided BIE TED funds: Cohort 1: Hopi Tribe, Navajo Nation, Oglala Sioux Tribe, Pueblo of Acoma, Rosebud Sioux Tribe, Santa Clara Indian Pueblo, and Standing Rock Sioux Tribe; and Cohort 2: Sault Ste. Marie Tribe of Chippewa Indians, Leech Lake Band of Ojibwe, Mississippi Band of Choctaw Indians, and the Muscogee (Creek) Nation. NARF and TEDNA have worked diligently to get federal funding for TEDs and are proud to see that work come to fruition with these new funding opportunities.

NARF and TEDNA continued to work with NCAI and the National Indian Education Association (NIEA) on ESEA amendments to provide for greater tribal self-determination in the area of education. The Every Student Succeeds Act (ESSA) was signed by President Obama in December 2015, and was a re-authorization of the Elementary and Secondary Education Act that was a long time coming. The bill rejects the overuse of standardized tests and one-size-fits-all mandates on our schools, ensures that our education system will prepare every child to graduate from high school ready for college and careers, and provides more children access to high-quality state preschool programs. With regard to Indian Education, the ESSA moved Title VII to Title VI. Within Title VI, the ESSA incorporated several suggestions from TEDNA and our education partners on the formula grant funds that typically go to Local Education Agencies. The ESSA now provides that, should an LEA or Indian Tribe not apply for a grant an Indian Organization or Indian Community Based Organizations can now apply for and receive a grant so long as certain conditions are met. The broad definition of organization will permit additional grants to be awarded to ensure our students are receiving services they need.

Importantly, a funding provision for TEDs was retained and amended in the ESSA. That provision provides that grants may be given to a Tribe or Tribal Education Agency for a variety of broad goals to support self-determination in education. Grants may now be used to promote self-determination in education; improve the academic achievement of Indian children and youth; and promote the coordination and collaboration of tribal educational agencies with state educational agencies and local educational agencies to meet the unique educational and culturally related academic

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needs of Indian students. This broadening of potential uses of grant funds will provide tribes and TEDs with flexibility to utilize those grants for many important purposes to advance tribal self-determination in education.

On behalf of a student who was affected by a change in Haskell Indian Nations University's admissions policy, NARF made a Freedom of Information Act request to the Bureau of Indian Education (BIE) for the agency's legal and decision-making documentation supporting its policy. The BIE responded and NARF has reviewed the response. NARF met with BIE officials in January 2015. NARF followed-up that meeting with a written request for clarification regarding the policy and is awaiting a response from the BIE.

## 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 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.

In January 2015, the BIA published its new revisions to the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings. The new Guidelines represent major progress in addressing many of the problematic areas which have arisen since ICWA was enacted in 1978 – such as the Existing Indian Family exception, which the Guidelines expressly repudiate. In February 2015, the BIA announced it intended to take its reforms even further by proposing, for the first time ever, to promulgate binding federal regulations governing the implementation of ICWA. These reforms, however, have drawn the ire of ICWA opponents nationwide.

The first response from ICWA opponents came in May 2015, when the National Council for Adoption (NCA) filed a suit against the BIA in federal district court for the Eastern District of Virginia. The case, *National Council for Adoption v. Jewell*, claims that the BIA exceeded its authority in publishing the updated 2015 Guidelines; that the Guidelines themselves violate the Constitutional rights of Indian children and parents, and that provisions of ICWA itself are unconstitutional under the Tenth Amendment. Days after the case was filed, NARF began working with other attorneys from the National Indian Child Welfare Association (NICWA), the National Congress of American Indians (NCAI), and the Association of American Indian Affairs (AAIA) to develop a response. Together, this informal working group has worked to develop a litigation defense strategy. The BIA filed a motion to transfer venue in July 2015, which the court denied. Plaintiffs then filed for summary judgment, which the BIA opposed, and filed a motion to dismiss for lack of subject-matter jurisdiction and for judgment on the pleadings. NARF representing NICWA, NCAI, and AAIA, filed an amicus brief in support of the BIA in September 2015. In September 2015, the court denied Plaintiff's motion for summary judgment on the grounds that (1) Plaintiffs lacked standing to challenge the Guidelines, (2) the Guidelines are not a "final agency action" within the meaning of the APA because they do not create legal rights and obligations, and (3) the Guidelines are non-binding interpretive rules not subject

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to the Administrative Procedures Act's notice-and-comment procedures. The court later issued a full order dismissing the case in its entirety. In addition to the points raised in its order denying Plaintiff's motion for summary judgment, the Court held: (1) that ICWA is a law rationally related to American Indians as a political class and therefore did not offend due process, and (2) that the Plaintiff foster parents did not have a cognizable constitutionally-protected right to raise the Native foster children in their care. With the Court's order on dismissal, the case is formally closed at the district court level. An appeal of the decision is unlikely.

In Minnesota, leading members of the Academy of Adoption Attorneys filed a constitutional challenge in state court to the Minnesota Indian Family Preservation Act. The case, *Doe v. Jesson*, makes many of the same constitutional challenges to the MIFPA as the plaintiffs make in *National Council for Adoption v. Jewell*; specifically, that the MIFPA violates the rights of Indian children

and parents by requiring them to notify the tribe of the adoptive proceeding and by allowing a tribe to intervene in the case. Plaintiffs filed for a preliminary injunction and requested expedited consideration of the case. NARF immediately reached out to the attorneys for the Tribe involved, the Mille Lacs Band of Ojibwe, and provided research and technical assistance in forming a response. The Tribe was ultimately successful in defeating the preliminary injunction, with the court finding the plaintiffs would suffer no irreparable harm by having to notify the Tribe on the adoptive proceeding in state court. The Tribe and the State have since filed separate motions to dismiss the case. Because many states have enacted similar state-ICWAs like Minnesota's MIFPA, NARF is working in conjunction with the attorneys from the Minnesota based firm BlueDog, Paulson & Small, P.L.L.P. in developing an amicus strategy on behalf of Minnesota's other tribal governments. The court heard oral arguments on the motions to dismiss in early August 2015. NARF is awaiting a decision from the bench.

