



# Legal Review

NATIVE AMERICAN RIGHTS FUND

## A 40 year legacy in Indian law

### Native American Rights Fund Honors the Past with a Focus on the Future

The Native American Rights Fund's (NARF) 40th Anniversary event was held on October 29, 2010, and was hosted by the Chickasaw Nation of Oklahoma at their WinStar World Hotel and Casino in Thackerville, Oklahoma. The celebration not only reflected the past accomplishments of NARF, but also focused on NARF's path forward.

Among the event highlights, NARF honored 40 clients, board members, staff members and funders who significantly contributed to NARF's success over the last four decades.

The event brought together some of the most transformative figures in Native American rights.

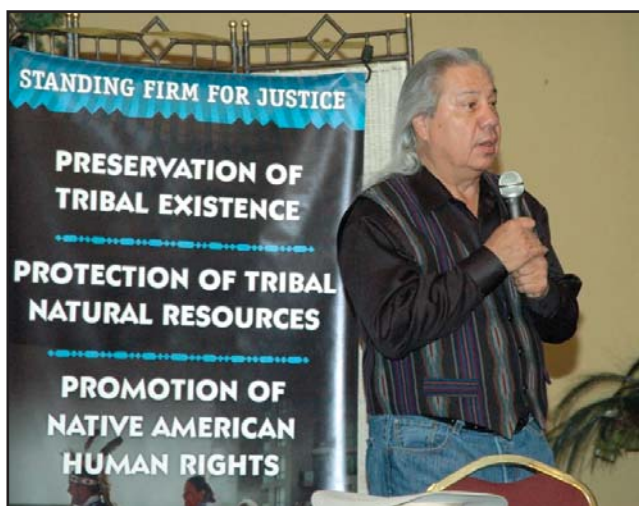
"Sink your teeth in like a wolverine and never, ever let go until you see victory," said Elouise

Cobell, a NARF former client and honoree at the 40th Anniversary event. "NARF represents that fortitude when it comes to fighting for Indian people and Indian causes." Cobell is recognized for the groundbreaking *Cobell v. Salazar* case,

which challenges federal mismanagement of trust accounts belonging to 300,000 Native Americans. Cobell is a member of the Blackfeet Tribe from Montana. NARF now represents 42 tribes in litigation against the federal government seeking accountings for tribal trust accounts.

Ada Deer, also a former NARF client and honoree, was appointed Assistant Secretary of

the Interior by former President Bill Clinton and led the Bureau of Indian Affairs for four years. A member of the Menominee Tribe, Deer was a key figure in bringing the Termination Era to an end. "NARF is needed today as much as it was



John E. Echohawk *Executive Director*

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40 years ago because the battles continue,” said Deer.

Other notable honorees included:

- Walter Echohawk, a leading voice in the Native American Graves Protection and Repatriation Act, was a long-time attorney for NARF. Echohawk was co-director of NARF’s American Indian Religious Freedom Project and director of the Indian Corrections Project.
- Katie John took a stand on behalf of Alaska Native subsistence fishing rights. With the help of NARF, John was successful in protecting her basic right to subsistence fish in the State of Alaska.
- The Fort McDowell Indian Community, a tribe of Yavapai Indians, was subject to severely restricted water rights. Working with NARF, the Fort McDowell Indian Community was successful in a complete restructuring of their water rights. The outcome of the litigation yielded \$25 million for development on the Reservation; \$13 million in loan funds to put the water rights to use; and a permanent easement to ensure access to diversion works.
- The Ford Foundation has funded NARF every year for the last 40 years. A Ford Foundation grant totaling \$155,000 launched NARF nationwide in 1970.
- A veteran in Indian law, Arlinda Locklear was the first American Indian woman to argue a case before the U.S. Supreme Court. She represented the Oneida Indian Nation of Wisconsin in a land claim litigation, from which similar cases are based.

“As leaders and advocates in American Indian and Alaska Native rights, it is important to reflect on just how far we have come,” said John Echohawk, Executive Director of NARF. “We have conquered challenges and obtained goals that were only dreams just 40 years ago.”

Event organizers concluded the celebration with a re-commitment to the NARF mission – preservation of tribal existence; protection of tribal natural resources; promotion of Native American human rights; accountability of



*NARF attorney Natalie Landreth, former NARF attorney Charles Wilkenson, NARF attorney Steve Moore.*



*Former Board member Eddie Tullis and Chickasaw Nation Lieutenant Governor Governor Jefferson Keel.*

governments to Native Americans; and development of Indian law and educating the public about Indian rights, laws, and issues.

“I believe in NARF because of the grassroots its legacy built on men and women warrior energy. In spite of the tremendous progress and success there remains so many challenges in Indian Country,” said Chairman of the National Indian Gaming Association, Ernie Stevens, Jr. “We as tribes need to help NARF continue its good work with moral and financial support.” Stevens is a former NARF board member and serves on its National Support Committee.

