

**Journal #2895**

**from sdc**

**7.15.13**

***Ninth Circuit Court of Appeals affirms subsistence fishing and hunting rights  
State Dept Contractor ERM Lied About TransCanada Ties, Another Fatal Flaw of Envi Review  
US State Department Doesn't Know Exact Keystone XL Route  
Common Native American Stereotypes Debunked  
Our Bodies, Our Ink  
Songs of Indigenous Womanhood  
Nonprofit Tech 2.0  
School Zone: Hands-on learning at outdoor school  
Our Power Climate Justice Camp***

**FOR IMMEDIATE RELEASE**

**CONTACT: Heather Kendall-Miller, Alaska Office**

**(907) 276-0680**

Re: *State v. Norton*, 3:05-cv-00006-HRH consolidated with  
*Katie John v. United States of America*, 3:05-cv-00158-HRH

On July 3, 2013, a panel of the Ninth Circuit Court of Appeals affirmed the district court's decisions upholding the 1999 Final Rules promulgated by the Secretary of the Interior and the Secretary of Agriculture to implement part of the Alaska National Interest Lands Conservation Act concerning subsistence fishing and hunting rights.

As threshold issues, the panel held that the Secretaries appropriately used notice-and-comment rulemaking, rather than adjudication, to identify whose waters are "public lands" for the purpose of determining the scope of the Act's rural subsistence policy; and that in construing the term "public lands," the Secretaries were entitled to "some deference." The panel concluded that, in the 1999 Rules, the Secretaries applied Katie John I and the federal reserved water rights doctrine in a principled manner. The panel held that it was reasonable for the Secretaries to decide that: the "public lands" subject to the Act's rural subsistence priority included the waters within and adjacent to federal reservations; and reserved water rights for Alaska Native Settlement allotments were best determined on a case-by-case basis.

**Background**

In 2005, the State of Alaska filed a lawsuit in the U.S. District Court for the District of Columbia challenging a federal agency final rule implementing the mandate in a prior Alaska Native subsistence case which established that the United States must protect subsistence uses of fisheries in navigable waters where the United States possesses a reserved water right. See, *Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995) ("Katie John I"). The State challenged the Federal agencies' implementation of the mandate by arguing that the reserved waters doctrine requires a quantification of waters necessary to fulfill specific purposes. Katie John moved for limited intervention for purposes of filing a motion to dismiss for failure to join an indispensable party. The United States also sought transfer the case to the U.S. District Court for the District of Alaska was granted. The case was then consolidated with *John v. Norton* (below). The issues in the two cases were bifurcated for briefing with the State's claims addressed first. In 2007 the court upheld the agency's rule making process identifying navigable waters in Alaska that fall

within federal jurisdiction for purposes of federal subsistence priority.

To counter the State's challenge, Katie John, Tanana, Charles Erhart and the Alaska Inter-Tribal Council filed a lawsuit in the U.S. District Court for the District of Alaska to challenge the Federal Agencies' final rule as being too restrictive in its scope. Katie John alleged that the Federal agencies should have included Alaska Native allotments as public lands and that the federal government's interest in water extends upstream and downstream from Conservation Units established under the Alaska National Interest Lands Conservation Act. The State of Alaska intervened and challenged the regulations as illegally extending federal jurisdiction to state waters. In 2009 the Court upheld the agencies' final rule as reasonable. While rejecting Katie John's claim that the agency had a duty to identify all of its federally-reserved water rights in upstream and downstream waters, the court stated that the agency could do so at some future time if necessary to fulfill the purposes of the reserve. The case was appealed to the U.S. Court of Appeals for the Ninth Circuit where oral argument was held on July 25, 2011. One of the panelists, Judge Betty Fletcher, passed away in August 2012, and her docket was assigned to Judge Canby.

