



Legal Review

NATIVE AMERICAN RIGHTS FUND

Agua Caliente Band of Cahuilla Indians rights to groundwater recognized

Introduction

As California enters yet another year of an historic drought, the all-encompassing importance of the water resource is increasingly evident. The need for more responsible management of the resource has finally started to sink in – federal, state, and local policymakers are finally taking action to conserve water and to enact measures that protect the availability of the resource in an uncertain water future.

Groundwater is perhaps the most critical water resource for California's water future. In an arid climate, surface waters are often available only seasonally and can be unreliable. Because of this, many big water users have opted to simply pump groundwater and have been doing so with little or no oversight for decades. This practice is being called into question throughout the state with the California State legislature passing new legislation last year that initiates a groundwater regulatory system, but it is incremental in execution and many fear that it's too little too late.

For years, the Agua Caliente Band of Cahuilla Indians has expressed growing concern about the viability of the groundwater basin underlying its Reservation. Indeed, the Cahuilla people have long been the stewards of this resource. The Coachella Valley was populated by ancestral Cahuilla people prior to the arrival of Spanish and then other people. The Cahuilla people understood the groundwater resource and managed its use with knowledge gained through millennia of experience surviving in the arid desert. Today, the Agua Caliente continue working to protect the viability of the groundwater resource and ensure that it is managed responsibly. Indeed, ►



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this concern and duty to protect the groundwater resource ultimately led the Tribe to file suit against the two main water agencies that serve the Reservation and surrounding lands.

The Agua Caliente Reservation

The Agua Caliente is a band of Cahuilla Indians who have made their home in the Coachella Valley since time immemorial. Indeed, today's Agua Caliente Reservation, which encompasses over 31,000 acres in and around the city of Palm Springs, sits in the heart of lands used and occupied by the clans from whom today's Agua Caliente tribal members are descended. It is their aboriginal land, although it is but a portion of their aboriginal territory.

The ancestral Cahuilla people were keenly aware of the value of water and planned nearly every aspect of their lifeways in utilizing the resource efficiently, paying it the respect due to it in the arid desert environment. Cahuilla villages were usually sited in proximity to reliable water sources. Knowledge of the location of springs, where groundwater percolates to the surface, was critical to the survival of travelers and hunting and gathering parties. Water was diverted to enhance the growth of important food sources, such as mesquite groves. And, perhaps most notably, walk-in groundwater wells were dug to provide a source of water when surface waters were not available. The ancestral Cahuilla people were aware of natural indicators of the presence of groundwater near to the surface and used those indicators in developing groundwater wells. The hot spring for which the city of Palm Springs is named, called Sec-he by the Cahuilla, was and remains a spiritually significant site and is believed to have healing power. Sec-he has been renowned as a valuable water resource from pre-contact times to the present day. In the early days of the reservation, non-Indians repeatedly attempted to usurp the spring from Agua Caliente ownership and control. Due to its persistence, the Tribe retained Sec-he as part of the Agua Caliente Reservation, and has been in control of how and by whom it is used for many years now.

When California became a state in 1850, the non-Indian population was growing rapidly. The

demand for land near dependable water sources underscored the need to set aside and protect arable lands for the use of the Agua Caliente and other California Indians. Treaties with the California Indians setting aside large reservations, including the majority of the land encompassed by the Agua Caliente Reservation today, were negotiated in 1851 but were never ratified by the United States Congress. The Indians were not made aware of that fact until decades later. On May 15, 1876, President U.S. Grant issued an executive order identifying lands to be "set apart as reservations for the permanent use and occupancy" of the Agua Caliente. On September 29, 1877, President Rutherford B. Hayes issued a second executive order that set aside additional sections of land adjacent to the 1876 withdrawal to be "set apart as a reservation for Indian purposes" as reservation lands for the Agua Caliente. Additional executive orders and actions followed over the next several decades, setting aside additional lands.

