



# Legal Review

NATIVE AMERICAN RIGHTS FUND

## Environmental Protection Agency Rules in Favor of Shoshone and Northern Arapaho Tribes



Disputes about the boundaries of an Indian reservation are neither uncommon nor unimportant. They arise from the foundations of the agreements between the United States and the Tribes involved, most often solemn treaties. All too often they arise from the violation of those treaties by, and unkept promises from, the United States. That history marks the relations between the United States and Eastern Shoshone Tribe where on this occasion the United States is actually acting to protect the interests of the Tribe in the defense of the Tribe's Reservation boundaries.

The most recent controversy arises out of efforts of the Eastern Shoshone and Northern Arapaho Tribes, who jointly share the Wind River Reservation in Wyoming, to secure delegation of certain non-regulatory programs from the United States Environmental Protection Agency (EPA) under the Clean Air Act (CAA). One of those programs requires that EPA identify where the boundary of the Reservation is located. Having done so consistent with the Tribes' description of the boundary has triggered significant opposition from the State of Wyoming, the City of Riverton, Fremont County, and some private parties.

### The history leading up to the controversy

The Eastern Shoshone Tribe settled the Shoshone Reservation in Wyoming in 1868 when the Tribe, with the United States, entered into the Treaty of July 3, 1868. That treaty set apart 3,054,182 acres "for the absolute and undisturbed use and occupation of the Shoshone Indians..., and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst ►

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them.” The Shoshone Reservation was established in exchange for the Tribe’s relinquishment of their former reservation of 44 million acres. The Reservation is situated in the shadow of the Wind River Mountain Range which serves as the headwaters for the rivers and streams that feed the Reservation’s Big Wind and Popo Agie Rivers, the primary source of all the water on the Reservation.

Broken treaties, broken promises lead to a reduced reservation and Eastern Shoshone and Northern Arapaho Tribes sharing the Reservation

Shortly after the Reservation was established the Shoshone Tribe was visited by Felix Brunot, a commissioner from the United States, requesting that the Tribes relinquish a portion of the southern end of the Reservation because, “since the date of [the] treaty, mines have been discovered, and citizens of the United States have made improvements within the limits of said reservation, and it is deemed advisable for the settlement of all difficulty between the parties, arising in consequence of said occupancy, to change the southern limit of said reservation.” The “difficulty”

which had arisen was that non-Indian settlers and miners had trespassed on the Reservation and the United States was unwilling to honor the treaty and remove them. The United States paid \$25,000 for 712,000 acres of land; about 3.5 cents per acre, under legislation enacted by Congress in the Lander Purchase Act, 18 Stat. 291 (1874).

Meanwhile the Northern Arapaho Tribe was continuing to petition the United States to honor its agreements in the Treaty of Fort Laramie of 1851 and the Treaty of 1868 to establish a reservation for the Arapahos. The United States failed to honor those agreements, leaving the Tribe to wander the plains while non-Indian settlers increasingly encroached on their hunting grounds, displacing them from their traditional homelands. In 1878, the federal Superintendent of the Shoshone Reservation Agency approached Chief Washakie of the Shoshone Tribe with a request that the Northern Arapaho’s be allowed to rest on the eastern end of the Shoshone Reservation while they continued to seek establishment of a reservation of their own. Deliberately misled by representatives of the federal government, everyone on the





Reservation believed the Arapaho tenancy was temporary. Not so. After a time it became apparent that the federal government intended to leave the Arapaho on the Shoshone Reservation. The result was that the Arapahos became equal owners with the Shoshone of the land and resources of the Reservation, which became known as the Wind River Reservation. What is unique about the relationship of the Eastern Shoshone and Northern Arapaho Tribes is that they are the only Tribes in the United States that share a reservation in joint ownership but maintain their separate sovereignty. They make decisions about shared resources through a Joint Business Committee.