### **Ninth Circuit Decision**

As to the State's specific challenges the Court determined:

a) adjacent waters: The State argued that the rules should not apply to waters that are adjacent to the boundaries of federal conservations system units. These boundary streams include long river segments, such as the portions of the Copper River technically outside the Park and Preserve boundaries. The court agreed with AFN the United States and Katie John that such waters were subject to the reserved rights doctrine and thus subject to the subsistence priority.

b) Sixmile Lake: This lake is adjacent to the Lake Clark National Park and Preserve. The State argued that because the Lake's shoreline is non-federal, non-public land owned primarily by the Native Village Corporation for Nondalton, the lake could not be considered as adjacent to the Park. The court deferred to the federal determination that the boundary of the Park was adjacent to the shore of Sixmile Lake and thus the lake is covered by the subsistence priority.

c) Seven Juneau-area streams: The State argued that these streams near Juneau were either outside of the Tongass National Forest, or were surrounded by private and state inholdings and thus could not be considered as subject to federal reserved water rights. The court concluded the U.S properly considered the rivers to be within the Tongass. The court also agreed with the U.S., AFN and Katie John that as a general matter the waters within the Tongass, but surrounded by private lands, should be considered public and lands subject to federal reserved water rights.

d) Water flowing through inholdings: The court rejected the State's general arguments that waters that ran between State and private inholdings within conservation system units could not be subject to federal reserved water rights. The court also agreed with the U.S., AFN and Katie John that waters within federal conservation system units surrounded by private lands should be considered public lands subject to federal reserved water rights.

e) Coastal waters and the "headland-to headland method": The State argued that the federal

government's subsistence rules unlawfully included waters at the mouths of rivers. A prime example was the Yukon Delta National Wildlife Refuge where the river meets the sea. The federal government determined the outer boundary of the river to determine federal reserved rights by drawing a boundary across the water from the outer bank of the Refuge land across to an opposite point on the other bank where the river meets the water. The court agreed that this was a reasonable way to determine where the federal subsistence priority applies and rejected the State's arguments.

f) Upstream and downstream waters: Katie John argued that because some adjacent waters were included, the federal priority should also apply to waters farther upstream and downstream of the various Conservation System Units. The court agreed that this was a reasonable way to apply the reserved water rights doctrine, but that it was up to the federal agencies to make that determination in the first instance. Importantly, the court recognized that the expansion advanced by Katie John might be appropriate in a particular situation.

g) Selected-but-not-yet-conveyed lands: The court rejected the State's argument that land selected by the state or a Native Corporation, but not yet conveyed from the United States, was not federal land for purposes of the subsistence priority.

### Summary

The decision is an important affirmation of the fishing priority in those federal waters identified by the agency rule-making.

The State will have the option of seeking rehearing in front of the 9th circuit, or asking the Supreme Court to review the decision.

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**Sam Despeaux was on the Moapa River Reservation about a year and a half ago filming for a series about the environmental and health impacts of coal ash across the country. We wanted to let you know that the series, entitled *Downwind and Downstream*, is now online.**

[www.downwindanddownstream.com](http://www.downwindanddownstream.com)

If you could please let everyone know and please specifically pass this along

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[Native Sun News's photo.](#)

\*\*\*\*\*Press Release from OST President Bryan Brewer\*\*\*\*\*

On July 10, 2013 High Plains Budweiser announced that it would cease to deliver alcohol to the town of Whiteclay, Nebraska. This decision marks a significant victory in our efforts to stop the flow of alcohol in to our communities from Whiteclay. In addition, High Plains Budweiser stated that they will only deliver as far as Rushville, Nebraska where vendors from Whiteclay would be expected to pick up their product for themselves and take it to their stores. This practice is illegal, and tantamount to bootlegging.

An alcohol retailer is prohibited by law from acting as its own distributor. There the state of Nebraska, there is a three tier system in place that separates the producer, distributor, and retailer.

This system will be circumvented if alcohol is delivered to stores in Whiteclay by the stores owners. This is a violation of law.

I and all people concerned must ask the Nebraska Liquor Commission to uphold their own policies and laws and prevent this from happening. If this process continues to take place we ask the Liquor Commission to revoke the licenses of those profiting from these illegal alcohol sales.

