



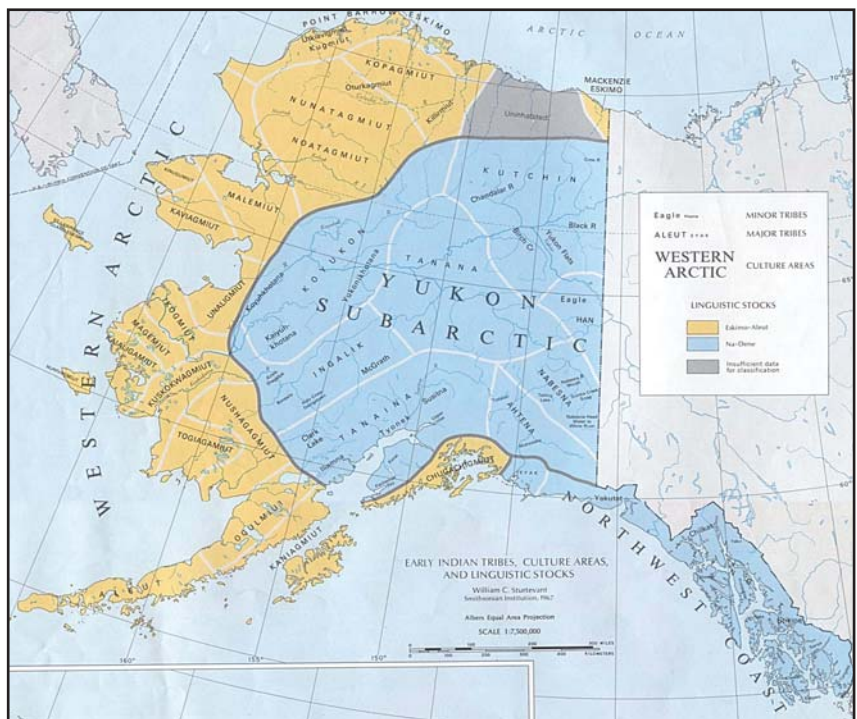
# Legal Review

NATIVE AMERICAN RIGHTS FUND

## Land into Trust Litigation Ends Historic Victory for Alaska Tribes

On August 15, 2016, Alaska Attorney General Jahna Lindemuth announced that the State of Alaska will not pursue further litigation in *Alaska Native Community v. U.S. Secretary of the Interior*. That case affirmed the ability of the Secretary of Interior to take land into trust on behalf of Alaska tribes and Alaska Natives, and also acknowledged the rights of Alaska tribes to be treated the same as all other federally recognized Tribes. The State's decision to not seek Supreme Court review ends years of protracted litigation and ushers in a new era for Alaska tribes.

"Trust land" refers to land held by the United States in trust for the benefit and use of an Indian tribe or individual. It contrasts with "fee land" or land held in "fee simple" which is the most common type of land ownership. Fee land is property in which owners have complete ownership of the land and the home. Owners of "fee land" can sell or mortgage their land but remain subject to state taxation and debt obligations on their mortgage. Unlike fee land, trust land is not subject to state taxation or debt foreclosure, and is considered "Indian Country" for jurisdictional purposes. Indian Country includes all land within the limits of any Indian reservation under the jurisdiction of the United States government; all lands belonging to or falling within the jurisdiction of an Indian tribe; and all Indian allotments, the Indian titles to which have not



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been extinguished. Moving land from fee into trust status occurs when a Tribe or individual successfully petitions the Secretary of the Interior (Secretary) to accept legal title of tribally-or-Indian-owned fee land pursuant to the Department of Interior's (DOI) fee to trust regulations at 25 C.F.R. part 151. Land formally becomes trust land when a deed or federal patent is issued reflecting the United States as the legal title holder of property for the benefit of an individual Indian or an Indian tribe.

The Secretary's statutory authority to take land into trust arises from Section 5 of the 1934 Indian Reorganization Act (IRA), which was made applicable to Alaska in 1936. Congress adopted the IRA to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." The IRA was intended to roll back the devastating effects of the General Allotment Act of 1887, also known as the Dawes Act. Under the Dawes Act, millions of acres of tribal reservation lands were

broken up and allotted to individual Indians in fee with excess lands opened up to non-Native settlement. The total amount of Indian-held land declined from 138 million acres in 1887 to 48 million in 1934.