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Finally, in July 2015, the Goldwater Institute—a conservative think tank located in Phoenix, Arizona—filed a lawsuit challenging the constitutionality of ICWA and the revised Guidelines. The suit, filed in Arizona federal district court as *A.D. v. Washburn*, seeks declaratory and injunctive relief and specifically targets the transfer, active efforts, burdens of proof for removal and termination of parental rights, and placement preferences provisions of the ICWA, as well as corresponding sections in the Guidelines. The complaint requests that the court declare these provisions of ICWA, and the corresponding Guidelines, unconstitutional as beyond the authority of Congress and the Department of the Interior. It further requests that the court enjoin the defendants from ensuring enforcement of the provisions. NARF, together with NICWA, NCAI, and others immediately began formulating a media and legal response to the suit. NARF has been coordinating with the two tribes with member children in the case—the Navajo Nation and the Gila River Indian Community. NARF also continues to coordinate with NICWA, NCAI, and AAIA and filed an amicus brief in the case on behalf of the organizations. Oral argument on the motions to dismiss was held in mid-December 2015. In addition to the federal cases listed above, NARF's ICWA Defense team is monitoring important cases in Michigan and Oklahoma.

## **Voting Rights**

In July 2013, NARF and co-counsel Morgan, Lewis & Bockius LLP and Armstrong Teasdale LLP, acting on behalf of two tribal councils and two Alaska Native voters, filed suit in federal court charging state elections officials with ongoing violations of the federal Voting Rights Act (VRA) and the United States Constitution. *Toyukuk v. Treadwell* claimed state officials failed to provide oral language assistance to citizens whose first language is Yup'ik, the primary language of many Alaska Natives in the Dillingham and Wade Hampton regions. Trial was held in June and July 2014 and the court rendered an oral decision in September 2014. The Court held that the Defendants had in fact violated Section 203 of the VRA in all the census areas at issue. The Court further found that the Defendants had improperly relied on what they called "outreach workers" in villages to translate the entire Official Election Pamphlet themselves, even though these workers had never been asked to do so and there was no evidence showing they could do this. The Court found that the end result was an absence of all pre-election information such as candidate statements, ballot measures, pro and con state-

ments for ballot measures and all other information available to English speaking voters before an election. After briefing, the Court ordered broad remedial relief including the written and audio translation of all pre-election materials distributed in English, posting of bilingual translators at all polling places, and also ordered Defendants to report back to the Court on their progress after the November 2014 election, which was submitted shortly before Christmas 2014.

In 2015, NARF and the plaintiffs spent several months in an extended negotiation with the State of Alaska to settle the case. In September 2015, the Court approved a settlement agreement with the Defendants that provides broad relief in the form of a comprehensive language assistance program, including the appointment of federal observers through the 2020 elections, translation of all pre-election information into the Yup'ik and Gwich'in languages, the creation of a new state-level position specifically devoted to language assistance, and court oversight and reporting through 2020.

In 2013, the U. S. Supreme Court in the *Shelby County* case invalidated Section 4 of the Voting Rights Act which required preclearance by the U.S. Justice Department of changes in state voting laws in certain states with histories of discrimination. On behalf of Bristol Bay Native Corporation and the Alaska Federation of Natives, NARF has been working on a Congressional amendment to the Voting Rights Act that would protect Alaska Natives and American Indians from the kinds of voting discrimination they have faced across the country since 2013. Senator Mark Begich introduced the NatiVRA (S.2399) in an attempt to remedy some of the longstanding issues such as the lack of language assistance, lack of polling places, and lack of early voting, but it did not pass before expiration of the 2013-2014 congressional term. Despite significant efforts, a large coalition of civil rights groups were unable to get a broader "Shelby Fix" through Congress either.

In June 2015, Senator Leahy and approximately 30 co-sponsors introduced the Voting Rights Advancement Act, a broad-based bill that prevents specific practices wherever they may occur in the country. That bill also includes a new Section 2 called "Voting on Indian lands" that mandates equal access to early voting, absentee voting and in-person polling locations on all Indian lands, which is very broadly defined in the bill. NARF helped author these sections in response to comments and complaints from Indian reservations and Native vil-

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lages. Senator Murkowski (AK) signed on as the first Republican co-sponsor in September 2015. Additionally, in August 2015, Senator Tester introduced S 1912, a voting bill specifically directed at election problems in Indian Country. NARF submitted some comments and suggested changes to the bill to ensure that while Tribes have an opportunity to designate polling locations, states should not be permitted to shift their expenses and burdens for these matters onto the Tribes.