Residents of Rushville, Nebraska have great cause for concern that their fine community will be used as a tool of the alcohol industry's bootlegging scheme. I would hope that the Nebraska highway patrol and the Dawes County Sheriff's office are also aware of these illegal ploys.

I ask all involved at the community, tribal, state and federal level to take a stand against the illegal bootlegging of alcohol in Whiteclay and that residents of Rushville, Nebraska do not allow these crimes to take place in their community.

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## **Common Native American Stereotypes Debunked** **June 21, 2013 | by [Shannon Ridgway](#)**

Growing up in the Midwest, I can remember sitting in school, learning about the Civil War and the (supposed) reasons behind it: White Southerners kept Black people as slaves, treated them as second-class citizens (or less than), worked them to the bone, and refused to give up this free labor until the inevitable result was war.

We were taught how wrong this was — the enslavement of our fellow citizens, the rendering of other people as less than human, simply because their skin was a different shade than ours.

We were taught that Southerners held racist and stereotypical views toward a group of people common to their geographical area, yet we refused to acknowledge our *own* stereotypical views toward the group of people common to our geographical area — Native Americans.

And growing up, I heard many things said about the Native American ethnicity.

Some things were good, most were bad, but all had one thing in common: They were sweeping generalizations – overarching assumptions that ascribe a specific set of characteristics to all people of a certain culture. Otherwise known as stereotypes.

My fellow Midwesterners had some learning to do.

Like those Southerners of the Civil War era (and others who hold racist beliefs today), we needed to move beyond stereotypical perceptions of Native Americans.

But to move beyond stereotypes, first we have to understand them.

### **Negative Stereotypes**

#### **1. All Native Americans are alcoholics.**

One of the stereotypes ascribed most commonly to Native Americans is that they are all alcoholics.

This is simply untrue.

According to [a study published by the National Institute On Alcohol Abuse And Alcoholism \(NIAAA\)](#), white people — specifically, white men — are more likely than any other demographic group to drink alcohol on a daily basis, start drinking at a younger age, and drive while under the influence of alcohol.

Furthermore, this same study acknowledges that the alcoholism that does exist within Native American culture is linked to the culture's history of economic disadvantages and racial discrimination.

In other words, those that *do* suffer from alcoholism within the Native community may be trapped in a cycle of oppression and hardship that's difficult to break free from.

## **2. Native Americans are lazy.**

As a whole, the term “laziness” is difficult to define.

However, in U.S. culture, we tend to say people are lazy if they lack concrete goals, fail in their education, or lack what is known as “work ethic.”

If we use this [ethnocentric](#) definition of laziness in examining the Native population, we see that they are far from lazy.

[77 percent have a high school degree](#), and although only 13 percent have a bachelor's degree, this percentage has doubled within the last ten years.

In addition, of those 25 and older with a bachelor's degree, [78 percent are within the fields of science and engineering](#), traditionally higher-paying occupations.

Actually, there are only [324 federally recognized reservations and as of 2010, only 22% of Native Americans live on them](#).

## **4. American Indians receive special benefits and privileges from the government.**

Okay, here's the deal on this one: Yes, Native Americans often receive educational benefits like reduced tuition and Pell Grants, but so do other historically disadvantaged people, like the disabled and war veterans.

Why are American Indians called out for the “special” benefits they receive, while others are not?

Besides, **the government took their land.**

By giving Native people educational and monetary advantages, we are simply fulfilling a legal contract in exchange for the cessation of their land.

This “special treatment” is not, in fact, special treatment at all, but rather, part of an agreement that still stands today.

### **5. Native Americans overreact to their likenesses being used in school celebrations or as team mascots.**

When I was in high school, a Native American student petitioned the school to stop using the term “Arikara” (in reference to the [Native tribe of the Dakotas](#)) as the name of its **homecoming celebration**.

She also petitioned to stop the use of the terms “Chief” and “Princess” and to ban the “ceremonial Arikara dance” (which included a bunch of white Midwestern teens dressed in Indian costumes doing their version of a rain dance to tribal drumbeats).