Congress commissioned the Meriam Report in 1928, which documented the failure of federal Indian policy during the Allotment period. The Report provided the impetus for a major change in federal Indian policy marked by passage of the IRA, also known as the Wheeler-Howard Act. Section 5, which has been described as the "capstone" of the land related provisions of the IRA, authorizes the Secretary, in her discretion, to acquire land in trust for Indian tribes and individuals.

In 1978, the Secretary proposed a regulation to establish a formal process for DOI's acquisition of fee land into trust; the proposed rule made no special mention of Alaska. Several months after that proposed rule was published, the Associate

Solicitor for Indian Affairs signed an opinion letter addressing the question of whether the Secretary could take former reservation land into trust. The Associate Solicitor concluded that, in light of the Alaska Native Claims Settlement Act (ANCSA), “it would . . . be an abuse of the Secretary’s discretion to attempt to use Section 5 of the IRA to restore the former Venetie Reserve to trust status.” The ANCSA had extinguished aboriginal claims and set forth a broad declaration of policy to settle land claims. However, the statutory text of ANCSA did not expressly revoke the Secretary’s authority, under Section 5 of the IRA as extended by the 1936 amendment, to take land into trust in Alaska. Nonetheless, the final regulations included an “Alaska exception” that barred federally recognized tribes in Alaska (except Metlakatla Indian Community that already had trust status of their lands) from taking advantage of the regulatory process.

In 1994, NARF represented three Alaska Native Tribes in filing a petition with the Secretary to revise the land-into-trust regulations to “include within [their] scope all federally recognized Alaska Native tribes.” The Secretary put that petition out for notice and comment, describing it as a request that the Secretary “remove the portion of the existing regulation that prohibits the acquisition of land in trust status in the State of Alaska for Alaska Native Villages other than Metlakatla.” Although the Secretary proposed a revision to the land-into-trust regulation in 1999, he noted that “[t]he proposed regulations would . . . continue the bar against taking Native land in Alaska in trust.” The Secretary referenced the Associate Solicitor Opinion and stated that while “that opinion has not been withdrawn or overruled, we recognize that there is a credible legal argument that ANCSA did not supersede the Secretary’s authority to take land into trust in Alaska under the IRA.” *Id.* (citations omitted). The Secretary then invited comment on the continued validity of the Associate Solicitor’s opinion and issues raised by NARF’s petition. In 2001, the Secretary published a final rule rescinding the Associate Solicitor Opinion, concluding that “there is substantial doubt about the validity of the conclusion reached in the 1978 Opinion.” Although the opinion was withdrawn, “the Department . . . determined that

the prohibition in the existing 151 regulations on taking Alaska lands into trust (other than Metlakatla) ought to remain in place.”

In 2006, NARF represented four Alaska Tribes and sued the United States, arguing that the “Alaska exception” violated 25 U.S.C. § 476(g) of the IRA. That statute nullifies regulations that discriminate among Indian tribes. The State of Alaska was granted intervenor status and argued that differential treatment of Alaska tribes was required by the ANCSA. On March 31, 2013, the district court granted summary judgment in favor of plaintiff tribes. The court held that “ANCSA left intact the Secretary’s authority to take land into trust throughout Alaska,” *Akiachak Native Community v. Salazar*; and that “Congress did not explicitly eliminate the grant of authority” with the passage of ANCSA. The DOI agreed that the prohibition was unlawful and initiated a rule-making to revise the existing regulation. The DOI then proceeded to have three tribal consultations sessions in Anchorage, Alaska, Washington, D.C., and by teleconference. On December 23, 2014, DOI published a final rule deleting the “Alaska exception.” The Final Rule’s Preamble noted that two recent federal commissions recommend the enhancement of tribal powers and the restoration of Native rights in Alaska—including renewal of the option to create trust lands.

The publication of the final rule mooted the challenge as the removal of the “Alaska exception” was the relief that Plaintiff Tribes had sought through litigation. The State of Alaska nonetheless elected to carry forward its appeal, but the court of appeals found the controversy to be moot and dismissed the appeal.