NARF is preparing a suit on behalf of seven Native Americans from North Dakota under the Voting Rights Act and the U.S. and North Dakota Constitutions challenging North Dakota's recently enacted voter ID law on the grounds it disproportionately burdens Native Americans and denies qualified voters the right to vote. The plaintiffs are challenging North Dakota House Bills 1332 and 1333, which require North Dakota voters to present one of only four qualifying IDs with a current residential address printed on it in order to vote. Before enactment of these laws, North Dakota required a poll clerk to request an ID, but a voter without one could still vote if the clerk vouched for their qualifications or the voter signed an affidavit of identity. While other states also have voter ID requirements, North Dakota is the only state without a fail-safe provision, such as provisional balloting that allows a voter to produce their ID within a few days of the election or an affidavit of identity. Additionally, North Dakota's list of acceptable IDs is much more limited than other states, which allow U.S. passports and military IDs to be used.

Many Native Americans living on Indian reservations in North Dakota do not have qualifying IDs, such as driver's licenses or state ID cards containing a residential address. Thus, in both the primary and general election in 2014, many qualified North Dakota Native American voters were disenfranchised because their IDs did not list their residential address. The lawsuit alleges that North Dakota's new voter ID requirements arbitrarily and unnecessarily limit the right to vote and disproportionately burden Native American voters in North Dakota. The burdens are substantial for a number of Native Americans who cannot afford to drive to the nearest driver's license site ("DMV"). There are no DMV locations on any Indian reservations in North Dakota, and for many Native Americans, a DMV location may be over 60 miles away. Many Native Americans live below the poverty line, and do not have dependable access to transportation or cannot afford travel to a distant DMV location.

In January 2015, NARF proposed an ambitious new project: gathering voting rights advocates, lawyers, experts, and tribal advocates into one room to discuss current problems with voting in Indian Country and begin to develop solutions to these problems. The meeting was held in May 2015 in Washington, DC. It was convened in part because the 2016 election cycle promises to be an unusually important one at the national, state and local levels. The national elections include the selection of a new President, and 34 Senate seats. Six of these Senate seats are in states with significant (and potentially determinative) American Indian/Alaska Native (AIAN) populations: Alaska, Arizona, California, North Dakota, Oklahoma, and South Dakota. There are also eleven gubernatorial races in 2016, three of which are in states where the Native vote may play a significant role (North Dakota, Montana and Washington).

In addition, in the wake of the U.S. Supreme Court's decision in *Shelby County*, numerous state legislatures have passed new election laws that impose significant barriers to AIAN voters. Currently, individuals and organizations working on AIAN voting rights issues do so independent of one another, with no coordinated strategy in place to address voting rights issues in Indian Country. To date, this work has been generally (but not exclusively) reactive – in response to an immediate threat – rather than proactive or planned in advance of a specific election. That is what this project hopes to change.

A meeting was conceived and planned specifically to address the shifting and increasingly complex issues surrounding AIAN voting. The specific goals of the meeting were: (1) Prepare pre-session reports/memos (by participants) describing history of work on voting rights issues in Indian country, effectiveness of strategies employed, and current status of issues (e.g., resolution by settlement or consent decree, ongoing litigation); (2) Bring together in one room lawyers, advocates, and grassroots organizers involved in litigating voting rights cases in Indian Country and others who have information to share about current problems in Indian Country; (3) Conduct a series of work sessions in which the participants discuss common issues, brainstorm approaches to these challenges, and generate a strategy and litigation plan to address the highest priority voting rights issues in Indian Country; (4) Allocate or assign issues to specific people or organizations and form collaborative partnerships to execute our strategy and litigation plan; and (5)

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Have an organized and prepared litigation strategy for the 2016 election cycle. With the completion of this initial meeting, the participants have developed an ongoing project called the Native American Voting Rights Coalition (NAVRC). It meets on a monthly basis, as do its subgroups on redistricting, litigation, capacity building and data gathering. The NAVRC is actively working on its 2016 work as well as fundraising for the group itself.

### **International Recognition of Indigenous Peoples**

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

In September 2007, the United Nations General Assembly overwhelmingly adopted the Declaration on the Rights of Indigenous Peoples (U.N. DRIP). The vote was 143 in favor, 4 opposed, and 11 abstaining. The votes in opposition were Canada, Australia, New Zealand, and the United States. This historic vote came after 30 years of worldwide indigenous efforts. NARF has represented the National Congress of American Indians (NCAI) in this matter since 1999. The U.N. DRIP recognizes that indigenous peoples have important collective human rights in a multitude of areas, including self determination, spirituality, and lands, territories and natural resources. The U.N. DRIP sets out minimum standards for the treatment of indigenous peoples and can serve as the basis for the development of customary international law.

In 2009 Australia and New Zealand reversed their positions and now support the U.N. DRIP. Canada endorsed the U.N. DRIP in November 2010 and in December 2010, President Obama made the historic announcement that the U.S. was reversing its negative vote and now endorses the U.N. DRIP.

In March 2015, NARF and NCAI participated in several days of meetings with an ad hoc group of indigenous representatives in Geneva, Switzerland to focus on the implementation of Outcome Document paragraphs 28 and 33, which address participation of indigenous peoples at the United Nations, and on implementation of the U.N. DRIP.

The group met with UN mechanism representatives, and with a number of states. Based on those meetings, the group discussed general strategy and shared information on upcoming UN meetings with a common goal of moving those important initiatives forward.

NARF attended the Expert Mechanism on the Rights of Indigenous Peoples in Geneva in July 2015, to participate in discussions about revising the mandate of that mechanism to advance and implement compliance with the U.N. DRIP by member states. NARF, on behalf of NCAI, gave an oral statement before the Human Rights Council's 30th Session in Geneva, urging the Council to adopt a resolution expanding and strengthening the Expert Mechanism on the Rights of Indigenous Peoples, and also cosponsored oral and written statements presented by the Indian Law Resource Center at the September 2015 Human Rights Council session on protecting and advancing the rights of indigenous women.