“NARF was in our 32 1/2-year battle to become a federally recognized tribe for the long haul – and they held true to their word to stand behind our federal recognition. For that, I have the utmost respect and thanks for NARF’s phenom-



*Former NARF attorneys Keith Harper, former Board member Billy Frank, former NARF attorney Bob Anderson.*



*NARF attorney Heather Kendall-Miller.*

enal work,” said Gordell Wright, a NARF client and member of the Shinnecock Nation Board of Trustees.

Native American environmental leader, Billy Frank, Jr., also supports the future direction of NARF. “I know and believe in NARF’s early warriors and modern day warriors – today’s Indian attorneys,” said Frank, a member of the Nisqually Tribe and important figure in Native American fishing rights. “It was medicine for me to be here to celebrate NARF’s 40 years.” Frank is a former NARF board member.

Among its “Modern Day Warriors,” is NARF Attorney Amy Bowers, a member of the Yurok Tribe of Northern California. “The reason I wanted to work for NARF is because I get to practice law with Indian people for Indian people. Whether it be treaty rights, natural

resources or tribal recognition, I will always get to work for Indian tribes.”

NARF concluded its 40th Anniversary activities with an Appreciation Pow-Wow on November 13, 2010, to thank the Denver/Boulder area community for 40 years of support.

### **A reflection on achievements in Native American rights as “Modern Day Warriors”**

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

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

At any given time, NARF works on approximately fifty ongoing cases and/or projects representing tribes, Native villages and organizations. The volume and importance of the cases on NARF’s docket illustrate the continuing need and demand for NARF’s services.

For the past 40 years, NARF has represented over 250 Tribes in 31 states in such areas as tribal restoration and recognition, tribal jurisdiction, land claims, hunting and fishing rights, the protection of Indian religious freedom, and many others. In addition to the great strides made in achieving justice on behalf of Native American people, perhaps NARF’s greatest distinguishing attribute has been its availability to bring excellent, highly ethical legal represen-





*NARF'S 40th Anniversary Appreciation Powwow*

tation to dispossessed Tribes. The survival and strengthened sovereignty of the nation's 565 federally recognized tribes of 2.5 million Native Americans are due, in no small measure, to the battles waged and won by NARF.

NARF 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.

As established by NARF's first Board of

Directors, the priorities that guide NARF in its mission to preserve and enforce the status of tribes as sovereign, self-governing bodies still continue to lead NARF today: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law and educating the public about Indian rights, laws, and issues.

NARF works 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. In 1971, NARF first started working with the Menominee Tribe of Wisconsin to restore them as a federally recognized tribe which culminated in the Menominee Restoration Act in 1973. Since that time, NARF has assisted the Siletz Tribe of Oregon, the Gay



*NARF'S 40th Anniversary Appreciation Powwow*

Head Wampanoag Tribe of Massachusetts, the Kickapoo Tribe of Texas, Alabama-Coushatta, and Ysleta Tribes of Texas, the Pascua Yaqui Tribe of Arizona, the Tunica-Biloxi Tribe of Louisiana, the Poarch Creek Tribe of Alabama, the Narragansett Tribe of Rhode Island, the Mashpee Wampanoag Tribe in Massachusetts and the Shinnecock Indian Nation of New York, in establishing their government-to-government relationship with the United States. In 1993, NARF also assisted in the federal recognition of 229 Alaska Native villages to insure that they would have the same tribal status as those tribes in the contiguous 48 states. NARF is currently working with the Little Shell Tribe of Chippewa Indians in Montana, and the Pamunkey Tribe of Virginia in establishing their government-to-government status.

The land base and natural resources of Indian nations continue to be critical factors in the

preservation of tribal existence. Through control over tribal lands and resources, Indian tribes can regain a degree of economic self-sufficiency necessary for Indian self-determination. NARF assisted the Passamaquoddy Tribe, the Penobscot Nation and the Maliseet Indians in the return of 300,000 acres of land. NARF also assisted the Narragansett Tribe, the Gayhead Wampanoag Tribe, the Catawba Tribe of South Carolina, the Swinomish Tribe, the Alabama-Coushatta Tribe in Texas, and the Potawatomi Nation in Canada with the return and/or compensation of their traditional lands.

Water is one of the most crucial Indian resources in the western states. NARF has helped secure water rights to the Tohono O'odham in Arizona, the Muckleshoot Tribe in Washington, the Southern Ute Tribe in Colorado, San Luis Rey Water Authority in California, the Pyramid Lake Paitue Tribe in





Nevada, the Fort McDowell Yavapai Tribe in Arizona, the Northern Cheyenne Tribe in Montana, Rocky Boy's Chippewa Cree in Montana, and the Nez Perce Tribe in Idaho. NARF also currently represents the Klamath Tribes in Oregon and the Kickapoo Tribe in Kansas in active water rights litigation and the Tule River Indian Tribe of California in water settlement negotiations with federal, state and local stakeholders.

