



NATIVE AMERICAN RIGHTS FUND

2004 ANNUAL REPORT



*"The Earth is the source of life. She gives birth. Her children continue the life of the Earth.
The People must be responsible to her. This is the way that all life continues."*

— (Excerpt from *"The People Shall Continue"* by Simon Ortiz, Acoma Pueblo)



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Tax Status: The Native American Rights Fund (NARF) 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. Contributions to NARF are tax deductible. The Internal Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code. NARF was founded in 1970 and incorporated in 1971 in Washington, D.C.

This issue is dedicated to the children, our most precious resource.

Photographs by Ray Ramirez. Board and staff photographs by Sundance Photography



INTRODUCTION

The attorneys, support staff and the Board of Directors at the Native American Rights Fund, the national Indian legal defense fund, form a modern-day warrior society. For these dedicated people, the Indian wars never ended, they merely changed venue. Law books replaced the chiseled arrow and the historical battlegrounds have been transported to courtrooms near and far, including the highest court in the land, from their Boulder, Colorado base. But the will to fight, and the reasons, remain unchanged. The survival and the strengthened sovereignty of the nation's 562 federally recognized tribes of over 2.5 million Native Americans are due, in no small measure, to the battles waged and won by the Native American Rights Fund.

Looking back over the past 35 years, NARF has represented over 200 tribes in 31 states in such areas as tribal restoration and recognition, jurisdiction, land claims, water rights, hunting and fishing rights, the protection of Indian religious freedom, and many others. In addition to the great strides that we have 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 tribes.

History of NARF

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

governed and controlled by a little known area of law – "Indian Law" – that was driven by treaties, court decisions, federal statutes, regulations and administrative rulings. They also found that few attorneys outside of the legal services system were willing to represent Indians, and those who did generally worked on a contingency basis, only handling cases with anticipated monetary settlements.

During this same period the Ford Foundation, which had already assisted in the development of the NAACP Legal Defense Fund and the Mexican American Legal Defense Fund, began meeting with California Indian Legal Services (CILS) to discuss the possibility of creating a similar project dedicated to serving the nation's indigenous people. CILS had already established somewhat of a reputation for taking on Indian legal cases. As a result of those meetings, the Ford Foundation awarded CILS a planning grant in 1970 and start-up funding to launch the Native American Rights Fund in 1971.

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

An eleven member, all-Indian Steering Committee (now a 13 member Board of Directors) was selected by the CILS Board of





Trustees to govern the Fund's activities. Individuals were chosen (as they continue to be today) based on their involvement and knowledge of Indian affairs and issues, as well as their tribal affiliation, to ensure a comprehensive geographical representation.

NARF continued to grow at a rapid pace over the next several years. In 1971, the project incorporated in the District of Columbia and opened its first satellite office in Washington, D.C. An office close to the center of government would prove critical in future interaction with Congress and federal administrative agencies. The Carnegie Corporation of New York awarded NARF start-up funding for the creation of the National Indian Law Library, a national repository for Indian legal materials and resources in 1972. Over ten years later in 1984, NARF established its second branch office in Anchorage, Alaska to take on the Alaska Native issues of tribal sovereignty and subsistence hunting and fishing rights.

The Mission

One of the initial responsibilities of NARF's first Steering Committee was to develop priorities that would guide the Native American Rights Fund in its mission to preserve and enforce the status of tribes as sovereign, self-governing bodies. 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

As this battle continues, NARF strives to protect the legal and sovereign rights of tribes and Native people within the American legal system. This effort certainly could not exist without the contribution of the thousands of individuals who have offered their knowledge, courage, and vision to help guide NARF on its quest. Of equal importance, NARF's financial contributors have graciously provided the resources to make these efforts possible. Contributors such as the Ford Foundation have been with NARF since its inception. The Rockefeller Foundation, the General Service Foundation, the John D. & Catherine T. MacArthur Foundation, and the W. K. Kellogg Foundation have also made consistent contributions over the years. Federal funding from the Administration for Native Americans enables NARF to carry on its governance, economic, and social development efforts in Indian country. Finally, the effects of NARF's work are reflective in the financial contributions by a growing number of tribal governments. United, these financial, moral, and intellectual gifts provide the framework for NARF to fulfill its mission: the securing of sovereignty and right to self-determination to which all Native American peoples are entitled.