NARF facilitated a panel discussion on international indigenous advocacy, and updates on the implementation of the U.N. DRIP, the participation of indigenous governments at the United Nations, and the OAS draft declaration negotiations, during a break-out session at NCAI's annual conference in October 2015.

The adoption of the U.N. DRIP has impacted the Organization of American States (OAS) process. NARF also represents NCAI in this process. In November 2007 it was agreed that the U.N. DRIP would be used as the foundation for an OAS document, in that all the terms of the OAS document would be consistent with, or more favorable to, Indigenous rights than the U.N. DRIP. It was further agreed that the terms of the OAS declaration would be agreed upon through a consensus based decision making process which includes Indigenous representatives. The process was finally rejuvenated with a three day negotiation session held in February 2015, followed by sessions in March, April and May 2015. The hope was to finish the negotiations so the Declaration could be submitted to the General Assembly for approval in 2015, but negotiations were not completed. It remains to be seen if the work will be carried on in 2016 or if political will is lacking.



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# The Accountability of Governments

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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 *Pembina Chippewa v. U.S.*, NARF represents the Turtle Mountain Chippewa, Chippewa Cree, White Earth Band of Minnesota Chippewa, and Little Shell Chippewa Tribes in this case against the federal government for misaccounting and mismanagement of their tribal trust fund, the Pembina Judgment Fund (PJF), since the inception of the fund in 1964. In 2006 the Tribes defeated the United States' motion to have the case dismissed. Since August 2007, the parties have been trying to resolve the Tribes' claims primarily through alternative dispute resolution proceedings before a Settlement Judge of the Court of Federal Claims. In August 2009, the parties reached agreement at least for settlement negotiations purposes on the population of "baseline" (non-investment) transactions in the PJF. In July 2015 the parties reached agreement on a monetary amount for a potential settlement of the Plaintiffs' claims in this case. Since that time the parties have been discussing numerous non-monetary components of a potential settlement, and preparing various documents.

In *Nez Perce v. Jewell*, NARF represented forty plaintiffs: the Nez Perce Tribe; the Mescalero Apache Tribe; the Tule River Indian Tribe; the Hualapai Tribe; the Klamath Tribes; the Yurok 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; Nooksack Indian Tribe; Prairie Island Indian Community; Pueblo of Zia; Qawalangin Tribe; Rincon Luiseno Band of Indians; Samish Indian Nation;

*"The medicine wheel is the symbol we use to express and represent the meaning of life, and meaning provides us with purpose and understanding. The symbol of the circle holds a special place of importance in our belief system. There is no hierarchy in a circle, it's about equality." Chi-Ma'iingan (Larry Stillday)*

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San Luis Rey Indian Water Authority; Sault Ste. Marie Tribe of Chippewa; Shoalwater Bay Tribe; Skokomish Tribe; Spirit Lake Dakotah Nation; Spokane Tribe; Summit Lake Paiute Tribe; Tulalip Tribes; and, Ute Mountain Ute Tribe, in this action filed in the federal district court for the District of Columbia in December 2006 seeking full and accurate accountings of their trust funds. Such accountings never have been provided by the federal government which is the trustee for the funds.

To date, 38 of NARF's client Tribes in this case have reached settlement agreements or other resolution of their claims with the United States. The settlement agreements have been filed in, and approved by, the Court. Per the settlement agreements, once the Tribes have received 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.

In *Sisseton Wahpeton Oyate v. Jewell*, NARF represents 10 tribes - Sisseton Wahpeton Oyate; Quinault Indian Nation; White Earth Chippewa Nation; Oklahoma Kickapoo Tribe; Comanche Nation; Penobscot Indian Nation; Pueblo of Acoma; Seminole Tribe of Florida; Southern Ute Indian Tribe; and Confederated Tribes of the Umatilla Indian Reservation – in this case filed in April 2013 in the federal district court for the District of

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## The Accountability of Governments



Columbia seeking historical accountings of the Tribes' trust accounts, funds, and resources. In November 2013 the government filed a Motion to Dismiss the case for lack of jurisdiction. The Tribes' opposed dismissal. The hearing on the Motion to Dismiss was held in July 2015 and in September 2015 the Court denied the government's Motion to Dismiss. In October 2015, the parties jointly requested the Court to stay further active litigation in this case while the parties engage in settlement negotiations of the Tribes' trust accounting and trust fund and asset mismanagement claims at the political level, and the Court approved the stay. The parties have since proceeded with their settlement negotiations.

In *Muscogee Creek Nation v. Jewell*, the Muscogee Creek Nation retained NARF to represent it in its pending action in the federal district court for the District of Columbia for historical accounting of its trust funds and assets. NARF and experts retained by NARF have been reviewing the Nation's trust account data provided by

the government in the context of political negotiated settlements by the Obama Administration, and have assisted the Nation in making an offer of settlement to the government. In September 2015 the parties reached agreement on a settlement in principle of the Tribe's claims in this case and are proceeding to implement the agreement.