The subsistence way of life is essential for the physical and cultural survival of Alaska Natives. In what is known as the *Katie John* case, NARF brought suit on behalf of two Native Elders from the Native Villages of Menasta and Dot Lake in federal court in 1990 alleging that the 1980 Alaska National Interest Lands Conservation Act (ANILCA) requires the federal government to manage subsistence fisheries for rural Alaskans in navigable waters of Alaska. In 2001 the Ninth Circuit Court of Appeals issued an opinion in favor of protecting Alaska Native subsistence rights. *Katie John*, more than any other subsistence case that had been pending before state or federal courts in Alaska, exemplifies the contentious battle being waged between federal, tribal and state interests about jurisdiction over Native fishing rights. NARF has been at the forefront of this battle for 26 years now.

Because religion is the foundation that holds Native communities and cultures together, religious freedom is a NARF priority issue. As a result, NARF has utilized its resources to protect First Amendment rights of Native American religious leaders, prisoners, and members of the Native American Church, and to assert tribal rights to repatriate burial remains. Since Native American religious freedom affects basic cultural survival of Indian tribes, NARF believes that American law and social policy must provide adequate legal protection.

NARF was a leading proponent of the Native American Graves Protection and Repatriation Act (NAGPRA) which was signed into law in 1990. The Act requires federal agencies and private museums that receive federal funding to



*NARF attorneys Erin Dougherty and Don Wharton.*



*NARF attorney David Gover.*

inventory their collections of Native American human remains and funerary objects, notify the tribe of origin, and return the ancestral remains and funerary objects upon request to the tribe. It makes clear that Indian tribes have ownership of human remains and cultural items which are excavated or discovered on federal or tribal land and that they alone have the right to determine disposition of Indian human remains and cultural remains discovered in these areas.

NARF works to hold all levels of government accountable for the proper enforcement of the many laws and regulations which govern the lives of Indian people. NARF was co-counsel for the *Cobell* plaintiffs in *Cobell, et al. v. Salazar* when the case was originally filed in 1996 and participated in the case until 2006 when it undertook the filing of a similar case for Indian



NARF'S 40th Anniversary Appreciation Powwow

tribes over federal mismanagement of tribal trust fund accounts, *Nez Perce Tribe, et al. v. Salazar*. NARF now represents forty-two tribes in this litigation.

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

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

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

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

### **The birth of modern day Indian law**

Modern Indian law and policy began to come to life in the late 1950s and early 1960s when a consensus was reached among tribal leaders, young Indian professionals, and traditionalists. They were tied by an indelible reverence for the aboriginal past, an educated appreciation of the accelerating consequences of five centuries of

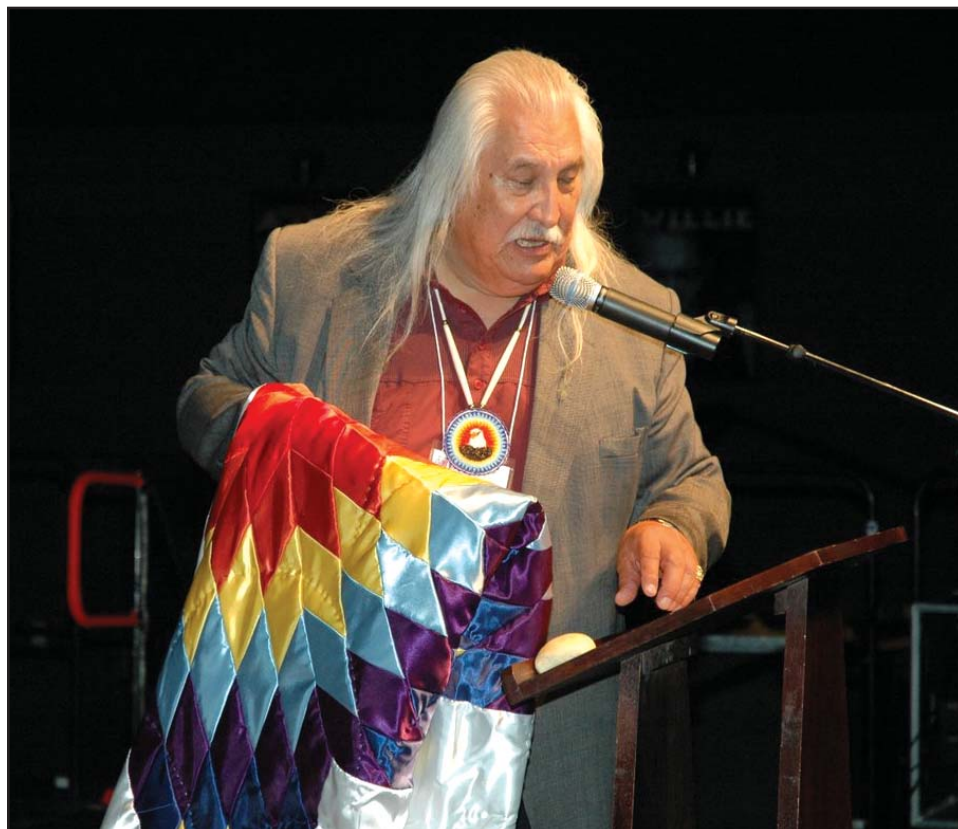


contact with Europeans, and desperation concerning the future of Indian societies as discrete units within the larger society.