Continuing pressure from the United States leads to an opening of Reservation to non-Indian settlement

In 1887 the United States adopted a new policy, the General Allotment Act (GAA), which was intended to accomplish the assimilation of Indian

people into the majority culture through breaking up of communal ownership of tribal lands and the destruction of Native American culture. The real purpose of the Act was identified at the time by Senator Teller from Colorado, who remarked that “[t]he provisions for the apparent benefit of the Indian are but a pretext to get at his lands and occupy them and making available to non-Indian settlement lands within the Reservations.”<sup>1</sup> The GAA was implemented through individual “surplus land acts” negotiated with the tribes of the various reservations. Under pressure from non-Indian interests and the State of Wyoming, the United States continued to pressure the Eastern Shoshone and Northern Arapaho Tribes to relinquish lands on the Reservation. After two failed attempts in 1891 and 1893 to negotiate further cessions, Indian Inspector James McLaughlin came to the Tribes seeking the cession of the hot springs and 55,040 acres of land surrounding present day Thermopolis, Wyoming. McLaughlin was successful in obtaining the Thermopolis agree- ►

<sup>1</sup>Sen Teller went on to say that, “If this were done in the name of greed, it would be bad enough; but to do it in the name of humanity, and under the cloak of an ardent desire to promote the Indian’s welfare by making him like ourselves whether he will or not, is infinitely worse.” Otis, D.S. The Dawes Act and the Allotment of Indian Lands. Norman: U of OK Press, 1973, pp. 18-19. Originally published in 1934



ment. Congress ratified the agreement which included an agreement to pay the Tribes \$60,000 for the cession at \$1.09 per acre. Thermopolis Purchase Act, 30 Stat. 93 (1897).

Inspector McLaughlin was not done. He came back in 1904 to seek the largest cession of all. He negotiated with the tribes to open for settlement nearly two-thirds of their land situated in the north and eastern portion of the Reservation, bounded in the south by the Big Wind and Popo Agie Rivers. Unlike in the past, McLaughlin advised the tribes that the United States didn't require their agreement. Based on a case in the US Supreme Court decided in 1903, Congress could exercise its "plenary power" over Indian affairs and open the reservation for settlement by non-Indians by legislative fiat. Moreover, McLaughlin said, the United States would not be paying for the land when it was opened for settlement, but rather, would pass the proceeds of the sale of the lands to the Tribes as they were collected. It was in this context that the "negotiations" were conducted.

In 1904, agreement was reached for the opening of Reservation land north and east of the Big Wind and Popo Agie Rivers. The agreement was that the United States would act as the trustee on behalf of the Tribes for the sale of any lands entered by settlers of and for the establishment of townsites. In order for the United States to be able to transfer good title to those seeking land, it was necessary for the Tribes to surrender all right title and interest to the United States. But the tribes retained the rights to any proceeds from the lands resulting from non-sale activities, such as leasing for grazing, mining for oil, gas, sand and gravel, and use of the surface for other activities. For every purpose except transfer for sale, the Tribes retained the beneficial ownership of the land.

The 1904 Agreement was amended and ratified by Congress by the Act of March 3, 1905 (1905 Act). The key question related to the 1905 Act is its effect, if any, on the boundary of the Reservation as it existed at the time of the adoption of that legislation. Either it had the effect of erasing the boundary surrounding the lands opened for settlement, i.e. "diminished" the





Reservation boundary, or it left the boundary intact and the lands within that boundary were simply opened for settlement.

**Significant oil and gas development takes place and the Tribes have increasing concerns about environmental impacts**

Recently, the number of oil and gas wells on or near the Reservation increased, the Tribes' joint environmental agency, the Wind River Environmental Quality Commission (WREQC), became increasingly concerned about environmental monitoring and regulation. To begin to get a handle on air quality, EST and NAT filed a joint application on December 17, 2008 with the EPA for delegation of "treatment in the same manner as a state" (TAS) in the administration of certain Clean Air Act programs. The Application asked for delegation pursuant to Clean Air Act (CAA) for Affected State Status – which would provide the Tribes with the right to receive notice of any activity that could impact air emissions within 50 miles of the boundary of the Reservation – as well as the right to apply for certain grant pro-

grams from EPA. The Application contains no request for any program that would include regulatory authority.