Water Agencies' History of Disrespect for and Abuse of the Groundwater Resource

The Reservation overlies the Coachella Valley groundwater basin. This water source that has sustained the Tribe since time immemorial is in overdraft and has been for some time. In other words, more groundwater is used each year than is replaced, either through natural or artificial means. In 2010, for example, the Coachella Valley Water District ("CVWD"), one of the two water agencies serving the Palm Springs area and the Reservation (the other is the Desert Water Agency, or "DWA"), and one of the largest pumpers of groundwater in the Coachella Valley, estimated the cumulative overdraft of the aquifer over the years at over 5.5 million acre-feet and an average continuing annual overdraft of approximately 239,000 acre-feet per year. These are alarming numbers and demonstrate that the current pattern of use by the water agencies is not sustainable. Overdraft also causes subsidence in the lands overlying the groundwater aquifer as water levels drop, often causing property damage on the lands' surface. Subsidence has occurred on lands immediately to the South of the Reservation and the Tribe is concerned that subsidence will soon impact its lands.

In addition to the unsustainable overuse of the aquifer, CVWD began artificially recharging the aquifer with imported Colorado River water in the 1970s in an attempt to offset the overdraft. The imported water is not treated before it is used for recharge, further compromising the aquifer. The Colorado River water has high levels of total dissolved solids and other nutrients from upriver agricultural runoff. From the recharge site, the lower quality water moves down-gradient directly toward the Reservation, impacting the quality of water underlying the Tribe's lands.

The Litigation

On May 14, 2013, the Agua Caliente Band of Cahuilla Indians filed suit against CVWD and DWA and their respective individual board members, in the federal district court for the Central District of California in Riverside, California. The relief requested by the Tribe in its complaint is a declaration of the Tribe's reserved and aboriginal water rights to groundwater to satisfy the present and future needs of the Tribe and its members, as well as to protect the Tribe's water rights from further damage by the water agencies' overdraft and artificial recharge of the Coachella Valley groundwater aquifer with untreated, lower-quality imported Colorado River water. The defendant water agencies answered the complaint, denying that the Tribe has reserved or aboriginal rights to water, as well as asserting other defenses. The case was assigned to Judge Jesus Bernal, a federal judge in the Eastern Division of the Central District.

Early in the case, the Tribe and the water agencies agreed to divide the litigation into three phases – the first phase would address whether the Tribe has a reserved right to groundwater and whether the Tribe has an aboriginal right to groundwater. The second phase encompasses whether the Tribe owns the pore space below its reservation, which is impacted by the artificial recharge of imported groundwater, whether the Tribe is entitled to fulfillment of its groundwater rights with water of a certain quality, what standard will be used to quantify the Tribe's rights, and whether several of the equitable defenses

asserted by the water agencies apply to this type of claim. The third phase encompasses the actual quantification of the Tribe's groundwater rights and pore space, and possibly determine the standard for the quality of water required to fulfill the Tribe's water right.

In May 2014, the United States intervened on behalf of the Tribe, supporting the Tribe's claim for a reserved right to groundwater. Motions for summary judgment were filed by all parties on October 21, 2014, with respect to the phase one issues. The Tribe and the United States both argued that federal law controls the issues of the case and that federal law provides that the Tribe has a reserved right to enough water from any available source to fulfill its present and future needs. The water agencies argued that California state law should apply and that the Tribe and the United States should be limited to the same water rights as other landowners in the Coachella Valley, contrary to a line of cases recognizing that federally reserved water rights of Indian tribes are prior and paramount to state law based rights and apply to groundwater resources underlying reservation lands.