CHAIRWOMAN'S MESSAGE

Aloha, Aloha ke Akua, nā 'aumakua a me nā Kūpuna:

This year, 2005, we celebrate the 35th anniversary of the Native American Rights Fund (NARF).

Last year, in my annual address I wrote about the power of traditional teachings and listening to the voice of our ancestors who guide each of us. As I enter the final months of my term as NARF's chairwoman, I extend a big aloha and mahalo to those who have been with NARF since its inception... mahalo for all your years of dedication.

Mahalo also to those who have made financial contributions to NARF so that we have been able to carry out our very important work these past 35 years...and please continue to include NARF in your financial planning – as you know, advancement towards peace and justice and freedom is very costly. NARF success is, and will continue to be, determined by our diligence, patience, and persistence in pursuing sustainable solutions to the complex issues that define our reality.

Mahalo to all of you who contributed to the passing of a strong National Congress of the American Indian (NCAI) resolution calling for change in the governmental administration of the National Park Service NAGPRA program which historically has been fraught with conflicts of interest that interfered with fair and effective enforcement of the statute. Although the program was not separated from the National Park Service as the resolution called for, the conflicts were acknowledged and immediate changes were made in staffing of the National NAGPRA program and review committee memberships were restored. We are hopeful that this will lead to improvements in compliance with NAGPRA. We are also extremely pleased with what appears to be a renewed commitment to NAGPRA implementation, and will continue our work to achieve

compliance through general collaboration (including through individual contacts and conferences) and consultations on specific areas of concern.



I am privileged to have served on the NARF board for almost six years, and as its chairwoman for the last few years. In this last message as chairwoman of NARF, I urge Onipa'a! Remain Steadfast!

My kūpuna, the only real queen to have reigned on "American soil", Queen Lili'uokalani, remained steadfast during the alleged 1893 "overthrow" of her Kingdom Nation of Hawai'i by the United States military, throughout her trials and tribulations, imprisonment and through the illegal annexation of Hawai'i. Her knowledge, understanding and accomplishments were attributed to her natural intelligence, observant ways and love for her 'āina (land) and her people. Like her, we must use our knowledge and understanding and our love for our 'āina and our people to help sustain us through our discouragements and to uplift us in our successes.





This is the spirit of Aloha I offer you all. In terms of landmass, Hawai'i is but a tiny speck in the middle of the Pacific yet we Hawaiians have made, and continue to make, an impact on the world over through our spirit of Aloha.

Today our survival depends on the emergence of new Native leaders who embody traditionalism as a personal identity and at the same time have the knowledge and skills required to bring traditional objectives forward as the basic agenda of the political and social institutions they work within. Promotion of traditional perspectives on power, justice and relationships is essential to the survival of indigenous peoples. To defend our nationhood against co-optation it is essential to redirect our energies and resources towards education for our young people and the development of a new indigenous intelligentsia rooted in tradition and committed to preserving traditions and creating conditions for harmonious coexistence with others.

In our relations with others, we need to engage society as a whole in a dialogue that will bring real changes in political practice and convince others to join us in challenging the state's oppression of indigenous peoples. This will require broad-based intellectual and political movement away from prevailing beliefs and structures.

In the 35 years since it was established, NARF has made a difference in the lives of many native communities. We all need for NARF to continue for another 35 years and to ensure that they are financially strong and able to help native peoples deal with the inevitable issues that will continue to challenge us. We have made great progress – but we still have a long way to go.

Institutionalized racism is still entrenched in the governmental and private systems that have far-reaching consequences for our lives. When NARF was founded 35 years ago could we have

predicted many of the challenges they have helped us face? I, for one, would not like to imagine where we would be today if NARF had not been founded and staffed by the many dedicated individuals and supported by the many individuals and institutions that have been invaluable to its protection and advancement of our interests.