After careful review, including securing an opinion from the Solicitor for the Department of the Interior on the boundary of the Reservation, EPA issued its Approval of the Application on December 11, 2013 – published in the Federal Register, Vol. 78, No. 244, 76829, December 19, 2013. That decision determined that the boundaries of the Wind River Reservation were not altered by the Surplus Land Act of March 3, 1905.

The State of Wyoming petitioned EPA for reconsideration and a stay on January 6, 2014. That petition was granted in part by EPA as to lands over which jurisdiction is in dispute. Wyoming also filed a petition for review in the Tenth Circuit Court of Appeals in Denver, Colorado on February 14, 2014, which was followed in due course by separate petitions for review from Devon Energy and the Wyoming Farm Bureau. The Court 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 Eastern Shoshone Tribe filed a notice of intervention which the Court also granted. The Tribes are urging the parties to sit down to negotiations in mediation or other settings to address the broad range of issues facing all of the parties. So far, the State of Wyoming has indicated no interest in talks.

#### **Wyoming congressional delegation drafts legislation to define the boundary**

In March 2014 the Wyoming Congressional delegation shared with the Eastern Shoshone Tribe a draft of legislation entitled “To clarify the boundaries of the Wind River Reservation and for other purposes.” The language of the draft appears intended to set the boundary of the Reservation to

exclude the lands that the State of Wyoming prefers. If that would be the case it would accomplish very little, and nothing more would be accomplished if the State were to prevail in the pending litigation; that is, it would simply draw a line. None of the issues that presently trouble the community would be addressed; including: criminal jurisdiction, rights-of-way and maintenance of roads, environmental regulation and permitting, the administration of water rights, taxation and revenue sharing, and other areas including zoning, building codes and other management issues. These issues deserve the attention of the leadership of the communities involved and the Eastern Shoshone Tribe is committed to seeking meaningful and acceptable agreements to improve the lives of all involved. 🌟

## In memory of Billy Frank Jr.

March 9, 1931 – May 5, 2014

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*“I don’t believe in magic. I believe in the sun and the stars, the water, the tides, the floods, the owls, the hawks flying, the river running, the wind talking. They’re measurements. They tell us how healthy things are, how healthy we are, because we and they are the same. Now that’s what I believe in.”*

— Billy Frank Jr., *Where the Salmon Run*

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Former NARF Board member Billy Frank Jr., died Monday, May 5 at age 83. Billy was a visionary, a fiery leader and a hero for Indian rights. Everyone in the NARF family—members, staff, board of directors—will miss his warmth, generosity and strength of conviction.

A Nisqually Tribal member, Frank grew up fishing for salmon and steelhead on the Nisqually River. Frank was first arrested for salmon fishing as a boy in 1945 — an event that led him on a long campaign for tribal rights. He and others were repeatedly arrested as they staged “fish ins” demanding the right to fish in their historical waters, as they were guaranteed in treaties when they ceded land to white settlers in the 19th century.

He was on the front line when the battle over treaty-guaranteed Indian fishing rights erupted in the 1960s and 1970s. His perseverance landed him in jail more than 50 times but helped lead to reaffirming the tribal treaty fishing rights when the *U.S. v. Washington* (Boldt Decision) was decided in 1974. NARF represented five tribes in that litigation, including Nisqually.

The ruling, supported by the Supreme Court in 1979, reaffirmed the treaty-protected fishing rights of the tribes. Among other things, the ruling stated that the tribes have a right to catch up to fifty percent of the harvestable resource, and that the state and the tribes must manage the resource as co-managers.