The State of Alaska’s announcement that it will forego further litigation ends a long history of state/tribal animosity and represents a significant policy shift from prior administrations that chose to vigorously litigate any assertion of tribal sovereignty. The decision to work with Tribes rather than against them ushers in a new era where tribal and state officials can cooperatively work together to protect the health, safety, and welfare of Alaska’s tribal member citizens. 🌸



# NARF Stands With Standing Rock Sioux Tribe



The Native American Rights Fund (NARF) stands with the people of the Standing Rock Sioux Tribe in their fight to protect sacred and irreplaceable resources, including the waters of the Missouri River, against the Dakota Access Pipeline.

NARF is working with the Standing Rock Sioux Tribe's attorneys, EARTHJUSTICE, and will be taking the lead to develop and coordinate an effective amicus brief strategy in support of the Standing Rock Sioux Tribe in their lawsuit against the U.S. Army Corps of Engineers in relation to the Dakota Access Pipeline (DAPL). The litigation involves two broad issues surrounding the proposed construction of a major crude-oil pipeline that passes through the Tribe's ancestral lands. First, the pipeline would pass under the Missouri River (at Lake Oahe) just a half a mile upstream of the tribe's reservation boundary, where a spill would be culturally and economically catastrophic. Second, the pipeline would pass through areas of great cultural significance, such as sacred sites and burial grounds that federal law seeks to protect.

*All photos courtesy of Rob Wilson Photography - @RobWilsonFoto, rawpolitics@gmail.com*

Also see <http://earthjustice.org/features/faq-standing-rock-litigation>.

Based on their years of experience with the work of the Tribal Supreme Court Project, NARF has agreed to provide direct assistance in channeling the overwhelming support received by the Standing Rock Sioux Tribe from all across Indian country in order to provide a strong, unified voice in the federal courts. On September 9, 2016, District Court Judge Boasberg denied the Tribe's motion for a preliminary injunction. After the court's ruling against the Standing Rock Sioux Tribe, the Department of Justice, the Department of the Army and the Department of the Interior issued a joint statement stating that the Army will not authorize constructing the Dakota Access pipeline on Corps land bordering or under Lake Oahe until it can determine whether it will need to reconsider any of its previous decisions.



regarding the Lake Oahe site under the National Environmental Policy Act and will invite formal government-to-government consultations with the Tribe. The Department of the Army urges the pipeline company to stand down on any construction within 20 miles of the Missouri River. In addition, the Tribe filed its notice of appeal and an emergency motion for a stay pending appeal in the U.S. Court of Appeals for the DC Circuit, which had issued a temporary stay of the pipeline construction until oral arguments on the emergency stay were heard on October 5, 2016, in Washington, DC. On October 9, 2016, the Court ordered that the administrative injunction be dissolved.

On October 10, 2016, the Department of Justice, Department of the Army and Department of the Interior regarding the D.C. Circuit Court of Appeals October 9 decision issued a joint statement – “The Army continues to review issues raised by the Standing Rock Sioux Tribe and other Tribal nations and their members and hopes to conclude its ongoing review soon. In the interim,

the Army will not authorize constructing the Dakota Access Pipeline on Corps land bordering or under Lake Oahe. We repeat our request that the pipeline company voluntarily pause all construction activity within 20 miles east or west of Lake Oahe.” They also stated that they will conduct listening sessions on whether there should be nationwide reform on the Tribal consultation process for these types of infrastructure projects.

NARF, along with NCAI, other tribal organizations, and Indian tribes from across the country, are prepared to move quickly, in coordination with EARTHJUSTICE, to develop litigation and amicus strategy in response to the outcome.

Water is life, and this critical resource to Indian tribes has historically been threatened by outside interests. Indeed, the right to clean water is an internationally recognized human right. Historically, communities of color, including indigenous peoples, have been those most at risk of having this basic and necessary right denied or violated. Federal laws such as the National







Historic Preservation Act, requiring government-to-government consultation with Indian tribes, are vital to Tribes' abilities to protect their resources. When those laws are disregarded, we must call the offending parties to task.

There is no doubt that the Dakota Access Pipeline presents grave threats to the Standing Rock Sioux Tribe, and others, and that the lapses in the federal regulatory process failed to protect the tribes' right to be consulted on a government-to-government basis, on an issue that directly threatens the values of these Tribes.