The termination policy – Congress’ forced dismemberment of American Indian tribes in the 1950s – had to be slowed, halted, and then reversed. In a larger sense, the most persistent evolution of federal Indian policy since the mid-19th Century – assimilation of Indians, reduction of the Indian land and resource base, and the phasing out of tribal governments – had to be stilled. Even more broadly, the tribes had to cease reacting to federal policy. The tribes had to grasp the initiative.

The Indian initiatives would be premised on tribalism. Chief Justice John Marshall’s old opinion, *Worcester v. Georgia* (U.S. Supreme Court 1832), had carved out a special, separate constitutional status for Indian tribes. Within their boundaries, tribes had jurisdiction – governmental and judicial power – and the states could not intrude. Indian tribes were sovereigns. Those doctrines left the tribes with the potential of substantial control over their resources, economies, disputes, families, and values – over their societies.

To outsiders, it has always been astonishing that reservation Indians would know of concepts like sovereignty and jurisdiction. But they do today, and they did in the 1950s and 1960s. On reflection, the reason for this is simple. The chiefs bargained for those things when treaties were made. Chief Justice Marshall was true to



*Former Board member Lionel Bordeaux.*

those negotiations. For generation after generation, elders passed down information about the talks at treaty time and about the fact that American law, at least in Marshall’s time, had been faithful to those talks.

It was not through choice that modern Indian people have placed so much reliance on federal law, as made by Congress and the courts. They would rather build things internally. But there was no alternative. Outside forces were bent on obtaining Indian land, water, fish and tax revenues, and on assimilating the culture out of Indian people, especially the children. There could be no internal development or harmony until the outside forces were put at rest.

Today, we are able to see that the program conceived at the end of the termination era was successful in many ways. However, in this new century, the forces of termination and the challenges to tribal sovereignty have once again reared their heads. For every victory, a new





*NARF 40th Anniversary Honorees.*

challenge to tribal sovereignty arises from state and local governments, Congress, or the courts. The continuing lack of understanding, and in some cases lack of respect, for the sovereign attributes of Indian nations has made it necessary for the struggle to continue.

### **The founding of the Native American Rights Fund**

In the 1960s the United States government adopted new policies and programs in a widespread effort to address some of the social ills affecting the country. As part of the “War on Poverty,” the Office of Economic Opportunity launched government-funded legal services programs throughout the nation to provide legal representation to the disadvantaged. Those programs which were set up on or near Indian reservations and large Indian communities came to realize that the legal problems of their Indian clients were, for the most part, governed

and controlled by a little known area of law – “Indian Law” – that was driven by treaties, court decisions, federal statutes, regulations and administrative rulings. They also found that few attorneys outside of the legal services system were willing to represent Indians, and those who did generally worked on a contingency basis, only handling cases with anticipated monetary settlements. Very few cases were handled on a contingency basis, meaning many issues would not get to court.

During this same period the Ford Foundation, which had already assisted in the development of the NAACP Legal Defense Fund and the Mexican American Legal Defense Fund, began meeting with California Indian Legal Services (CILS) to discuss the possibility of creating a similar project dedicated to serving all of the nation’s indigenous people. CILS had already established somewhat of a reputation for taking on Indian legal cases. As a result of those



*Sara Rios, Ford Foundation.*

meetings, the Ford Foundation awarded CILS a planning grant in 1970 and start-up funding to launch the Native American Rights Fund in 1971.

As a pilot project of CILS in 1970, NARF attorneys traveled throughout the country to find out firsthand from the Indian communities what the legal issues were. They also began a search for a permanent location for the project, which was initially being housed at CILS's main office in Berkeley, California. The site needed to be centrally located and not associated with any tribe. In 1971, NARF selected its new home and relocated to Boulder, Colorado.

An eleven member all-Indian Steering Committee (now a 13 member Board of Directors) was selected by the CILS Board of Trustees to govern the Fund's activities. Individuals were chosen (as they continue to be today) based on their involvement and knowledge of Indian affairs and issues, as well as their tribal affiliation, to ensure a comprehensive geographical representation.

NARF continued to grow at a rapid pace over the next several years. In 1971, the project incorporated in the District of Columbia and opened its first regional office in Washington, D.C. An office close to the center of government would prove critical in future interaction with Congress and federal administrative agencies. The Carnegie Corporation of New York awarded NARF start-up funding in 1972 for the creation of the National Indian Law Library, a national



*Board Chairman Delia Carlyle, NARF Executive Director John Echohawk, former Board member Charles Lohah.*



*NARF'S 40th Anniversary Appreciation Powwow*

repository for Indian legal materials and resources. Over ten years later, in 1984, NARF established its second branch office in Anchorage, Alaska, to take on the Alaska Native issues of tribal sovereignty and subsistence hunting and fishing rights. ❁



## CASE UPDATES

### Shinnecock Nation's federal acknowledgment finally realized

The Shinnecock Indian Nation (Nation) and the Native American Rights Fund (NARF) are celebrating the October 1, 2010 decision by the U. S. Interior Board of Indian Appeals (the "IBIA") dismissing two requests for reconsideration of the U.S. Department of the Interior's Final Determination for Federal Acknowledgment of the Nation (the "FD"), because the requesters failed to demonstrate that they were interested parties under the federal acknowledgment regulations. With the ruling, the FD is immediately effective, thereby rendering the Nation the 565th federally recognized Indian nation in the United States. NARF is proud and honored to have represented the Nation in its federal acknowledgment petition efforts during this time, along with Mark C. Tilden of the law firm Tilden McCoy, LLC.