In April of 2015 in *Intertribal Council of Arizona v. United States*, NARF filed on behalf of the Intertribal Council of Arizona (ITCA) in a breach of trust case against the United States in the U.S. Court of Federal Claims seeking \$50 million in damages for mismanagement of the Arizona Intertribal Trust Fund (AITF). The AITF was established by Congress in 1988 to compensate Arizona tribes for the closure of the Phoenix Indian School which was an off-reservation boarding school operated by the Bureau of Indian Affairs since 1891. The school's closure allowed the Department of the Interior to exchange the land on which the school had been located for privately owned lands in Florida that would



become part of a national wildlife refuge. The Phoenix lands were more valuable than the Florida lands and Congress approved the land exchange only if the difference in value - \$35 million – went to the AITF and a trust fund for the Navajo Nation. The private owner of the Florida lands has paid some, but not all, of the \$35 million, and has given the United States notice that he will no longer make the AITF or Navajo Nation trust fund payments. The lawsuit seeks to hold the United States liable for the remaining payments into the AITF. In July 2015, the United States filed a Motion to Dismiss this case, which ITCA opposed in October 2015. At a status conference in December 2015, the Court indicated that it likely would be scheduling oral argument on the Motion to Dismiss sometime in early 2016.

NARF has been retained to seek repeal of the Klamath Tribe Distribution of Judgment Fund Act which was adopted as part of the legislation that terminated the Tribes' government-to-government relationship in 1954. That relationship was restored in 1986, but the

remnant legislation contained in section 565 was not repealed. The Distribution Act requires distribution of judgments from the United States Treasury to descendants of those who appear on the final roll compiled pursuant to the Termination Act. That would include distribution of tribal funds to a significant number of non-Indians and individuals who are not enrolled members of the Tribes. Repeal would result in funds deposited in the Treasury from judgments against the United States being distributed pursuant the Distribution of Judgment Funds Act for all Tribes. Discussions with congressional staff on this matter are ongoing.



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# The Development of Indian Law

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

## **Indigenous Peacemaking Initiative**

The mission of the Indigenous Peacemaking Initiative (IPI) 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. The project is guided by an Advisory Committee consisting of traditional peacemaking experts and practitioners. 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 to prevent future occurrences and conflicts.

The IPI program helped facilitate the planning of a two-site introductory peacemaking training for Oglala Sioux Tribe community members, attended a meeting and provided an expert plenary speaker at a University of Washington program that trains judges from state and tribal courts. IPI also continued discussions with a judge from a state court in Southern California who is interested in implementing peacemaking to help with a dependency and delinquency docket that includes a high number of Native children.

The collaborative efforts with the National American Indian Court Judges Association and the Columbia and New Mexico Schools of Law continue. The collaborators recently provided a training workshop in St. Paul,

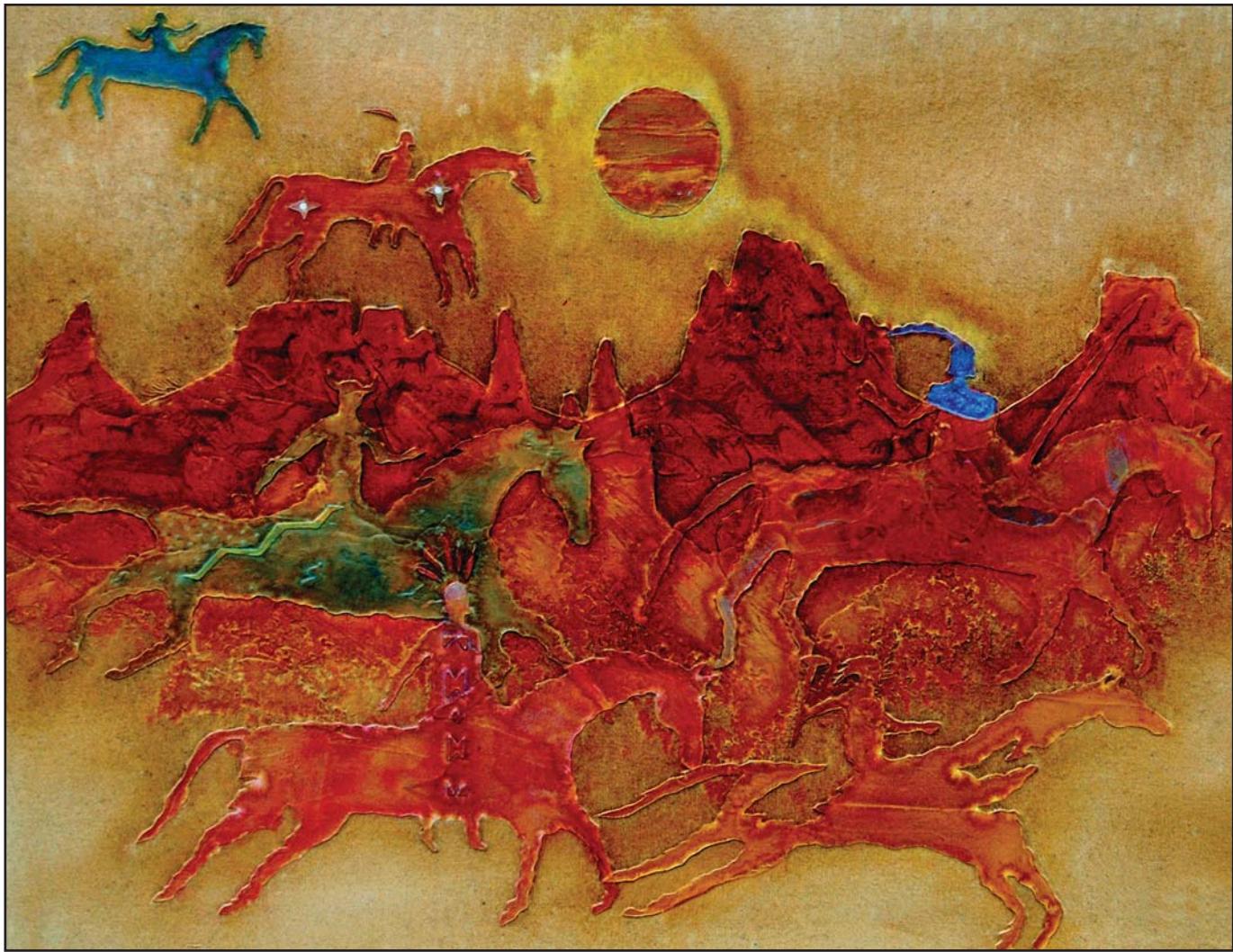
*"When you go out there to represent Indian people, you see your family – your brothers, your sisters, your nephews, your mother and father, your grandparents. You realize the devastating impact that society can have on people because they are a different culture, because their skin is a different color. Being Indian at NARF brings a focus—a fire—a determination to do the very best. You're going to be as good a lawyer as any non-Indian lawyer who ever walked into a court-room. This organization is like a warrior society. You put your life on the line—be the best you can be—always be prepared. You are fighting for the survival of your people." Yvonne Knight (NARF attorney-retired)*