Oral argument was held on March 16, 2015, and Judge Bernal issued his order on March 20, 2015. In this ruling, the Tribe's reserved right to water was recognized and the court ruled in the Tribe's favor that a tribal reserved right can be fulfilled by groundwater. Although many courts, both federal and state, have recognized that federally reserved water rights apply to groundwater as well as to surface water, this was a significant opinion as it clearly and decisively applied the doctrine of *U.S. v. Winters*, an early case establishing the reserved water rights of Indian tribes, to groundwater. The court declined to find that the Tribe retained an aboriginal right to groundwater, ruling that previous case law limiting the rights of all California tribes applied to this case as well, and that the Tribe's aboriginal rights were extinguished by various federal acts, including the establishment of the Reservation. However, the more significant ruling that the Tribe's reserved water rights apply to groundwater was a victory for Agua Caliente.





Andreas Canyon in the Indian Canyons.

Looking Forward

Following the District Court's ruling in favor of the Tribe's reserved right to groundwater, the water agencies petitioned for interlocutory review on that sole issue by the federal Ninth Circuit Court of Appeals. The Ninth Circuit agreed to hear the appeal in an order issued on June 10, 2015. Belying the grant of interlocutory review, there are strong arguments and precedent consistent with Judge Bernal's March 20th Order, which will inform the appeals court's analysis. Briefing on this part of the case is currently scheduled to be completed in November 2016, and oral argument will likely take place in early 2016.

Water will continue to be an increasingly important resource for Indian tribes, especially in the arid western states. The combination of growing populations in the West coupled with

the effects of climate change producing shrinking water supplies mean an even more uncertain water supply picture for tribes. Tribes' ability to ensure the availability of enough clean water to plan a responsible water future for themselves and future generations will continue to be a fundamental challenge to many tribes for decades to come. The ability of tribal governments to work collaboratively as partners with decision makers in neighboring communities will be vital to effective planning and the efficient use of everyone's resources. This will only be possible when the existence of tribal rights are recognized and respected by surrounding communities. 🌵

CASE UPDATES

NARF files suit on behalf of Intertribal Council of Arizona

In December 2014 NARF prepared a legal opinion for the Intertribal Council of Arizona (ITCA) on its rights and possible claims under a 1988 statute establishing education trust funds. In January and February 2015 NARF met with ITCA to discuss NARF's conclusions and recommendations. On April 2, 2015, NARF filed on ITCA's behalf 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.

NARF represents Native American student in challenge to ban on ceremonial eagle feathers during graduation

A Native American student in California will be allowed to wear an eagle feather on his cap during his high school graduation ceremony after reaching a settlement agreement with the Clovis Unified School District on June 2. Christian Titman, a member of the Pit River Tribe, filed a lawsuit and sought an injunction in state court after repeated requests to wear the eagle feather on his cap at graduation were denied by the school district.

Eagle feathers are considered sacred objects in many Native American religious traditions. They represent honesty, truth, majesty, strength, courage, wisdom, power, and freedom. Many Native Americans believe that as eagles roam the sky, they have a special connection with God. Often, Native American graduates receive an eagle feather from an elder or their community in recognition of educational achievements and wish to wear it during their graduation ceremony in order to honor their tribal religion, community, achievement and traditions.



In an affidavit submitted to the court, Isidro Gali, Vice Chairperson of the Pit River Tribes said, “[t]he gift of an eagle feather to wear at a ceremony is a great honor given in recognition of an important transition and has great spiritual meaning. When given in honor of a graduation ceremony, the eagle feather is also recognition of academic achievement and school-related success. Eagle feathers are worn with pride and respect.”

“Although school districts across the country recognize the importance of wearing eagle feathers to Native graduates, there remains a minority that persists in erecting undue barriers. However, once the religious and cultural significance of wearing eagle feathers is understood by school districts, it is easy for schools to accommodate the practice at graduation ceremonies,” said Joel West Williams, a Staff Attorney with the Native American Rights Fund, who represented

Titman along with the American Civil Liberties Union of Northern California and California Indian Legal Services.