And people. Flipped. Out.

“Don’t you get it? We’re *celebrating* your culture, not demeaning it!” we said.

Riiiiight.

Because white people smearing war paint on their faces and donning headdresses is *soo* different from dressing in blackface and performing slapstick comedy in front of a crowd.

Here’s the thing: If we want to celebrate Native culture, we must *respect* it.

And this means not making a mockery of it in the name of “school tradition.”

### **Positive Stereotypes**

Some people don’t understand the problem with positive stereotypes.

After all, who wouldn’t want to be like the wise, strong Native American [shaman](#) (which isn’t even a term Natives use in their culture, by the way — it originated in Europe) from the movie *Poltergeist II* — yes, I’m dating myself here — who uses his supernatural Indian powers to save the Freeling family from the evil forces invading their home — and using cool Indian animal metaphors while doing it?

But the thing about positive stereotypes is that they [set the bar unrealistically high](#).

And it’s *still* problematic when you assign one idea to an entire group of people.

### **1. Native Americans are spiritual and wise.**

While it’s true that Natives have a [history threaded with cultural traditions](#), it would be inaccurate to say that every one of them is spiritual and brimming with vats of wisdom ready to be dispensed at any time.

It’s just like saying that all Canadians are super laid-back, all New Englanders are punctual, and all Southerners are hospitable.

Just because you see it portrayed on TV or read about it in a book doesn't make it accurate for every individual, *even if it's accurate for some.*

Having these pre-conceived “positive” notions of qualities that people of certain cultures or ethnicities are supposed to possess only places undue pressure on those who don't “measure up.”

## **2. American Indians are animal lovers, tree-huggers, and sun-worshippers.**

When we think of the Native culture, often the first thing to come to mind is their supposed love of animals — especially eagles and wolves.

We also tend to think of Natives as being extreme environmentalists who worship nature and the earth.

[According to this great resource](#), Native Americans worship a Supreme Being just like other cultures do.

The stereotype of the nature-worshipping Indian comes from early European settlers in America who observed Native peoples raising their hands to the sky in the form of prayer, which they misinterpreted as “sun-worshipping.”

The animal-loving stereotype may also have its roots in early European colonization. Early Native Americans observed the behavior of animals to learn how to hunt and survive in undeveloped land, similar to what other hunter/gatherer societies did.

So just because Native American ancestors observed the behavior of animals and tried to understand their environment, doesn't mean they are tree-worshippers or extreme environmentalists.

And even if some are, who are we to judge?

## **3. Native Americans are all dancers and storytellers.**

Again, some traditional dancing and storytelling is part of Native culture — just like the tango and meringue are part of Latin culture and gospel music is part of African culture.

But to say that all Natives are rain-dancers is just like saying that all Latin Americans dance like Ricky Martin, all Africans have great singing voices, and that all Jewish people are good with money.



And therein lies the problem: If we already believe something about someone, what motivation do we have to get to know them as individual people?

—  
Fortunately, there are a few things that we can do to acknowledge when we're stereotyping and move past it:

- **Be honest with yourself.** If you hold assumptions about people based on their race, class, sex, social status, or any other demographic characteristics, acknowledge that it's an issue for you, even if it's hard to admit or makes you feel embarrassed.
- **Check yourself.** About to tell a racist joke? Catch yourself in the act, and stop before you go through with it.
- **Step outside your comfort zone.** Learn about people of other cultures, ethnicities, and religions. The more you learn about others, the less likely you are to judge them.
- **Correct others when they stereotype.** When you hear others make racist, offensive, or stereotypical remarks, call them out on it! When engage others in discussion of their own prejudices, we engage in positive dialogue and increase our own awareness as well.

**To move beyond stereotypes, first we have to understand them.**

I'm still working on my fellow Midwesterners to move beyond their prejudices.

I hope that one day, we can talk openly and respectfully about the Native culture, without letting these learned prejudices crowd our perceptions.