As Chairman of the Northwest Indian Fisheries Commission, Frank worked to achieve a number of key agreements between the tribes and various local, state and federal officials that further strengthen treaty-guaranteed fishing rights and environmental protection laws. His involvement in areas like the unique Timber-Fish-Wildlife Agreement, the Chelan Agreement (a water resources planning document), and the Centennial Accord placed Frank in a powerful leadership role for Indian and non-Indian alike. It’s a leadership role that’s been recognized from Olympia to Washington, D.C. 🌸



## CASE UPDATES

### Department of the Interior proposes regulations to make trust land acquisitions for Alaska Natives



The Department of the Interior published a proposed regulation today authorizing petitions for lands to be taken into trust status on behalf of Alaska Native Tribes and individuals. Kevin Washburn, Assistant Secretary of Indian Affairs, announced the long standing regulatory prohibition on Alaska petitions would come to an end. The proposed regulation comes nearly one-year after the historic court victory for Alaska Native Tribes in *Akiachak Native Community, et al. v. Salazar*, which affirmed the ability of the Secretary of Interior to take land into trust on behalf of Alaska Tribes and also acknowledged the rights of Alaska Tribes to be treated the same as all other federally recognized Tribes.

In 2006, four Tribes and one Native individual—the Akiachak Native Community, Chalkyitsik Village, Chilkoot Indian Association, Tuluksak Native Community (IRA), and Alice Kavairlook—brought suit challenging the Secretary of the Interior's decision to leave in place a regulation that treats Alaska Natives differently from other Native peoples. On behalf of our clients, NARF and Alaska Legal Services Corporation sought judicial review of 25 C.F.R. § 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 barred the acquisition of land in trust in Alaska other than for the Metlakatla Indian Community or its members. Plaintiffs argued that this exclusion of Alaska Natives—and only Alaska Natives—from the land into trust application process is void under 25 U.S.C. § 476(g), which nullifies regulations that discriminate among Indian Tribes. The State of Alaska intervened to argue that the differential treatment is required by the Alaska Native Claims Settlement Act (ANCSA). The District Court for the District of Columbia agreed with Plaintiffs on all counts.

Today's announcement from the Department of the Interior, along with the District Court's ruling last year, will allow Alaska Tribes to begin petitioning the Secretary to have their tribally-owned fee lands placed into trust status. With such status, Alaska's Tribal governments will have the opportunity to enhance their ability to regulate alcohol and generally protect the health, safety, and welfare of tribal members.



# Supreme Court Upholds Tribal Sovereign Immunity in Michigan v. Bay Mills



In a stunning victory for Indian tribes, the Supreme Court of the United States on May 27, 2014 issued its opinion in *Michigan v. Bay Mills Indian Community*, reaffirming the doctrine of tribal sovereign immunity. In a 5-to-4

decision, Justice Kagan, joined by Chief Justice Roberts, Justices Kennedy, Breyer and Sotomayor, upheld the lower court's decision that that Indian tribal governments possess sovereign immunity against lawsuits, including lawsuits brought by state governments, and reaffirmed the principle that it is for Congress, not the Court, to determine the circumstances where Indian tribes should be subject to suit. In an unexpected development, Chief Justice Roberts provided the crucial fifth vote to secure this legal victory, having not voted in favor of tribal interests in a single case since he joined the Court in 2005.

The lawsuit had its origin in a dispute between the State of Michigan and the Bay Mills Indian Community over whether a particular location constituted Indian lands eligible for gaming under the Indian Gaming Regulatory Act, but then turned into a much larger legal battle over the rights of all Indian tribes across the country.

"This is a good day for tribal governments," said NCAI President Brian Cladoosby and Chairman of the Swinomish Tribe. "Congratulations to the Bay Mills Indian Community! We always thought this case was an overreach by the State of Michigan. Tribal and state governments work together and find common ground all the time. All governments are working to create jobs, educate our children, provide public safety and protect our environment. We find agreement on thousands of issues, but every now and then we disagree. When that happens, we have to negotiate solutions on a government-to-government basis. That takes leadership, and we can't take each other to court. The Supreme Court agrees."