The Dakota Access Pipeline threatens the Tribe's water resources. The pipeline route includes a river crossing upstream from the main diversion point for the Standing Rock Sioux Tribe's water supply. Access to clean and safe water is a necessity for any community and is a human right. If and when the pipeline breaks, the Tribe's water supply would be directly impacted, and most likely rendered unusable. The people of the Standing Rock Sioux Tribe must be able to depend on the availability of a reliable source of clean and safe water to serve the many needs of their people and

their homeland. The risks associated with this, and many other pipelines, are unacceptable because of the irreversible harm that results when pipelines rupture.

The Dakota Access Pipeline route also crosses many lands that have traditional cultural significance to the Standing Rock Sioux Tribe, as well as to many other tribal nations. The pipeline presents a threat to the integrity of ancestral burials and other cultural resources, as well as to lands which are and have been integral to traditional religious practices since time immemorial.

Projects like the Dakota Access Pipeline, with its very real risks of permanent harm to water resources, cultural resources, tribal lands and other natural resources, must be developed in full consultation with the tribes whose lands, resources, and futures are impacted. Tribes must be fully and meaningfully included in the decision-making process, as required by federal law.

The Native American Rights Fund stands with the Standing Rock Sioux Tribe in the effort to protect their land, water, culture, and their future. 🌸







## CASE UPDATES

### Federal Court Enjoins Restrictive North Dakota Voter ID Law



On August 1, 2016, a federal district court enjoined North Dakota's strict voter ID law and ruled that voters unable to obtain the necessary identification may vote in the upcoming election by completing a declaration or affidavit. The court agreed with the seven Native American voters that the new law disproportionately burdens Native Americans and denies qualified voters the right to vote.

North Dakota House Bills 1332 and 1333 put in place the most restrictive voter ID law in the nation. Before this decision, North Dakota voters were required to present one of only four qualifying IDs with a current residential address printed on it in order to vote. Before enactment of those laws, North Dakota required a poll clerk to request an ID, but a voter without one could still vote if the clerk vouched for their qualifications or the voter signed an affidavit of identity. In a September 20 order, the court required North Dakota to reinstitute the affidavit procedure, which allows qualified voters to cast a ballot even if they do not have an ID.

Federal Judge Daniel Hovland wrote, "[t]he record is replete with concrete evidence of significant burdens imposed on Native American voters

attempting to exercise their right to vote in North Dakota." Although the state argued that the law was necessary to prevent voter fraud, the court found that there "is a total lack of any evidence to show voter fraud has ever been a problem in North Dakota." The court concluded that it "is a minimal burden for the State to conduct this year's election in the same manner it successfully administered elections for decades before the enactment of the new voter ID laws."

"What we asked for is that all qualified voters have the opportunity to cast a ballot – particularly Native Americans. This ruling is an incredible victory for North Dakota voters as it will ensure that fail-safe mechanisms will be in place in November to protect them" said Native American Rights Fund attorney Matthew Campbell.

The plaintiffs are represented by the Native American Rights Fund, Richard de Bodo of Morgan, Lewis & Bockius LLP, and Tom Dickson of the Dickson Law Office. NARF won important Voting Rights cases in Alaska in 2010 and again in 2015, establishing that the State of Alaska should be required to provide greater language assistance to voters who speak Alaska Native languages.



## NARF Helps 10 more Tribes Reach Historic Settlements with the United States

Ten years ago, frustrated with the inability of the Executive Branch and Congress to resolve legitimate claims for historic breaches of trust by the United States regarding millions of dollars of trust funds and trust resources, American Indian and Alaska Native Tribes turned to the third branch of government for help – the federal judiciary. By December 31, 2006, over 100 tribes were suing the government for historical trust accountings and monetary damages for trust mismanagement.

NARF represented over half of these Tribes. “When we filed these cases,” said NARF Staff Attorney Melody McCoy, who serves as the lead attorney in NARF’s tribal breach of trust cases, “we expected to be slogging it out in court for years.” That all changed when Barack Obama was elected President of the United States in November 2008. He quickly made good on his campaign promise to negotiate on a government-to-government basis with each suing tribe out-of-court settlements of their historical breach of trust claims.