Matthew Campbell, also a Native American Rights Fund Staff Attorney representing Mr. Titman said, “Importantly, this settlement requires the school district to remain engaged after graduation and discuss with Christian ways that it can improve communications regarding religious accommodations for future graduates. We are hopeful that future Native American graduates will not face the same obstacles.”

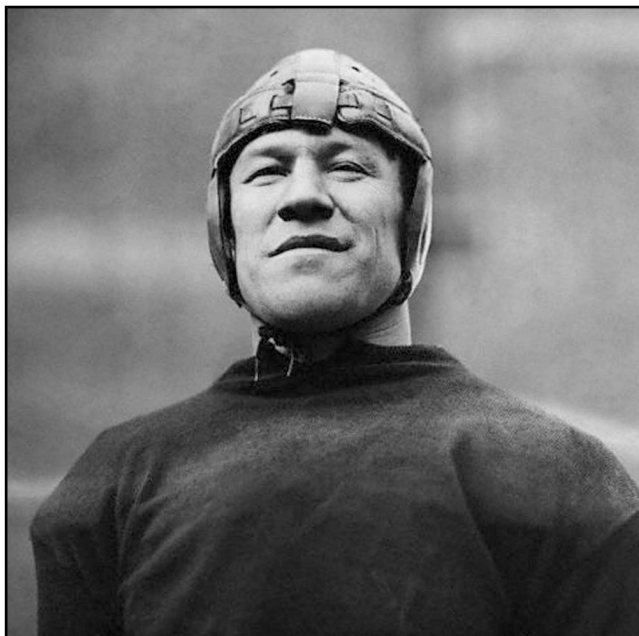
NARF has a long history of assisting students who are prohibited from wearing eagle feathers at graduation ceremonies due to narrow graduation dress codes.

Tribal Supreme Court Project update

The October Term 2014 has been and continues to be relatively quiet in relation to cert petitions and cases involving questions of federal Indian law. Oral arguments have concluded without a single Indian law case argued on the merits this Term. As expected, the U.S. Solicitor General filed his brief in *Dollar General Corporation v. Mississippi Band of Choctaw Indians* on May 12, 2015, and the Court has scheduled the petition for conference on June 04, 2015. Although the United States recommended that the Court deny cert in the Dollar General case, since the question involves a challenge to tribal court jurisdiction—specifically, jurisdiction over a tort committed by a non-Indian corporation—there is a high probability that four Justices may vote to grant review.

The Project continues to working closely with the attorneys for the Sac and Fox Nation and the sons of Jim Thorpe to prepare a cert-worthy petition and to develop an effective amicus brief strategy in support of the petition to be filed in *Thorpe v. Borough of Jim Thorpe*. The Project was successful in lining up Jeffrey Fisher, Brian

Wolfman and the Stanford Supreme Court Clinic to work as *pro bono* Supreme Court counsel for the Tribe and the Thorpe sons on all facets of the cert-stage process, and is in the process of lining up *pro bono* Supreme Court counsel to assist on





a number of the amicus briefs in support. At its core, the Jim Thorpe case is a civil rights struggle, and one that is fully representative of the disregard American culture has often showed toward Native American customs. The facts of this story are compelling and play into a broader narrative already existing in the mainstream media that Native Americans have been systematically discriminated against throughout history of this country – be it through derogative sports team names or disregard of tribal issues by state and federal governments.

NARF, on behalf of the Project and the Sac and Fox Nation, secured the services a professional media firm to work with the Tribe and the Thorpe sons to conduct a successful media campaign aimed at expanding public support to bring pressure on decision makers at the local, state and national levels. On June 3, 2015, the cert petition will be filed, and we are in the process of scheduling national and regional press events with the mainstream, legal and sports media. The Supreme Court petition will be used as a “news hook” to re-introduce to the public the Tribe’s struggle to bring one of their own home. A narrative will be created, one that emphasizes that, at its core, the Jim Thorpe case is a civil rights struggle, and one that is fully representative of the disregard American culture has often showed toward Native American customs. The facts of this story are compelling and play into a broader narrative already existing in the mainstream



media that Native Americans have been systematically discriminated against throughout history of this country – be it through derogative sports team names or disregard of tribal issues by state and federal governments.