Upon learning of the decision and the fact that Chief Justice Roberts voted in favor of tribal interests, NARF's Executive Director John Echohawk's initial response was a simple "WOW!" After a sigh of relief, he stated: "I am pleased that the Court today stood upon the foundational principles of Indian law that we are all familiar with, instead of changing the rules on us all the time. The victory in this case is attributed to the hard work and dedication of the tribal leaders and attorneys for Bay Mills, as well as the on-going efforts of the Tribal Supreme Court Project."

In parts of the opinion aside from the main holding, the Supreme Court found that the states can use other remedies to address issues off-reservation, including negotiations, permit enforcement, and lawsuits against tribal officials in their individual capacities. A dissent written by Justice Thomas strongly disagreed with the holding, stating that sovereign immunity is a judicially created doctrine and could be modified by the Supreme Court. However the majority emphasized that tribal sovereignty is an inherent right of Indian tribes recognized in a string of Supreme Court decisions from the founding of the United States.

NCAI and NARF filed an amicus brief before the argument, and would like to thank all of the tribal leaders and attorneys who participated in the efforts on this case.

On December 2, 2013, in *Michigan v. Bay Mills Indian Community*, the Supreme Court heard oral argument involving the petition filed by the State of Michigan seeking review of a decision by the U.S. Court of Appeals for the Sixth Circuit which held that federal courts lack jurisdiction to adjudicate the State's claims against the Bay Mills Indian Community under the Indian Gaming Regulatory Act (IGRA) to the extent those claims are based on an allegation that the Tribe's casino is not on "Indian lands," and that the claims are also barred by the doctrine of tribal sovereign immunity.



The Bay Mills Indian Community opened a casino in late 2010 on fee land about 90 miles south of its Upper Peninsula reservation. The Tribe had purchased the land with interest earnings from a settlement with the federal government over compensation from land ceded in 1800s treaties. Under the Michigan Indian Land Claims Settlement Act of 1997, any land acquired with these settlement funds would "be held as Indian lands are held." Michigan argued that the tribe opened the casino on lands that do not qualify as "Indian lands" under IGRA and in violation of a state-tribal gaming compact. The questions presented in the petition are: The Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (IGRA), authorizes an Indian tribe to conduct class III gaming under limited circumstances and only on "Indian lands." 25 U.S.C. § 2710(d)(1). This dispute involves a federal court's authority to enjoin an Indian tribe from operating an illegal casino located off of "Indian lands." The petition presents two recurring questions of jurisprudential significance that have divided the circuits: (1) Whether a federal court has jurisdiction to enjoin activity that violates IGRA but takes place outside of Indian lands; and (2) Whether tribal sovereign immunity bars a state from suing in federal court to enjoin a tribe from violating IGRA outside of Indian lands.

In its opening brief, Michigan mounted a full frontal attack on tribal sovereign immunity seeking to extend the authority of states to regulate "gaming activity" under the Indian Gaming Regulatory Act (IGRA). First, Michigan asked the Court to examine "IGRA as a whole" to find Congressional intent to waive of tribal sovereign immunity or, in the alternative, to overrule *Santa Clara Pueblo* and apply a "less strict standard" when considering whether legislation such as IGRA abrogates tribal sovereign immunity. Second, if the statutory arguments are not successful, Michigan asked the Court to recognize that tribal sovereign immunity "is a federal common law doctrine" created by this Court and subject to adjustment by this Court. Thus, according to Michigan, the Court should narrowly read *Kiowa* as a "contract-based ruling" and (at the extreme) hold that a tribe's immunity is limited to its on-reservation governmental functions.

Two amicus briefs in support of Michigan were filed. First, the State of Alabama, joined by fifteen other states, asked the Court to allow states to sue tribes for declaratory and injunctive relief when tribes are operating "unlawful gambling, payday lending, and similar activities" within the state. The states' amicus brief characterize the commercial activities of Indian tribes as "hav[ing] built everything from brick-and-mortar casinos to Internet-based banks, based on the perception that they can evade federal and state regulations within state territory." Second, the State of Oklahoma filed its own amicus brief to draw the Court's attention to three examples of what it characterizes as the failure of the United States and the National Indian Gaming Commission to stop "illegal tribal gambling" within the state.