The decision ends a 32-year saga initiated by the Nation and NARF when NARF filed the Nation's initial petition and litigation request in 1978 with the U. S. Department of the Interior. The events in the following years finally culminated in the Department issuing a FD dated June 13, 2010 concluding that the Nation met the seven mandatory federal acknowledgment criteria under 25 C.F.R. § 83.7. (See 75 Fed. Reg. 34,760 (June 18, 2010)). The FD was challenged in the IBIA by the requesters who claimed to be interested parties. But, the IBIA rejected their challenges.

Chairman Randy King of the Nation's Board of Trustees eloquently stated, "After 32 years, the Shinnecock Indian Nation has finally obtained formal federal acknowledgment, thus closing a



*Gordell Wright, Shinnecock Nation; Billy Frank, former NARF Board member; Lance Gumbs, Shinnecock Nation.*

long chapter on the Nation's epic struggle. The Native American Rights Fund was part of this effort and the Nation is grateful that it crossed the finish line with NARF by its side."

John Echohawk, NARF Executive Director, reflected on the long fight by his modern day warriors, the NARF attorneys, lamenting "It took forever to achieve federal acknowledgment for Shinnecock, but with the persistence of the Nation and the expertise of former NARF attorney Mark Tilden and NARF attorney Kim Gottschalk, we finally got it done."

The Shinnecock Indian Nation is located on the Shinnecock Indian Reservation, adjacent to Southampton, New York.

### Kaltag Tribe's ICWA case now final

The United States Supreme Court declined to hear the State's appeal in the case of *Hogan v. Kaltag Tribal Council*, thus effectively ending the case and clearly reinforcing the rule that tribal courts have authority to initiate and fully adjudicate children's cases.

The Kaltag Tribal Council had taken emergency custody of one of its member children due to allegations of abuse and neglect and, after

conducting hearings and finding a suitable home, it terminated the rights of the birth parents and issued an order of adoption to the adoptive parents in Huslia. Kaltag then notified the State of Alaska Bureau of Vital Statistics about the adoption and requested a new birth certificate reflecting the names of the adoptive parents and the new last name of the child. The State refused, claiming that it did not owe full faith and credit to the decision of the Kaltag Tribal Court because Kaltag did not have jurisdiction to initiate the case at all.

In the fall of 2006, NARF filed a lawsuit on behalf of the Kaltag Tribal Council and the adoptive parents to enforce the full faith and credit provision of the Indian Child Welfare Act (IWCA). In February 2008, the United States District Court rejected the State's claims and held that Tribes have jurisdiction to adjudicate adoptions and child-in-need-of-aid (CINA) type cases over their member children, and that the Tribal Court's decisions are entitled to full faith and credit by the State. In a detailed and thoughtful opinion, the Court reaffirmed what the United States Supreme Court stated in the *Holyfield* case that the IWCA created "concurrent but presumptively tribal jurisdiction in the case of children not living on a reservation." The Court also noted that denying tribal jurisdiction in CINA-type cases would leave Tribes "powerless to help children in their own villages at the most critical time." The Court's decision was then summarily affirmed by the Ninth Circuit Court of Appeals.

This case reaffirms the rule that when Tribes adjudicate domestic matters of their own member children, whether it is a simple voluntary adoption or a CINA-type case, their decisions are



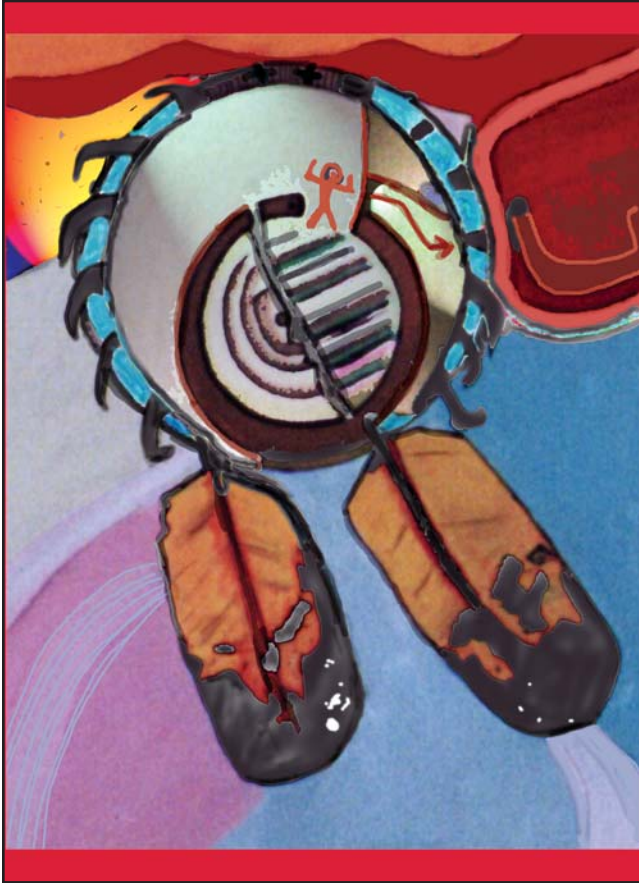
entitled to full faith and credit.