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Minnesota, in conjunction Tekamuk Inc. (the training business wholly owned and operated by the Mesa Grande Band of Mission Indians). The St. Paul training was attended primarily by members of the various Minnesota Chippewa Tribes working in the Twin Cities or at their home reservations, as well as participants from tribes in Arizona, Idaho, South Dakota, and Michigan.

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The Development of Indian Law



The collaborative group added the Chief Justice from the Mississippi Band of Choctaw Indians and a Michigan State Court judge to the faculty, and provided an innovative three-day training in peacemaking and integrating culture, sponsored by the Pokagon Band of Pottawatomi Tribal Court in Dowagiac, Michigan, as requested by that Tribe's Court.

NARF's National Indian Law Library staff have developed a web page and continue integrating that page with the electronic versions of resources on Peacemaking in the NILL catalog. The webpage will serve as a basis for outreach and provide easy access to resources gathered for the project. The project also continues to grow and strengthen its networks, as part of raising awareness and also recruiting additional expert resources. The project has also been working closely

with Columbia Law School to complement each other's work, and the Colorado University Indian Law Clinic has placed an intern to help in development and analysis of the catalog of resources for the project.

#### **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

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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. NARF's website has recorded over 200,000 visits each year. See [www.narf.org/nill/index.htm](http://www.narf.org/nill/index.htm).

The Access to Tribal Law Project continues to be an invaluable resource for researchers and practitioners in tribal law. In the last fiscal year, we received updates to 71 Constitutions or Codes from 39 tribes. NILL has developed good relationships with a number of tribes who regularly send updates to their laws as changes are made and we are working to develop relationships with others who have expressed interest. NILL is also working to move tribal law pages from our old tribal law index to our new Tribal Law Gateway. NILL has received several enthusiastic compliments on the new platform, with researchers saying it is helpful and easy to navigate.

The website for the Indigenous Peacemaking Initiative has been launched as NILL worked closely with IPI attorneys, the IPI Advisory Committee and other NARF staff members to create the new IPI website, which is available at <http://narf.org/peacemaking>. The website provides resources to help visitors learn about peacemaking as well as tools to help practitioners implement peacemaking in their community. Many of the resources highlighted are available online and NILL has obtained permission to post some resources that were not already available online.

In providing access to law review articles on Indian law, each week when the Indian Law Bulletin is published, NILL indexes the law review articles from the bulletin and puts them in our online catalog. By including a table of contents and subject headings for each article, we have created a searchable database of articles on Indian law for our patrons. Whenever an article is available for free online, we add a link, making it easy for researchers to access the article quickly. In the event an article is not available online, patrons can contact the library to request a copy of the article. Because NILL has been indexing articles for over 10 years, our online catalog is a useful place to start research on Indian law for attorneys and academics alike.

In providing for a Tribal Nation Pronunciation Guide, NILL is actively seeking funds as well as volunteers

and/or interns to help develop and publish an audio index of tribal nations. We believe this unique guide will be a valuable resource for those who need to communicate with tribes. The guide will allow people to address a tribe in a respectful manner. This project would involve developing and implementing a plan to: 1) find authoritative pronunciations for each Indian nation's name; 2) lease/purchase proper recording equipment/technology to capture the correct pronunciation of each Indian nation's name for publication on the Internet; and 3) capture and publish the recorded names on the National Indian Law Library website.

### **Indian Law Support Center**

NARF continues to perform Indian Law Support Center duties by sending regular electronic mail outs nationwide to the 25 Indian Legal Services (ILS) programs, hosting a national listserv, handling requests for assistance, and working with ILS programs to secure a more stable funding base from Congress. The Indian Tribal Justice and Legal Assistance Act of 2000 authorizes the U.S. Department of Justice to provide supplemental funding to Indian legal services programs for their representation of Indian people and Tribes which fall below federal poverty guidelines. After funding in 2003, 2004, and 2005, funding in 2006 - 2009 was unsuccessful. However, funding has been received in FYs 2010-2015 and made available to NARF for the ILS programs through the Bureau of Justice Assistance (BJA) in the Department of Justice.