In response, the Tribe informed the Court that this case "is one of the rare cases before this Court that is squarely controlled by settled precedent." Based on the Court's 1998 decision in *Kiowa*, the Tribe argued that an Indian tribe is entitled to sovereign immunity unless Congress has abrogated its immunity, or the tribe has waived it, neither of which applies to this case. The Tribe goes on to point out that there are a variety of means for resolving this dispute, including arbitration which is the dispute resolution process agreed to by the state and the tribe in their gaming compact. Accordingly, "[t]here is no reason for the Court to rewrite the law or discard settled doctrine simply because Michigan is now unhappy with the bargain it struck."

Four amicus briefs were filed in support of the Bay Mills Indian Community. The United States, in support of the tribe, argued that IGRA does not authorize a suit against a tribe to enjoin gaming that takes place off Indian lands and that the Court's settled precedents recognize that Indian tribes have immunity from suit. In an effort to persuade the Court to preserve the doctrine of tribal sovereign immunity, the United States pointed to other alternative resolutions for this case, including mutual waivers of immunity in federal court; pending *Ex Parte Young* actions against state or tribal officials; tribe seeking NIGC final agency action; and enforcement of



state's gaming laws. The National Congress of American Indians, joined by the National Indian Gaming Association, other intertribal organizations, and 51 federally recognized Indian tribes, filed an amicus brief challenging whether subject matter jurisdiction exists for the Court to consider the states' broad attacks on the doctrine of tribal sovereign immunity and educating the Court in relation to Congress' careful consideration of immunity in the wake of *Kiowa* and its decision to not curtail the doctrine in a manner suggested by the states.

As expected, Michigan Solicitor General John J. Bursch began oral argument with the State's principal contentions: (1) it makes no sense that Congress intended States to have a federal injunctive remedy for illegal gaming on-reservation under IGRA, but no remedy if that gaming took place on land outside the reservation and within the State's exclusive jurisdiction; and (2) a tribe should not have greater immunity than a foreign nation, such as France, which would not have blanket immunity if it opened up an illegal business in Michigan.

To begin questioning, Justice Sotomayor inquired about a "jurisdictional" issue raised within the amicus brief submitted by NCAI, *et al.*, (i.e. whether the State could pursue its appeal since the District Court had made clear that the State had not filed the motion for the injunction, had not intervened, and had only filed a brief supporting another party's motion in a related suit). However, no other Justice joined in the discussion which ended abruptly after Chief Justice Roberts inquired whether this issue involves a jurisdictional objection or a procedural objection (a procedural objection is waived by a party if it is not timely raised, whereas a jurisdictional objection can be raised at any time by any party or the Court). Therefore, it appears that a majority of the Court views the issue as procedural, therefore waived, and this case is properly before the Court.

The Court spent most of the oral argument exploring several interrelated issues: (a) the possibility of alternative remedies available to the parties that would resolve their dispute without requiring the Court to modify its 1998 decision in

*Kiowa*; (b) assuming such alternative remedies are insufficient to resolve the dispute, the ways in which the Court could modify or limit tribal sovereign immunity to provide a remedy to the State; and (c) whether it would be proper for the Court to modify the tribal sovereign immunity at all, or whether such modification is within the province of Congress.

Justice Ginsberg began the discussion of alternative remedies by asking why the State did not pursue arbitration—the dispute resolution agreed to by the parties under the gaming compact. Several of the Justices seemed to agree with the State that, in the end, although arbitration under the compact appears well-suited to resolve the underlying merits of the dispute, there is skepticism regarding whether or not Bay Mills would re-assert sovereign immunity if Michigan successfully invoked the arbitration provision. Justices Sotomayor and Kagan appeared more convinced by the plausibility of an alternative remedy in the form of an *Ex Parte Young* action against tribal officials to enjoin them from operating the casino (raised in the amicus briefs submitted by the United States and the Indian Law Scholars). The State responded that an *Ex Parte Young* suit is an imperfect remedy in this case for a number of reasons and looked to turn the discussion towards the need for the Court to modify *Kiowa*. However, the Justices observed that *Ex Parte Young* would likely provide all of the relief being sought by the State except for its claim for monetary damages.