Counsel for Kaltag, Natalie Landreth, said "The fact is that the Kaltag Tribal Court was doing what it, and the 561 other tribes in this country, has been doing since time immemorial: taking care of their own children. This case never should have been appealed to the United States Supreme Court, and the Plaintiffs are very glad that their victory stands." Moreover, the Native American Rights Fund and plaintiffs Kaltag Tribal Council and Hudson and Selina Sam call upon Governor Parnell and Attorney General Sullivan to rescind the Renkes Opinion issued in October 2004 and instead take this opportunity to work with tribes and tribal courts to ensure the protection of all children, no matter which court their case is in.

### **Pamunkey Indian Tribe Files for Federal Acknowledgment**

After years of preparing the necessary historical, legal, genealogical and anthropological evidence to fully document its petition for federal acknowledgment, the Pamunkey Indian Tribe, located on the Pamunkey Indian Reservation, Virginia, filed its petition with the Office of Federal Acknowledgment, Bureau of Indian Affairs (BIA) on October 14, 2010. It is the only Indian Tribe located in the Commonwealth of Virginia to have filed a fully documented





petition. Established no later than 1646, the Pamunkey Indian Reservation is located next to the Pamunkey River, and adjacent to King William County, Virginia. The Reservation comprises approximately 1,200 acres and is the oldest inhabited Indian reservation in America.

The history of the Pamunkey people is rich and well documented. In the course of collecting evidence for the federal acknowledgment petition, researchers compiled more than a thousand documents recording their existence from the period of first European contact through the present. These documents comprise official censuses, correspondence between the Pamunkeys and officials of the Commonwealth and U.S. governments, numerous newspaper stories, church and school records, books by prominent scholars, popular authors, and federal officials, memoirs and much more. Because of these rich resources, continuous, detailed genealogies have been created for the

Pamunkey Tribal members, which trace their lineage back over two hundred years.

Notably, documents have been preserved both in the United States and England that show the continual existence of the Pamunkey Indian Tribe as an independent sovereign since the first visit of Capt. John Smith in 1607, when the English settled Jamestown. At this time, Powhatan, father of Pocahontas, ruled a vast empire which included the great and powerful Pamunkey Indians who were at the core of his empire. A Treaty relationship between the Pamunkeys and Great Britain in 1646, followed by the Treaty of Middle Plantation in 1677, is still honored between the Pamunkeys and the Commonwealth of Virginia. One expression of this continuing relationship is the annual tribute ceremony at Richmond, Virginia, where deer and other wild game are presented to the Virginia Governor by the Pamunkey Chief and members of Tribal Council.

The Tribe has survived intact as an identifiable Indian tribe, although they are not yet federally acknowledged. Tribal existence does not depend on federal acknowledgment. It is, however, necessary to establish a government-to-government relationship between the Tribe and the Federal government, which allows the Tribe access to federal services and benefits. The Tribe's petition documents their continued existence from 1789 to the present and their self-governance throughout this time, which meets the federal acknowledgment regulations.

The Pamunkey Chief and Tribal Council state that "Current Pamunkey Tribal members respect and appreciate what our ancestors have accomplished since first European contact, especially their sustained and successful efforts to maintain the lands, identity and sovereignty that have belonged to the Pamunkey Indians for thousands of years. We believe that federal acknowledgment is the natural means to continue those traditions and honor the ancestors who have given us our birthright. We look forward to the day our existence as an Indian Tribe is formally acknowledged by the United States."

The Native American Rights Fund (NARF) has represented the Pamunkey Indian Tribe in this effort since 1988, joined by the law firm of Tilden McCoy, LLC this year.

### Tribal Supreme Court Project Update

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund. The Project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected tribal sovereignty. The purpose of the Project is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Indian tribes. We encourage Indian tribes and their attorneys to contact the Project in our effort to coordinate resources, develop strategy and prepare briefs, especially at the time of the petition for a writ of certiorari, prior to the Supreme Court accepting a case for review.

On November 1, 2010, the U.S. Supreme Court heard oral argument in the first Indian law case of the term, *United States v. Tohono O'odham Nation*. The Court is reviewing a decision of the U.S. Court of Appeals for the Federal Circuit which found that 28 U.S.C. § 1500 does not preclude jurisdiction in the Court of Federal Claims when a Indian tribe has also filed an action in Federal District Court seeking different relief (e.g. money damages versus historical accounting). During oral argument, the Justices appeared to struggle with the positions of both parties and the practical implications resulting from a ruling for either side. In particular, the Court appeared hesitant to adopt the broad rule sought by the United States — a rule precluding jurisdiction in the Court of Federal Claims in which a “related” case is pending in another court even if it seeks different relief. A number of Indian tribes have filed identical claims for breach of fiduciary duties in both the Court of Federal Claims and the Federal District Court seeking separate relief. Unlike prior Indian law



cases, the Justices did not appear as hostile to the tribal position.