### **Other Activities**

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

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# FY 2015 Financial Report

Based on our audited financial statements for the fiscal year ending September 30, 2015, the Native American Rights Fund reports unrestricted revenues of \$12,381,359 against total expenditures of \$10,013,022. Total revenue and net assets at the end of the year came to \$12,934,588 and \$18,639,906, respectively. Due to presentation requirements of the audited financial statements in terms of recognizing the timing of certain revenues and expenses, they do not reflect the fact that based on NARF's internal reporting, revenue exceeded expenses and other cash outlays resulting in an increase of \$2,240,041 to NARF's reserve fund. When compared to fiscal year 2014: the increase in Public Contributions is mostly due to receiving approximately \$200,000 more in bequests (this area can vary widely from one year to the next). The final contributions from our *Nez Perce v. Salazar* Tribal clients (who received settlement awards

from the federal government in fiscal year 2012) were received in fiscal year 2014. Federal Awards relate 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) and, although we continue to be awarded new contracts, the amounts vary from year to year. We continue to receive new Foundation Grants that are restricted to our work in Alaska. The increase in Legal Fees is mostly due to a large settlement related to one of our cases. Along with the overall investment markets, NARF's investments took a hit near the end of the fiscal year.

Unrestricted Revenue and Expense comparisons between fiscal year 2015 and fiscal year 2014 are shown below.

UNRESTRICTED SUPPORT AND REVENUE COMPARISON				
	2015		2014	
	dollars	percents	dollars	percents
<b>Public Contributions</b>	\$ 1,701,434	13.7%	\$ 1,417,397	14.8%
<b>Tribal Contributions</b>	1,004,250	8.1%	3,355,204	35.0%
<b>Federal Awards</b>	1,330,607	10.8%	1,467,829	15.3%
<b>Foundation Grants</b>	1,707,184	13.8%	1,410,689	14.7%
<b>Legal Fees</b>	7,065,520	57.1%	1, 306,465	13.6%
<b>Return on Investments</b>	(443,858)	-3.6%	609,308	6.3%
<b>Other</b>	16,222	0.1%	28,666	0.3%
<b>TOTALS</b>	<b>\$ 12,381,359</b>	<b>100%</b>	<b>\$ 9,595,558</b>	<b>100%</b>

EXPENSE COMPARISON				
	2015		2014	
	dollars	percents	dollars	percents
<b>Litigation and Client Services</b>	\$ 7,160,564	71.5%	\$ 7,598,844	75.2%
<b>National Indian Law Library</b>	358,675	3.6%	389,780	3.9%
<b>Total Program Services</b>	<b>7,519,239</b>	<b>75.1%</b>	<b>7,988,624</b>	<b>79.1%</b>
<b>Management and General</b>	789,122	7.9%	860,765	8.5%
<b>Fund Raising</b>	1,704,661	17.0%	1,249,301	12.4%
<b>Total Support Services</b>	<b>2,493,783</b>	<b>24.9%</b>	<b>2,110,066</b>	<b>20.9%</b>
<b>TOTALS</b>	<b>\$ 10,013,022</b>	<b>100%</b>	<b>\$ 10,098,690</b>	<b>100%</b>

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

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# NARF Acknowledgment of Contributions: Fiscal Year 2015

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, tribes and Native organizations, bequests and trusts, benefactors, private donations, and in-kind contributions. We gratefully acknowledge these gifts received for fiscal year 2015 (October 1, 2014 through September 30, 2015).

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<b>Tribes and Native Organizations</b>	Tanana Native Council Twenty-Nine Palms Band of Mission Indians Chickasaw Nation Confederated Tribes of Siletz Indians Cow Creek Band of Umpqua Tribe of Indians Keweenaw Bay Indian Community Lac Du Flambeau Band of Lake Superior Chippewa Indians Mohegan Indian Tribe of Connecticut Muckleshoot Indian Tribe National Indian Gaming Association Nome Eskimo Community Pechanga Band of Luiseno Mission Indians Sac and Fox Nation of Oklahoma San Manuel Band of Mission Indians San Pasqual Band of Diegueno Mission Indians Seminole Tribe of Florida Seven Cedars Casino/Jamestown S'Klallam Tanana Chiefs Conference	Gordon and Betty Moore Foundation Impact Fund Inge Foundation Keluche-Fuller Foundation, Inc. Lannan Foundation MALDEF Natural Resources Consulting Engineers, Inc. <b>Foundations, Corporations and Law Firms</b> Alaska Conservation Foundation Arches Foundation Aria Foundation Agua Fund Inc. Bay and Paul Foundations Biedenharn Foundation Calvert Foundation Casey Family Programs Charles P. & Mary E. Belgarde Foundation Comcast Foundation Davis Graham & Stubbs LLP Dowl, LLC Ferriday Fund Ford Foundation Foundation to Promote Open Society Edward & Verna Gerbic Family Foundation	Program Apple Matching Gifts Program Boettcher Foundation Edison International GE Foundation HIGHMARK Matching Gift Company IBM Corporation JP Morgan Chase Foundation Microsoft Corporation PEW Charitable Trusts Pfizer Foundation Morgan Stanley Xcel Energy Foundation	Marvin W. Pourier, Jr. & Donna M. Deans Memorial Fund Mary Lou Mosca-Ragona Memorial Fund Ernest L. Schusky Endowment The Snoqualmie Indian Tribe Helen & Sidney Ungar Memorial Endowment Fund Dan & Beth Whittemore <b>Bequests and Trusts</b> Jeannette Anderson Sandra Carroll Berger Robert Borsch William & Jovana Brown Fay Chandler Dale Crayne Diane Delp Carolyn Ferriday Virginia Flack William Guimond John Hodgson Ethel Huebner Dorothy Huelsman Anna Laufer Ruth Emily Leiman Franklin Loveland
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# NARF Acknowledgment of Contributions: Fiscal Year 2015