Generally, the Court appeared to accept the fact that Michigan or the federal government could resolve the matter by initiating criminal proceedings against the individuals operating or working at the casino, but questioned their efficacy. Bay Mills conceded (as it did in regard to arbitration) that both the *Ex Parte Young* and criminal prosecution options were available remedies that could be pursued by the State. Bay Mills reminded the Court that the casino is currently closed and that the parties are currently in the process of renegotiating their state-tribal gaming compact where the State can bargain for additional remedies. However, several Justices appeared to view tribal sovereign immunity as a hurdle to any potential remedy.



Throughout the argument, various Justices noted several ways by which the Court could modify the doctrine of tribal sovereign immunity. Justice Kennedy, observing the unusual procedural posture of the case, proposed a ruling that would limit *Kiowa* to make the tribal sovereign immunity defense unavailable in the context of Indian gaming. Other Justices questioned whether Indian tribes should enjoy greater sovereign immunity than States or foreign nations. Justice Ginsburg proposed making a distinction between governmental and commercial (off-reservation) activity, whereby the latter would not be covered by tribal sovereign immunity. Michigan argued that the Court could either

modify *Kiowa* on this governmental-versus-commercial distinction, or simply distinguish *Kiowa* on the basis that States are different—States are constitutional sovereigns entitled to be treated differently than ordinary business plaintiffs.

Finally, the Court discussed whether it should modify the doctrine of tribal sovereign immunity, or whether, in line with *Kiowa*, once again defer any changes to Congress. A majority of the Justices, including Chief Justice Roberts, expressed a belief in the inherent power of the Court to modify tribal sovereign immunity despite its holding in *Kiowa*.

## NEW NARF BOARD MEMBER

**Larry N. Olinger**, Vice Chairman of the Agua Caliente Band of Cahuilla Indians located in Palm Springs, California, was elected to the Native American Rights Fund Board of Directors in November 2013. Larry has always been interested in tribal activities and service. He was first elected to the Tribal Council in 1961, subsequently served as Secretary/ Treasurer in 1969 and served as Chairman of the Tribal Council in 1970-71. He has been the Vice Chairman since 2012.

Larry has also served on numerous tribal boards and was the first Chairman of the Agua Caliente Development Authority when it was established in 1989. He currently serves on the State of California Coachella Valley Mountains Conservancy which works to protect the natural and cultural resources of the Coachella Valley.

In 1988, Mr. Olinger was responsible for the enactment of federal legislation that exempts from taxation the proceeds of investment income related to Native American land taken by eminent domain for public purposes. He spent his professional career working in the defense industry, specializing in test equipment for the Polaris submarine. He has an AA degree from Long Beach City College and attended the University of

California Riverside. He also spent many years breeding and racing thoroughbred horses.

The NARF Board of Directors and staff welcome Larry and look forward to working with him. 🌟





# National Indian Law Library

## Justice Through Knowledge!

The National Indian Law Library needs your financial support

You probably are familiar with the great work NARF does in court rooms and the halls of Congress relating to tribal recognition, treaty enforcement, trust fund settlements, repatriation, and more. Did you know that NARF also is the go-to resource for legal research in Indian law?

**Advance Justice through Knowledge! Support the National Indian Law Library!**

Historically, Indian people and advocates fighting for indigenous rights have found themselves limited by their ability to access relevant federal, state, and tribal Indian law resources. In direct response to this challenge, the National Indian Law Library (NILL) was established over forty years ago as a core part of the Native American Rights Fund (NARF). Today the library continues to serve as an essential resource for those working to advance Native American justice. As the only public library devoted to Indian law, we supply much-needed access to Indian law research, news updates, and tribal law documents. To extend the tradition of free public access to these services we ask for your financial support.