By the end of Obama’s First Term, over 70 settlements had been reached between the United States and tribes, and dozens more were reached in the Second Term, such that by September 2016, no tribe was actively litigating its historical breach of trust claims. The settlements ranged in amounts from tens of thousands to over half a billion dollars.

In April 2013, in response to requests for assistance by several tribes who did not have pending cases, NARF filed *Sisseton Wahpeton Oyate v. Jewell*, bringing 10 more tribes into court, and ultimately to the settlement table. “It was a bold move,” says McCoy, “and it really tested the Obama Administration’s commitment to settling these claims.” At the final Obama Administration’s White House Tribal Nations Conference in September 2016, U.S. Department of the Interior Secretary Sally Jewell was among the federal officials to announce the settlements for the



*Official White House Photo by Pete Souza*

**10 Sisseton Tribes:** Sisseton Wahpeton Oyate; Quinault Indian Nation; Kickapoo Tribe of Oklahoma; White Earth Nation; Pueblo of Acoma; Comanche Nation; Penobscot Indian Nation; Seminole Tribe of Florida; Southern Ute Indian Tribe; and the Confederated Tribes of the Umatilla Indian Reservation.

“The Sisseton Tribes are thrilled to join the extraordinary resolution by the Obama Administration of decades of trust mismanagement by the United States of their trust funds, land, and natural resources,” confirmed McCoy. “The United States unilaterally imposed itself as the trustee for tribal trust assets, but it has not been a good trustee,” she continued. “No one would dispute that, but no branch of the federal government has been able or willing to equitably fix this problem until now.”

NARF continues to represent four tribes in North Dakota, Montana, and Minnesota in a long-running complex historical breach of trust case, and a consortium of tribes in Arizona in a more recent case.



## Kickapoo Tribe's water settlement agreement finalized

The Kickapoo Tribe of Kansas held a ceremony to commemorate completion of the Plum Creek Settlement Agreement on September 9, 2016.

In his statement, Tribal Chairman Lester Randall said, "This Agreement secures the Kickapoo Tribe's long-term viability, for without water, we cannot survive as a Tribe or a community." Randall went on to say, "This commemoration ceremony allows the Kickapoo People to formally thank Kansas Attorney General Derek Schmidt and staff as well as the Kansas Department of Agriculture and representatives of other state agencies for working with the Tribe and the Native American Rights Fund to secure the Tribe's right to a permanent supply of water, thus enhancing the quality of life for tribal members and sustaining the Kickapoo Reservation for future success and enhancement."

The Kickapoo Tribe has worked for more than 40 years to secure a safe and reliable source of water for its reservation beginning with the construction of a small dam, water intake and treatment system in the 1970's. Since that time, the Tribe has worked with regional stakeholders on development of a water storage initiative known as the Plum Creek Project.

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

The Plum Creek Project stalled due to the inability of the Tribe to secure adequate property rights after the local watershed district refused to



exercise condemnation authority. Many man-made lakes and watersheds developed in Kansas have required the use of eminent domain and condemnation authority in instances where not all land owners are willing to sell. As a result of these setbacks, the Tribe set out to acquire land in fee simple title through negotiation and purchase with willing landowners. To date the Tribe has acquired a substantial portion of land needed for the Plum Creek Project and continues to solicit the purchase of additional land from area landowners. This effort will continue as the Tribe works with the Congressional delegation and the Natural Resources Conservation Service to take a fresh look at the design of the Plum Creek Project.

The Plum Creek Agreement quantifies the Tribe's senior water rights in the Delaware River Watershed, which is necessary for the Plum Creek Project to proceed. Plum Creek is a tributary to the Upper Delaware River, which flows through the Kickapoo Reservation in Brown County. The Tribe has successfully negotiated its water right with the State of Kansas, the U.S. Department of the Interior and U.S. Department of Justice, with the assistance of technical staff and consultants.

Signatories to the Agreement include the State of Kansas, Office of the Kansas Attorney General and the Kickapoo Tribe in Kansas. Upon execution, the Agreement will be forwarded to the Federal Government for ratification following approval by the U.S. Congress.



## Tribal Supreme Court Project

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

On September 26, 2016, the Court held its long conference during which the Justices considered nearly two-thousand petitions filed during its summer recess, including six petitions in Indian law cases. On September 29, 2016, the Court issued an order granting review in *Lewis v. Clarke*, a case involving an individual-capacity suit against a tribal employee and the doctrine of tribal sovereign immunity. In short, the Connecticut Supreme Court held that a tribal employee who is acting within the scope of his employment falls within the sovereign immunity of the Tribe even though he is sued in his individual, not official, capacity.