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<b>Peta Uha – Peta Uha is an exclusive membership program for donors making substantial annual commitments to NARF.</b>	Hermann Burchard	Elizabeth Steele	Martin Griffith	John Stolar
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Bruno Rudolph	John Hirschi	Bonnie Beckel	Otwin Marenin	<b>Circle of Life –</b>
John & Carson Taylor	John Hodgson	William & Elsa Boyce	Martha McEldowney	<i>Circle of Life members have made a lasting commitment by including NARF in their wills.</i>
Jan Winniford	Margaret Jacobs	David Boyd	Virginia Meade	Catches Bear & Judy Adams
<b>Peta Uha Granite</b>	Judy Judd	Kristin Briggs	Meredith Miller	Rodney J. Addison
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Allison B. Emerson	Helen McCahill	Michael & Carol Sullivan	<b>NARF's 45th Anniversary Event</b>	Kitcki Carroll
Judy Fair-SpaULDING	Marion McCollom Hampton	Louis Tabois	– 2015 marked NARF's 45th Anniversary. Tribes, businesses and individuals came together to celebrate the milestone. The following helped make the celebration possible through monetary gifts, donated auction items and in-kind services.	Richard Collins
James K. Fee	Joseph McNamara	Valeria Tenyak		Colorado History Museum
Debra K. Frazier	Peter & Betty Meyer	Charlotte Thompson		Core Power Yoga
Jan Freeman	William G. Milligan	M. D. Turek		Comanche Nation of Oklahoma
Lyle Funderburk	Gary Montgomery	John H. Tyler		Virginia Cross
Lawrence H. Geller	Leila V. Moore	Rene Vivo		Joanne Curry
Deborah Ghoreyeb	Leanne Morrel-Franklin	William Joseph Wade		Curtis Hotel
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Louise Gomer Bangel	Anthony Pampena	Robert & Mary Wellman		Denver Art Museum
Gene Grabau	Marc Pearce	Roger L. Welsch		Denver Bronco's
Anna Gulick	Moses Peter	Dan & Beth Whittemore		Denver Zoo
Jean Gundlach	Randall Petersen	Karen Williams-Fast Horse		Wayne Dieck & Chrissy Johnson Dieck
Merrill Hakim	Denise Pfalzer	Marcel E. Wingate	<b>NARF Employee Giving</b> – NARF employees commit thousands of hours to protecting the rights of	Jeff Doctor
Michael S. Hall	Thelma Populus Gordon	David Yeoman		Caryn Donald
Margaret Hartnett	B.J. Powell	Wayne W. Zengel		
Theodora C. Haughton	Robert & Mary Resnik	<b>NARF Employee Giving</b> – NARF employees commit thousands of hours to protecting the rights of		
Patricia Heidelberger	Maureen Ripley			
Karin Holser				
Alfred Hoose				
Judith Horton				
Barbara Humes				

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# NARF Acknowledgment of Contributions: Fiscal Year 2015

				<b>In-Kind Donations</b>
Erin Dougherty Lynch	Innovairre/Quadriga Keslie Kandt	Morgan & Fern O'Brien	Scribbles Stationary Store	<i>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:</i>
Julie Dougherty Winger	Heather Kendall Miller	Oweesta Corporation	Sea Glass Fine Art Photography	
50 Dresses	Martha King	Paako Ridge Golf Course	Brett Shelton	
Sarah Eagle Heart	Kroenke Sports	Pahponee	Ansley Sherman	
Crystal Echohawk	Heidi Kummler	Panzano	Suzan Shown Harjo	
Lucille Echohawk	Natalie Landreth	Peg's Glorified Ham 'n Eggs	Sipping & Painting	
Sarah EchoHawk	Law's Whiskey House	John Pepion	Snooze AM Eatery	
Susan Jordan Eichorn	Paul & Eileen LeFort	Richard Peterson	South West American Indian Artists Association	
First Nations Development Institute	Yvonne & Patrice LeMelle	PF Chang's	Spa Universaire	
Frame de Art	Lils Sushi Bar	Pink Fog Studios	Ace Stuebens Vesta	Sara Barudin
Fredericks Peebles & Morgan LLP	Mary C. Lovato	Peter Pino	David Gary Suazo	Kurt BlueDog
Tom & Judy Fredericks	Lucky Strike Bowling Alley	William Plon	Pat Tenorio	Caitlyn Brandt
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			Pearl Zoebisch	

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

**Show Your Support in NARF's programs** – NARF receives contributions from many sources and for many purposes. 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 – an individual who made a solemn commitment to ensure that the sacred flame, source of light, heat and energy for his people, would 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 recognize the constant need to stand firm for justice by pledging and making monthly contributions. Monthly contributions add up over the years to make a real difference for the tribes we serve.

**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 donors 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 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.

**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.

**Matching Gifts** – Currently, 18 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-News** – Sign up at [www.narf.org](http://www.narf.org) for our e-news 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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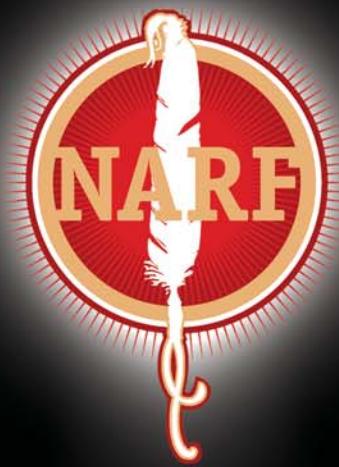
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## **The “Native American Rights Fund Statement on Environmental Sustainability.”**

*“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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## *NATIVE AMERICAN RIGHTS FUND*

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