On January 26, 2015 in *Knight v. Thompson*, the Court issued a “GVR” (petition granted, judgment vacated and case remanded) for further consideration in light of its unanimous decision in *Holt v. Hobbs*. In *Holt*, the Court held that Arkansas violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) where its grooming policy did not allow beards and it refused to grant a religious exemption to an inmate whose Muslim religion required him to wear a beard. Shortly before the Court granted review in *Holt*, a group of Native American inmates filed a petition in *Knight v. Thompson*, asking the Court to review a decision of the U.S. Court of Appeals for the Eleventh Circuit which held in favor of prison officials in Alabama who refused to grant a religious exemption from their restrictive grooming policy to allow Native Americans to wear long hair consistent with their Native religious beliefs. The Native American Rights Fund, representing the National Congress of American Indians and Huy filed “friend of the Court” briefs supporting the prisoners in both *Holt* and *Knight*.

Like Mr. Holt, the Native American prisoners in *Knight* are seeking relief under RLUIPA, which

requires that a substantial burden on an inmate's religious exercise be the least restrictive means of furthering a compelling government interest. This standard, referred to as "strict scrutiny," is the most stringent legal standard applied to laws and government rules. A lack of consistent application of this rigorous standard by the lower federal courts has allowed some state prison systems to unduly restrict religious practices of Native American inmates. Nearly 80% of U.S. prison systems allow Native Americans to wear long hair, either through blanket policies or special religious exemptions. By and large, prison officials have found ways to mitigate the minimal risks associated with these practices and have observed numerous benefits to Native inmate behavior and rehabilitation as a result. However, a handful of state prison systems stubbornly refuse to accommodate certain facets of Native religion, such as long hair at issue in *Knight*. Those prison officials have hidden behind safety, security and hygiene concerns to frustrate sincere religious beliefs and practices. Yet, these same prison officials openly admit that they did

not investigate, or even consider, the successful accommodation measures taken by the 80% of prison systems allowing long hair, or exemptions for Native American inmates. Rather than apply RLUIPA's strict scrutiny to the state's arguments and ask, "Why not Alabama?" the lower courts in *Knight* deemed the policies of other jurisdictions simply irrelevant to the operation of Alabama prisons and accorded "due deference" to the uninformed opinions and unsubstantiated claims of prison officials.

The *Holt* opinion, and the *Knight* case on remand, should change a fundamental aspect of how certain prison systems deal with Native Americans and their religious practices. For those Natives who reside in the darkest corners of U.S. penal systems, it is no longer the rule that they cannot engage in their traditional religious practices merely because their jailors say so. Courts will demand more, just as Congress intended when it enacted RLUIPA.

International Efforts on Climate Change

After several years of fruitful partnership, NARF now represents NCAI on 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. NARF, in addition to working with some of its present clients on this issue, previously worked with National Tribal Environmental Council (NTEC) on comprehensive federal climate change legislation. NTEC, NARF, NCAI and the National Wildlife Federation worked together and created a set of Tribal Principles and detailed legislative proposals. Unfortunately, these efforts stalled in the Senate.

NARF and NTEC attended the United Nations Framework Convention on Climate Change (UNFCCC) Summit-COP 15- in Copenhagen, Denmark in December 2009. The purpose of the

UNFCCC process is to come up with an international treaty governing emissions of greenhouse gases. NARF and NTEC also attended COP 16 in Cancun in December 2010. A Cancun Agreement was reached, likely saving the UNFCCC process. The agreement contains increased, though inadequate, mentions of indigenous peoples and of the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP). There are safeguards calling for "The full and effective participation" of indigenous peoples in Reduction of Emissions from Deforestation and Forest Degradation (REDD+) activities and there are also some references to taking into account traditional indigenous knowledge.