**Each year, NILL responds to more than 1,000 individual research requests and receives several hundred thousand visits to its online resources.** Whether it's through updates to the online *Guide to Indian Child Welfare* or additions to the extensive *tribal law collection*, NILL is committed to providing visitors with resources that are not available anywhere else! Additionally, our *Indian Law Bulletins* and *news blog* deliver timely updates about developments in Indian law and ensure that you have the information you need to fight for indigenous rights. However, we are not resting on our laurels; we are constantly improving our online



resources and access to tribal law materials. With your support we plan to develop an innovative and valuable community based wiki-source for Indian law information and greatly broaden the scope of the Tribal Law gateway.

**The bulletins, research resources, extensive catalog, and personal one-on-one librarian assistance can only exist with your help.** The National Indian Law Library operates on an annual budget of \$190,000—primarily from the donations of concerned and motivated individuals, firms, businesses, and tribes who recognize NARF and NILL as indispensable resources for Native American justice.

**By donating, you stand with the National Indian Law Library in its effort to fight injustice through access to knowledge.** You help ensure that the library continues to supply free access to Indian law resources and that it has the financial means necessary to pursue innovative and groundbreaking projects to serve you better. Please visit [www.narf.org/nill/donate](http://www.narf.org/nill/donate) now for more information on how you can support this mission. 🌟

# 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 for our 2014 fiscal year – October 1, 2013 to September 30, 2014:

- Chickasaw Nation
- Comanche Nation of Oklahoma
- Confederated Salish & Kootenai Tribes
- Confederated Tribes of Siletz Indians
- Fort Mojave Indian Tribe
- Lummi Nation
- Native Village of Fort Yukon
- Native Village of Port Lions
- Nome Eskimo Community
- Organized Village of Saxman
- Pechanga Band of Luiseno Indians
- Poarch Band of Creek Indians
- San Manuel Band of Mission Indians
- Seminole Tribe of Florida
- Seven Cedars Casino/Jamestown S'Klallam
- Spirit Lake Dakota Nation
- Tonkawa Tribe
- Yoche Dehe Wintun Nation





# THE NATIVE AMERICAN RIGHTS FUND

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

Native Americans have been subjugated and dominated. Having been stripped of their land, resources and dignity, tribes today are controlled by a myriad of federal treaties, statutes, and case law. Yet it is within these laws that Native Americans place their hope and faith for justice and the protection of their way of life. With NARF's help, Native people can go on to provide leadership in their communities and serve as catalysts for just policies and practices towards Native peoples nationwide. From a historical standpoint Native Americans have, for numerous reasons, been targets of discriminatory practices.

For the past 44 years, NARF has represented over 250 Tribes in 31 states in such areas as tribal jurisdiction and recognition, land claims, hunting and fishing rights, the protection of Indian religious freedom, and many others. In addition to the great strides NARF has made in achieving justice on behalf of Native American people, perhaps NARF's greatest distinguishing attribute has been its ability to bring excellent, highly ethical legal representation to dispossessed tribes. NARF has been successful in representing Indian tribes and individuals in cases that have encompassed every area and issue in the field of Indian law. The accomplishments and growth of NARF over the years confirmed the great need for Indian legal representation on a national basis. This legal advocacy on behalf of Native Americans continues to play a vital role in the survival of tribes and their way of life. NARF strives to protect the most important rights of Indian people within the limit of available resources.

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

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

**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

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.

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.

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. 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. Because such laws impact virtually every aspect of tribal life, NARF maintains its involvement in the legal matters pertaining to accountability of governments to Native Americans.

The 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.

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.



ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.

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**Washington, D.C. Office:** Native American Rights Fund, 1514 P Street, NW (Rear) Suite D, Washington, D.C. 20005 (202-785-4166) (FAX 202-822-0068).

**Alaska Office:** Native American Rights Fund, 745 W. 4th Avenue, Suite 502, Anchorage, Alaska 99501 (907-276-0680) (FAX 907-276-2466).

**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.

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