On October 3, 2016, the Court issued a second order list from the long conference and denied review in four other Indian law cases. However, the Court has held over the petition in *Tunica-Biloxi Gaming Authority v. Zaunbrecher* in which the Louisiana Court of Appeals, in conflict with the holding by the Connecticut Supreme Court in *Lewis v. Clarke*, found that the doctrine of tribal sovereign immunity does not extend to a suit against individual tribal employees for alleged acts of negligence in the course and scope of their employment.



In *Lewis v. Clarke*, the Court granted review of a petition seeking review of a decision of the Connecticut Supreme Court which held that doctrine of tribal sovereign immunity extends to an employee of the tribe who is acting within the scope of his employment. The petitioners—the Lewises—are a non-Indian couple who were rear-ended by a limousine owned by the Mohegan Tribal Gaming Authority on I-95 (outside the Tribe’s reservation). The petitioners sued the Tribal Gaming Authority and Mr. Clarke (the driver and an employee of the Tribal Gaming Authority) in state court for negligence. However, prior to the filing of the motion to dismiss based on tribal sovereign immunity, the petitioners dropped their suit against the Tribal Gaming Authority, and proceeded against Mr. Clarke in his individual capacity. The trial court, relying on *Maxwell v. San Diego* (9th Cir. 2013), held that the doctrine of tribal immunity does not apply when the Tribe is neither a party, nor the real party in interest because the remedy, and the damages sought will be paid by the defendant himself, and not the Tribe. The Connecticut Supreme Court distinguished *Maxwell* (a case involving claims of gross negligence), reversed the trial court, and held that the doctrine of tribal sovereign immunity extends to the driver as an employee of a Tribe who was acting within the scope of his employment when the accident occurred.

The petitioners have specifically requested that the Court resolve this conflict among the lower courts. The question presented in the cert petition is: “Whether the sovereign immunity of an



Indian tribe bars individual-capacity damages actions against tribal employees for torts committed within the scope of their employment.” The petitioners’ opening brief is due on November 14, 2016. The Tribe’s response brief is due on December 14, 2016. The Project is working directly with the attorneys representing Mr. Clarke and the interests of the Mohegan Tribe to develop an effective amicus brief strategy.

*Pro-Football, Inc. v. Blackhorse* – On April 25, 2016, in response to a petition filed by the United States in *Lee v. Tam*, seeking review of an en banc decision of the U.S. Court of Appeals for the Federal Circuit which held that the disparagement clause in § 2(a) of the Lanham Act is facially invalid under the free speech clause of the First Amendment, Pro-Football, Inc. filed a petition for writ of certiorari before judgment (by the Fourth Circuit) asking that if the Court grants review in *Tam*, then the Court should also grant review in *Pro-Football, Inc. v. Blackhorse* as “a necessary and ideal companion to *Tam*.” The U.S. Supreme Court agreed to decide whether the federal government’s ban on offensive trademarks — the

rule used to revoke the Washington Redskins registrations — violates the First Amendment.

The justices granted certiorari in the separate case of The Slants, a rock band that was denied a trademark registration on its name by the U.S. Patent and Trademark Office on the grounds that it was offensive to Asian-Americans. At issue is the Lanham Act’s Section 2a, which bars the registration of trademarks that “disparage” people. USPTO says the provision merely denies a small benefit in order to further legislative policy and doesn’t hinder speech, but the Federal Circuit declared the rule unconstitutional in December. USPTO appealed that ruling to the high court in April.

The U.S. Supreme Court refused the Washington Redskins’ extraordinary request to join the *Tam* case challenging the government’s ban on offensive trademarks. The Redskins’ separate case is still pending before the Fourth Circuit, set for arguments in December. The team had filed their extraordinary request this summer to skip the appeals court and join The Slants’ Supreme Court proceedings.