At COP 17 in Durban, South Africa, November – December 2011, the countries established a new Ad Hoc Working Group for Enhanced Action (ADP). The countries committed to adopt a universal legal agreement on climate change as soon as possible, but not later than 2015, to go into



effect by 2020. Based on this commitment, a core of countries, led by the European Union agreed to a second commitment period to the Kyoto Protocol (KP) (to which the U.S. is not a party). In addition, the Green Climate Fund, which is to be the major source of funding for international mitigation and adaptation activities was agreed to and can start receiving funding. But no progress was made regarding an assessment of whether safeguards for indigenous rights are being implemented.

At a two week session in Bonn in May 2012, the new ADP could not even agree on the agenda until the last day. Informal sessions were held in Bangkok, Thailand in August and September, 2012 to prepare for COP 18 which was held in Doha, Qatar in November and December, 2012. The outcome at Doha was generally anemic. A second period for the KP was approved with weak emissions reduction commitments by countries accounting for a modest percentage of 31 worldwide emissions. COP 18 resulted in nothing solid in the way of commitments from non-KP countries, and nothing as to financial commitments to developing countries. These are matters for the ADP in upcoming meetings. The can was kicked down the road once again. Further, Indigenous Peoples, along with other constituencies found their already limited rights to make interventions

curtailed even more, as usually only 2-3 entities were allowed to speak. On a brighter note, the head of COP 18 attended an indigenous caucus meeting and expressed support. The caucus asked in a letter that Qatar support a meeting between indigenous peoples and friendly states before COP 19 was to be held in Warsaw, Poland in November 2013. However, no reply was ever received.

The first meetings on the specifics of the new “protocol to be adopted by December 2015 were held in Bonn in April/May and June, 2013. NARF attended all of the April /May meeting and part of the June meeting on behalf of NCAI. NARF was the only one to make a brief statement on behalf of the indigenous viewpoint at the April/May meeting. So far, the process is very slow and developed countries are spending a lot of time on general concepts, but no specific language has been proposed yet. In November 2013, NARF attended COP 19 in Warsaw, Poland and the results were disappointing. Disturbingly, Poland only authorized a small percent of NGOs to attend. One indigenous organization requested 30 slots and only seven were approved. The main accomplishment of COP 19 was the approval of a loss and damage mechanism (though with no finding) which would address loss due to climate change.





On a more positive note, the Indigenous Caucus met with the organizers of COP 20 which was held in Lima, Peru in December 2014 and were assured that ample attendance by Indigenous participants would be approved and that a pre-meeting would be held between Indigenous representatives and friendly states just as had been done before COP 16 in Mexico and COP 17 in Durban, South Africa. Finally, the caucus also met with organizers for COP 21 which is to be held in France in 2015 who gave assurance of ample participation as well, though they did not commit to a pre-meeting.

At the March 2014 meeting of the UNFCCC 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

meeting in Lima, Peru. The Peruvian government hosted a meeting in Lima between friendly states and indigenous peoples just prior to COP 20. We arranged for indigenous representatives to meet among ourselves to formulate the indigenous positions and then with “friendly” countries to explore the possibility of support from them. Among the “friendly” countries who attended were the United States, Canada, Bolivia, Norway, Mexico, Singapore, Tuvalu, Panama, Brasil, Peru, Costa Rica and France. These countries were given the indigenous position papers, and the papers were sent to other state parties as well. In addition, during the negotiations we made statements orally and in writing, and written proposals for text in the draft decisions.

There were three main tasks facing the parties going into COP 20 in Lima, encompassed in two workstreams. Workstream one deals with the 2015 Agreement itself, and the task was to agree on the elements to be contained in the Agreement, with the specific language of the Agreement to be negotiated next year leading up to COP 21 which is to be held in Paris, France in December 2015. A subsidiary task under this workstream was the development of guidelines for the submission of



Intended Nationally Determined Contributions (“INDCs”), countries are to submit their INDCs to the UNFCCC Secretariat.