On October 12, 2010, the Court granted review in the second Indian law case for this term, *Madison County v. Oneida Indian Nation of New York*. In *Madison County*, the U.S. Court of Appeals for the Second Circuit held that the Oneida Indian Nation is immune from suit in foreclosure proceedings for non-payment of county taxes involving fee property owned by the Tribe. In a terse concurring opinion written by Judge Cabranes and joined by Judge Hall, two of the three judges on the Second Circuit panel agreed that they were bound by Supreme Court precedent upholding tribal sovereign immunity, but wrote that this decision “defies common sense” and “is so anomalous that it calls out for the Supreme Court to revisit *Kiowa* and *Potawatomi*.” This case is the latest chapter of a lengthy dispute over payment of taxes addressed by the Supreme Court in 2005 in *City of Sherrill v. Oneida Indian Nation of New York*.

You can find copies of briefs and opinions on the major cases we track on the Project’s website ([www.narf.org/sct/index.html](http://www.narf.org/sct/index.html)). 🌟



## NEW BOARD MEMBERS



**Mark Macarro**, Tribal Chairman of the Pechanga Band of Luiseño Indians in California, was first elected as a Councilman in 1992. He is serving his eighth consecutive two-year term on the council and is in his 14th year as Tribal Chairman. Macarro's vision for the Pechanga people is to see the band strengthen its political self-determination and economic self-sufficiency by developing a diversified economy for the Pechanga Band while maintaining its distinct and unique cultural identity.

A national leader, Macarro represents Pechanga in the National Congress of American Indians (NCAI) as an alternate area Vice-President of the Pacific Region 2007-2009 and represents the Pacific Region on the board of directors for the National Indian Gaming Association (NIGA). He is a member of the Electoral College 2008 US Presidential Election, 2008 Platform Committee Member of the Democratic Party and a member of the Board of Governors, Harvard Honoring Nations. In 2008 he was presented as a Pathbreaker Award Honoree at the 20th Annual IGRA Symposium.

He also served as a Riverside County Board of Supervisors appointee to the County Historical Commission and served on the board of directors of Borrego Springs Bank, NA. In the 1990s as a charter board member, Chairman Macarro helped found the Advocates for Indigenous California Language Survival (AICLS), a non-profit organization with the mission of funding tribal language speakers in the state. Macarro has a Bachelor of Arts degree in political science from the University of California, Santa Barbara.

Chairman Macarro believes it is critical to maintain and cultivate the Pechanga tribal culture, language, and traditional life ways so that the Pechanga people can preserve their unique tribal identity. Macarro is a traditional Luiseño singer, singing ceremonial Nukwáánish funeral songs at tribal wakes throughout area Indian reservations, and is a practitioner of Cham'tééla, the Luiseño's native language. He has also been an apprentice bird singer to Robert Levi, an elder of the Torres-Martinez Reservation; having learned hundreds of Levi's birdsongs.



**Buford L. Rolin** is a member of the Poarch Band of Creek Indians in Alabama. He has served as Secretary for the Tribe and has served as the Vice-Chairman from 1991-1999. As of June 2006 he serves in the capacity of Chairman.

In 1989, Chairman Rolin received a service award for improving the Health of Indian People. In 1993, he was awarded the Director's Award for Excellence by the Indian Health Service. In 1996, he also received the Area Director's Special Commendation Award from the Indian Health Service. Chairman Rolin has served on many national organizations including the National Congress of American Indians (NCAI), the Atmore Area Partnership for Youth Board of Directors, and the Florida Governor's Council on Indian Affairs. He has held various positions involving the Northwest Florida Creek Indian Council, the National Committee on Indian Work, the Episcopal Church, The Chamber of Commerce Board of Directors, Creek Indians Arts Council, Creek Indian Heritage Memorial Association, and the United South & Eastern Tribes (USET) and currently as Vice-Chairman for the National Indian Health Board (NIHB). He serves on the State of

Alabama Public Health Advisory Board and is a member of the USET Health Committee. During 2000, Mr. Rolin was appointed to the White House Commission on Complimentary and Alternative Medicine Policy by then President Bill Clinton.