**Want to discuss this further? [Login to our online forum](#) and start a post! If you're not already registered as a forum user, please [register first here](#).**

*Shannon Ridgway is a Contributing Writer to Everyday Feminism from the great flyover state of South Dakota (the one with the monument of presidential heads). In her free time, Shannon enjoys reading, writing, jamming out to '80s music and Zumba, and she will go to great lengths to find the perfect enchilada. Follow her on Twitter@[sridgway1980](#). [Read her articles here](#).*

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**Our Bodies, Our Ink** By DWIGHT GARNER BOOKS OF THE TIMES nyt

In a revision of "Bodies of Subversion," Margot Mifflin updates the history of women and



tattoos. [\\_ Slide Show](#)

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[Fawn Wood - Tapwe Oma](#) - **Songs of Indigenous Womanhood**

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**Nonprofit Tech 2.0 - All Recorded Webinars Now Half Off Through August 31**

[All recorded webinars offered by Nonprofit Tech 2.0 are now only \\$25 each through August 31 on Vimeo](#) – and then on September 1 the Vimeo channel will be deleted and Nonprofit Tech 2.0 will no longer offer recorded versions of their live webinars. Ideal for training communications and fundraising staff and volunteers and interns, please note that webinars purchased on Vimeo have a viewing period of one week.

**New Blog, New Branding, New Avatar Coming in Two Weeks**

**Nonprofit Tech 2.0** will relaunch in two weeks as *Nonprofit Tech for Good* with a new design and new branding for all the various "Nonprofit Organizations" profiles. To prepare for the upcoming changes, please note that this email newsletter will no longer come from Heather @ DIOSA Communications in two weeks, but simply from "Nonprofit Tech for Good." In fact, DIOSA Communications will be retired as a public brand and [diosacommunications.com](#) will be archived.

Also, Nonprofit Tech 2.0 is being moved from WordPress.com to WordPress.org with the help of [Bureau for Good](#) and if you would like to bookmark your browser in advance of the relaunch, the new home for *Nonprofit Tech for Good* will be [nptechforgood.com](#). The content of the blogs will be the same and redirects will be put in place to automatically forward those of who have linked to [nonprofitorgs.wordpress.com](#) in the past.

Finally, the reason for the upgrade is an obvious one. Social and mobile media is advancing at such a rapid rate that my current blog functionality and branding just isn't good enough. For me to advocate that nonprofits also invest in mobile compatible web communications and professional graphic design for their social networks, it's imperative that I give that advice from a position of personal experience. All that said, I want to express my gratitude to all of those who have helped build the brand of Nonprofit Tech 2.0 and for your support of the "Nonprofit Organizations" profiles over the last eight years.

**New Fall Webinars for Nonprofits**

Tuesday, July 16: [Twitter and Twitter Apps](#)

Wednesday, September 4: [LinkedIn Groups and Company Pages](#)

Tuesday, September 10: [YouTube and Creating Video Content](#)

Tuesday, September 17: [Pinterest and Digital Photography](#)

Tuesday, October 1: [Blogging on WordPress](#)

Tuesday, October 8: [Google+ and Google+ Hangouts](#)

Tuesday, October 15: [How to Launch a Mobile Communications and Fundraising Campaign for Your Nonprofit New!](#)

Tuesday, October 29: [12 Steps to Launching a Successful Social and Mobile Media Strategy for Your Nonprofit New!](#)

Tuesday, November 5: [33 Online Fundraising and e-Newsletter Best Practices for Nonprofits New!](#)

Tuesday, November 12: [25 Facebook Pages Best Practices for Nonprofits New!](#)

Webinar Special: [Buy 2, Get 1 Free - Buy 3, Get 2 Free - Buy 4, Get 3 Free - or Buy 5, Get 5 Free!](#)

Services Offered by DIOSA Communications

[Social and Mobile Media Training for Nonprofits](#)  
[Social Media and Online Communications Audits for Nonprofits](#)

Thank you, **Heather Mansfield**      Web: [diosacommunications.com](http://diosacommunications.com)  
Blog: [nonprofitorgsblog.org](http://nonprofitorgsblog.org)      LinkedIn: [linkedin.com/heathermansfield](http://linkedin.com/heathermansfield)

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## **School Zone: Hands-on learning at outdoor school**

Written by **BARBARA MCLAURY**

In April, I spent a cold and crisp morning at the Grizzly Creek Ranch, a 1,500-acre [campus](#) near Portola, Calif., which houses an outdoor school sponsored by Sierra Nevada Journeys, a 501(c)3 located in Reno.