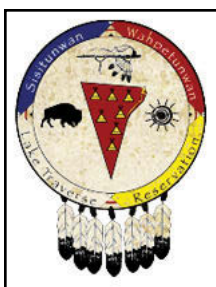
Workstream 2 deals with enhancing pre 2020 ambition. The 2015 Agreement is to go into effect in 2020. It is felt that action must be taken between now and when the Agreement goes into effect. Workstream 2 became associated with that part of workstream 1 dealing with INDCs at COP 20 in Lima in December 2014.

Work on Workstream 1 proved extremely problematic. After a few sessions, the work on the elements of the 2015 Agreement was halted to be taken up in 2015. No real progress toward reaching agreement on the elements rather than the documents was made. The one piece of work that had to be completed was the draft decision on the INDCs and this work was completed only after extending the Conference past its scheduled closing and in quite a weak document, giving states leeway to decide what commitments they will make in what areas e.g., emissions, reductions, adaptation, finance, etc.; when they will submit their INDCs; and what information they will provide to allow assessment of the commitments made.

As to Workstream 2, the main decision was to continue technical expert meetings in the period 2015-2020 to identify “opportunities with high mitigation potential, including those with adaptation, health and sustainable development benefits[.]” It is in this area that indigenous peoples received their only mention in the draft decision, which requests the Secretariat to “Provide meaningful and regular opportunities for the effective engagement of experts from Parties, relevant international organizations, civil society, indigenous peoples, women, youth, academic institutions, the private sector, and subnational authorities . . .” The reference to indigenous people are something other than civil society.

The most recent session of the ADP was held in Geneva February 8-13, 2015 during which time the countries finished compiling a 90 page draft document from which they hope to distill a final agreement at COP 21 in Paris in December 2015. The next session which is to be conducted during the last two weeks of June 2015 will commence the process of whittling the draft down to a workable size. 🌀

NEW NARF BOARD MEMBERS



Kurt BlueDog has been in the active practice of federal Indian law for nearly 40 years almost exclusively on behalf of Indian Tribal governments. Kurt was born and raised on the Sisseton-Wahpeton Sioux Indian Reservation in South Dakota. After he graduated from the University of South Dakota in 1972, he served as a Commissioned Officer in the Army paratroopers. He graduated from the University of Minnesota School of Law in 1977 and is a member of the State Bars of Minnesota and Wisconsin, several Tribal Courts, the United States Supreme Court and numerous Federal District and Appellate Courts.

Early on in his legal career, Kurt worked for the Native American Rights Fund (NARF) in Boulder, Colorado as a Staff Attorney for approximately seven years. His experience at NARF involved extensive litigation experience in the areas of Indian education, economic development, tribal sovereignty, American Indian religious freedom, land rights, tribal recognition, corrections and housing. Currently in his private practice, he is involved in litigation, administrative and legislative activity representing tribal concerns. The emphasis of his practice has been in the area of tribal commercial law, corporate law, gaming, and economic development. He has represented many

tribes over the years, to include service as General Counsel to the Shakopee Mdewakanton Sioux Community and the Sisseton-Wahpeton Sioux Tribe (his Tribe) for over twenty years.

Kurt has served as an adjunct professor teaching federal Indian law at William Mitchell College of Law and the Hamline University School of Law in St. Paul, Minnesota. Additionally, he has served as the Chief Judge for the Fond du Lac Chippewa Tribal Court for 10 years and the Prairie Island Sioux Tribal Court for 11 years. For the past 15 years he has served part-time as the Chief Judge for the Lower Sioux Indian Community.