**Natasha V. Singh**, serves as General Counsel to the Tanana Chiefs Conference in Fairbanks, Alaska. Previous to this, Ms. Singh was a law clerk for Justices Daniel Winfree and Diesje Steinkruger of the Alaska Supreme Court. She was also a law clerk for the Native American Rights Fund in the Summer of 2006. Ms. Singh received a Bachelor of Arts from Dartmouth College in 2004 where she was President of Native Americans at Dartmouth and received Dartmouth's Stacey Coverdale Academic Achievement Award. Ms. Singh received a Juris Doctor from the University of Washington in 2007 and was a member of the Native American Law Students Association. She was the Tulalip Tribes Public Defender from 2006 to 2007. 🌸



# National Indian Law Library

## Justice Through Knowledge!

### About the Library

The National Indian Law Library (NILL) located at the Native American Rights Fund in Boulder, Colorado is a national public library serving the Indian law information needs of people across the United States. Since 1972 NILL has collected nearly 10,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions in the United States and hard to find reports, handbooks and conference proceedings. We believe the real value of NILL is the professional staff that responds to about 150 questions from the public each month – providing copies of documents in a timely way. In addition, the free Indian Law Bulletin Service

helps keep the legal professional, student and general public informed on weekly developments in Indian law. Visit the NILL web site to learn more and to register for the free Indian Law Bulletin alerts. [www.narf.org/nill/index.htm](http://www.narf.org/nill/index.htm)

**Support the Library:** The National Indian Law Library is unique in that it serves the public but is *not* supported by local or federal tax revenue. NILL is a project of the Native American Rights Fund and relies on private contributions from people like you. For information on how you can support the library or become a sponsor of a special project, please contact David Selden, the Law Librarian at 303-447-8760, [dselden@narf.org](mailto:dselden@narf.org) or visit us in Boulder, Colorado. 🌻



# CALLING TRIBES TO ACTION!

It has been made abundantly clear that non-Indian philanthropy can no longer sustain NARF's work. Federal funds for specific projects have also been reduced. Our ability to provide legal advocacy in a wide variety of areas such as religious freedom, the Tribal Supreme Court Project, tribal recognition, human rights, trust responsibility, tribal water rights, Indian Child Welfare Act, and on Alaska tribal sovereignty issues has been compromised. NARF is now turning to the tribes to provide this crucial funding to continue our legal advocacy on behalf of Indian Country. It is an honor to list those Tribes and Native organizations who have chosen to share their good fortunes with the Native American Rights Fund and the thousands

of Indian clients we have served. The generosity of Tribes is crucial in NARF's struggle to ensure the future of all Native Americans.

The generosity of tribes is crucial in NARF's struggle to ensure the freedoms and rights of all Native Americans. Contributions from these tribes should be an example for every Native American Tribe and organization. We encourage other Tribes to become contributors and partners with NARF in fighting for justice for our people and in keeping the vision of our ancestors alive. We thank the following tribes and Native organizations for their generous support of NARF thus far for our 2011 fiscal year – October 1, 2010 to September 30, 2011:

- 
- Chickasaw Nation
  - Citizen Potawatomi Nation
  - Fond du Lac Band of Lake Superior Chippewa
  - Iowa Tribe of Oklahoma
  - Mississippi Band of Choctaw Indians
  - Poarch Band of Creek Indians
  - Pokagon Band of Potawatomi Indians
  - San Manuel Band of Mission Indians
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  - Wildhorse Foundation
  - Yoche Dehe Wintun Nation



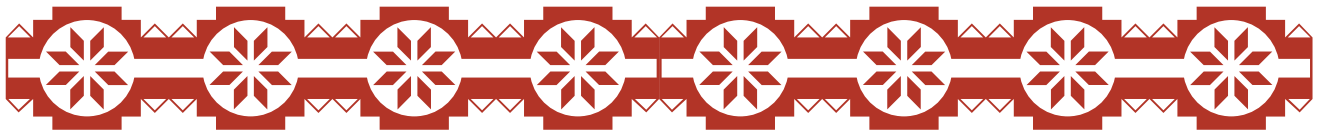
# THE NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund (NARF) was founded in 1970 to address the need for legal assistance on the major issues facing Indian country. The critical Indian issues of survival of the tribes and Native American people are not new, but are the same issues of survival that have merely evolved over the centuries. As NARF is in its fortieth year of existence, it can be acknowledged that many of the gains achieved in Indian country over those years are directly attributable to the efforts and commitment of the present and past clients and members of NARF's Board and staff. However, no matter how many gains have been achieved, NARF is still addressing the same basic issues that caused NARF to be founded originally. Since the inception of this Nation, there has been a systematic attack on tribal rights that continues to this day. For every victory, a new challenge to tribal sovereignty arises from state and local governments, Congress, or the courts. The continuing lack of understanding, and in some cases lack of respect, for the sovereign attributes of Indian nations has made it necessary for NARF to continue fighting.

NARF strives to protect the most important rights of Indian people within the limit of available resources. To achieve this goal, NARF's Board of Directors defined five priority areas for NARF's work: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law and educating the public about Indian rights, laws, and issues.

Requests for legal assistance should be addressed to the Litigation Management Committee at NARF's main office, 1506 Broadway, Boulder, Colorado 80302. NARF's clients are expected to pay whatever they can toward the costs of legal representation.

NARF's success could not have been achieved without the financial support that we have received from throughout the nation. Your participation makes a big difference in our ability to continue to meet ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance.



**NARF Annual Report.** This is NARF's major report on its programs and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request. Ray Ramirez Editor, [ramirez@narf.org](mailto:ramirez@narf.org).

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**Tax Status.** The Native American Rights Fund 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, and 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.

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