This unique program focuses student learning on outdoor educational experiences in many branches of science by utilizing the environment and culture of the northeastern Sierra. I was there to observe Washoe County School District sixth-grade students, teachers and parent volunteers from the Lemelson STEM (science, technology, engineering and math) Academy, formerly known as Sierra Vista Elementary School in Reno, who were all involved in a four-day residential science camp with expert teachers and staff from the outdoor school.

As explained on its website and in its literature, “Sierra Nevada Journeys uses outdoor classrooms throughout our region to deliver impactful science education to promote long-term student achievement.” By integrating school-based common core standards in science, math and reading with field studies and residential programs, as well as providing professional development for teachers, it is able to fully immerse students in an outdoor experience that broadens and deepens its knowledge base in science, math and reading. The programs also emphasize critical thinking and collaborative problem- solving in a team situation while simultaneously helping teachers build the capacity necessary to provide exemplary STEM classroom instruction.

At the beginning of their stay at Grizzly Creek Ranch, the children are each given a journal in which they record all of the daily activities they engage in and how those activities relate to the goal for the day. For example, I watched students participating in the first steps of making a shelter. The objective of the lesson was for the students to fully experience, in a real-life situation, the strength of the triangle in design and architecture as a component of surviving the elements in the wilderness.

The outdoor school gives new meaning to the concept of “hands-on” learning. Other activities involving the students included archery, animal tracking, pond and forest ecology, nature hiking and climbing, as well as astronomy and archeology.

The opportunity for the district to participate in this novel experience will reap benefits for all of our students academically and will give them insight into [different careers](#) or jobs they may aspire to as a result of participating in this particular approach to teaching and learning.

Barbara McLaury is a member of the Washoe County School District Board of Trustees.

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## **Our Power Climate Justice Camp** June 14-17 ~ Black Mesa, AZ

Ruckus has been rolling with the [Climate Justice Alliance](#) and our friends at the Black Mesa Water Coalition for months now planning and preparing for the **Our Power\* Camp** this past June on the Navajo Reservation in Arizona.

Participants came from all over the reservation, the U.S., and from as far away as Brazil to share skills, strategy and solutions for a just transition to clean and [sustainable energy](#) future for the reservation, Arizona and beyond!

This camp ended with a powerful action in Scottsdale, Arizona, bringing the water crisis and the solution from Navajo lands to the city!

Ruckus was part of the first Our Power camp in Northern California back in 2003 and we're back around for the new round of Our Power camps launching this year. Up and coming gatherings include Richmond, CA, and Palmer, AK, so stay tuned!

Check out more [photos of](#) the Camp [here](#), and the Action [here](#).

For more information about CJA and the Our Power campaign, check [ourpowercampaign.org](http://ourpowercampaign.org).

*\*The "Our Power" name comes from the "Our Power" Action Camp convened by Ruckus, the Indigenous Environmental Network (IEN), Communities for a Better Environment (CBE) and Project Underground, back in 2004 in northern California, which brought together majority people-of-color organizers fighting resource extraction - many of whom were indigenous - and which ultimately led to the creation of Ruckus's Indigenous Peoples' Power Project (IP3), which is a program that builds direct action skills and trainers by, for, and with indigenous communities.*

3 - MAN  
HANDGAME  
TOURNEY

FRIDAY  
JULY 19, 2013  
REGISTRATION TIL 7:00 PM  
TOURNEY STARTS @ 8:00 P.M.

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