## Muscogee Creek Nation settles trust fund suit with the federal government

In *Muscogee Creek Nation v. Jewell*, the Muscogee Creek Nation retained NARF to represent it in its pending action in the federal district court for the District of Columbia for historical accounting of its trust funds and assets. NARF and experts retained by NARF have been reviewing the Nation’s trust account data provided by the government in the context of political negotiated settlements by the Obama Administration, and have assisted the Nation in making an offer of settlement to the government. In September 2015 the parties reached agreement on a settlement in principle of the Tribe’s claims in this case and on August 27, 2016, the Muscogee Creek Nation approved the settlement of its claims against the United States.

On December 20, 2006, the Muscogee Creek Nation filed an action in federal district court raising trust accounting claims, trust fund mismanagement claims, and non-monetary trust asset or resource mismanagement claims and seeking injunctive relief and damages. On December 30, 2013, the Nation retained the Native American Rights Fund as legal counsel to represent the Nation in this action (thereby replacing its prior legal counsel). ❁





# National Indian Law Library

## Justice Through Knowledge!

### Free Weekly Indian Law Updates

Each week, The National Indian Law Library provides free updates on Indian law through the Indian Law Bulletins. Researchers in the library uncover the latest legal developments and information relevant to Native Americans, including recent cases, legal news and scholarship, federal legislation, and regulatory action from agencies and departments such as the Environmental Protection Agency, the Bureau of Indian Affairs and the Department of Education. The updates are distributed via email, on our blog, and on the NARF Facebook page.

To receive the Indian Law Bulletins by email, please sign up through the NILL website: <http://narf.org/nill/bulletins/index.html>

### Free Searchable Database of Indian Law and News

Content from the Indian Law Bulletins is archived on the NILL website each week, effectively creating a searchable database of Native American law and news. To begin researching a topic, type your search term into the Google Search box on the right side of the Indian Law Bulletins page. Topics include Child Welfare, Education, Economic Development, Environment & Energy, Land & Water, Recognition & Enrollment, and Sovereign Immunity. Your results will be organized under nine different tabs that represent individual bulletins.

Most cases, legislation and regulatory actions are available in full-text. Many news and law review articles are also available online. If the item you would like to see is not available online, you can use the Research Help link (<http://www.narf.org/nill/asknill.html>) to request it from the library.



### Free Access to Tribal Codes and Constitutions at our Tribal Law Gateway

Find tribal law by name of tribe or search the Gateway using terms for law on a topic. Over 100 tribal codes and constitutions are available in full-text and content from over one hundred more are available by request. Just browse the detailed table of contents provided and use the askNILL request form to receive an emailed copy of the content you need. The Tribal Law Gateway is constantly being updated and improved and we believe the best place to start if you are looking for tribal law. In an effort to make the Gateway more practical, we are now adding audio clips to help with tribal name pronunciation on each individual tribal nation page.

### Support the National Indian Law Library

Your contributions help ensure that the library can continue 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 <http://www.narf.org/nill/donate.html> 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 2016 fiscal year – October 1, 2015 to September 30, 2016:

Agua Caliente Band of Cahuilla Indians  
 Ak-Chin Indian Community  
 American Indian Youth Running Strong, Inc.  
 Asa'carsarmiut Tribal Council  
 Chickasaw Nation  
 Confederated Tribes of Siletz Indians  
 Cow Creek Band of Umpqua Tribe of Indians  
 First Nations Development Institute  
 Fond du Lac Band of Lake Superior Chippewa  
 Klamath Tribes  
 Miccosukee Tribe  
 Mohegan Sun  
 Muckleshoot Tribe  
 National Indian Gaming Association  
 Nome Eskimo Community  
 Nottawaseppi Huron Band of the Potawatomi  
 Organized Village of Saxman

Pechanga Band of Luiseño Indians  
 Poarch Band of Creek Indians  
 Pueblo of Isleta  
 Rosebud Sioux Tribe  
 Sac and Fox Nation  
 San Manuel Band of Mission Indians  
 San Pasqual Band of Mission Indians  
 Seminole Tribe of Florida  
 Seven Cedars Casino/Jamestown S'Klallam  
 Shakopee Mdewakanton Sioux Community  
 Stebbins Native Community  
 Suquamish Tribe  
 Tanana Chiefs Conference  
 Tulalip Tribes  
 Wyandotte Nation  
 Yavapai-Prescott Indian 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.

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](mailto:ramirez@narf.org).

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

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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