In addition to his legal work, Kurt has served on numerous Boards and is currently serving on the Minnesota Historical Society Executive Board. He has served on the Executive Committee at the National Indian Gaming Association (NIGA) for over twenty years. He was recently named the Best Lawyer in the field of Native American law for the Minneapolis area. For the past fifteen years Kurt has been rated "AV Preeminent," the highest possible peer review rating in legal ability and ethical standards by the Martindale-Hubbell Law Directory.

The NARF Board of Directors and staff welcome Kurt to the Native American Rights Fund and look forward to serving with him.



Ch'aa Yaa Eesh (Richard Peterson) is Tlingit from the Kaagwaantaan Clan. Richard grew up in Kasaan, Alaska and is a life-long Alaska Native resident of Southeast Alaska. Prior to being elected as President of the Central Council of the Tlingit and Haida

Indian Tribes of Alaska (Central Council), Richard served as CEO of Prince of Wales Tribal Enterprise Consortium, LLC (POWTEC), President of the Organized Village of Kasaan (OVK), Mayor/City Council member for the City of Kasaan, and member of the Southeast Island School District Board of Education. He has been a delegate to the Central Council of Tlingit and Haida since 2000.

During his tenure with OVK, Richard fostered growth through innovative program and economic development, developing competent and reputable grant and fiscal management procedures. OVK's annual budget increased from \$13,000 to over \$4 million dollars through widespread program development and a strategic pursuit of grant funding.

Richard has developed the skills necessary to effectively represent and communicate the needs of his Native people of Southeast Alaska. He is adept at negotiating and team building and has worked to continually build lasting relationships that prove to be mutually beneficial to all stakeholders. Richard believes in a proactive approach to achieve win-win scenarios and continues to shape the future of the economic and social well-being of tribal citizens through collaborative efforts and local economic development initiatives.

Richard has also served as 4th Vice President, Central Council Tlingit & Haida; 1st Vice President, Central Council Tlingit & Haida; Board Member of RuralCAP; 3rd Vice President, Central Council Tlingit & Haida; and, Board Member, Gulf of Alaska Coastal Communities Coalition. He also served as Director of Economic Development, Organized Village of Kasaan, and Tribal Administrator, Organized Village of Kasaan.

The NARF Board of Directors and staff welcome Richard to the Native American Rights Fund and look forward to serving with him.

National Indian Law Library

Research Support for the Public!

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

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?

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 2,000 individual research requests and receives several hundred thousand visits to its online resources. Whether it's through updates to the *ICWA Info Blog* 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, in the coming year, we plan to publish more tribal law and an innovative and a valuable audio directory providing the correct pronunciation for all 566 federally recognized tribal nations.

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 \$240,000—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 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 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 2015 fiscal year – October 1, 2014 to September 30, 2015:

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- | | | |
|--|---|---|
| • Agua Caliente Band of Cahuilla Indians | • National Indian Gaming Association | • Tanana Chiefs Conference |
| • Alatna Village Council | • Sac & Fox Nation | • Twenty-Nine Palms Band of Mission Indians |
| • Chickasaw Nation | • San Manuel Band of Mission Indians | • Wildhorse Foundation/Umatilla |
| • Comanche Nation of Oklahoma | • San Pasqual Band of Mission Indians | • Yavapai-Prescott Indian Tribe |
| • Nome Eskimo Community | • Seminole Tribe of Florida | • Yoche Dehe Wintun Nation |
| • Lac Du Flambeau Band of Lake Superior Chippewa Indians | • Seven Cedars Casino/Jamestown S'Klallam | |
| • Mohegan Sun | | |



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.

Since its inception in 1970, 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.

The NARF Legal Review is published biannually by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Ray Ramirez, Editor, ramirez@narf.org. There is no charge for subscriptions, however, contributions are appreciated.

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.

Main Office: Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302 (303-447-8760) (FAX 303-443-7776). <http://www.narf.org>

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.

Native American Rights Fund
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