Although we can predict many of the types of issues that will arise, the future is unpredictable. I am confident that NARF, with the help of all of us, will Onipa'a (remain steadfast). I am proud to be part of this organization and look forward to working with them for many years. I urge you to Onipa'a and to continue to build the financial strength and influence of this invaluable organization.

I ka noho pu ana a 'ike I ke aloha. It is living together that teaches the meaning of Love.

Elizabeth Ann Ho'oiipo Kalaena'auao Pa,
Chairwoman



EXECUTIVE DIRECTOR'S REPORT

The Native American Rights Fund enters its 35th year of providing litigation and advocacy on behalf of Native Americans on significant national Native issues in 2005. We are proud of our many accomplishments on behalf of Native Americans over those 35 years and pleased to be of continuing service to Native America. During 2004, our legal assistance once again resulted in several important developments affecting Native Americans.

In *United States v. Lara*, the United States Supreme Court held that tribal courts do have jurisdiction over non-member Indians who commit misdemeanor crimes on reservations. In its ruling, the Supreme Court upheld the authority of Congress to recognize the sovereignty of a tribe to exercise such jurisdiction after the Supreme Court had held that tribal power to be non-existent in a previous case. Through the Tribal Supreme Court Project operated by NARF and the National Congress of American Indians, amicus curiae briefs were coordinated and filed in support of the tribal position in this important tribal sovereignty case.

In another impressive example of the Tribal Supreme Court Project in action, the U.S. Supreme Court refused the State of South Dakota's request to review *South Dakota v. Cummings*. As a result, a very good decision by the South Dakota Supreme Court refusing to extend state criminal jurisdiction onto the reservations was preserved. The State was asserting such jurisdiction under a prior U.S. Supreme Court decision in *Nevada v. Hicks*, but the Project assisted in successfully opposing the State's request for U.S. Supreme Court review of the South Dakota Supreme Court decision.

Once again, NARF assisted the Gwich'in Steering Committee in their efforts to protect the Arctic National Wildlife Refuge (ANWR) in Alaska from oil development and successfully worked

with a coalition of environmental groups to stop the U.S. Senate in 2004 from approving oil drilling in ANWR. 7,000 Gwich'in people live on or near the migratory route of the Porcupine caribou herd and rely on the caribou for food, clothing, tools and a source of respect and spiritual guidance. The calving grounds of the caribou lie inside ANWR and will be disturbed by any oil drilling.

NARF has assisted the Nez Perce Tribe of Idaho with the assertion and protection of the Tribe's water rights for many years and helped the Tribe achieve a Congressional settlement of its water rights claims in 2004. The Snake River Water Rights Act of 2004 recognizes the Tribe's right to 50,000 acre-feet of water for consumptive uses on reservation lands; recognizes Nez Perce access and use rights to water from springs on federal lands within the Tribe's original 1855 reservation boundaries; transfers \$7 million worth of federal lands within its current reservation boundaries to the Tribe; establishes three trust funds for the Tribe – a \$60.1 million water and fisheries management fund, a \$23 million water and sewer improvement fund, and a \$38 million habitat trust fund, one-third of which will be controlled by the Tribe; directs agreements for Nez Perce management of the Kooskia National Fish Hatchery and co-management of the Dworshak National Fish Hatchery; and directs an agreement for the use of 200,000 acre-feet of water from the Dworshak Project on the North Fork Clearwater River as part of an improved flow augmentation plan for the salmon. Formal approval of the settlement by the Idaho Legislature and the Nez Perce Tribe is in process.





In *Wyoming Sawmills v. United States* and *Medicine Wheel Coalition*, a federal appeals court upheld a lower court decision dismissing a challenge by a private timber company to the legality of a U.S. Forest Service plan for managing the Medicine Wheel National Historic Landmark. The Medicine Wheel is considered sacred to tribes indigenous to the area and the Forest Service plan explicitly recognizes that the cultural and historic importance of the Medicine Wheel is an element of many Native Americans' religious traditions. NARF had filed an amicus curiae brief on behalf of the National Congress of American Indians addressing the accommodation of Native religions, but the dismissal was based on lack of standing.

Through the efforts of NARF, the Tribal Education Departments National Assembly and other Native organizations, President George W. Bush signed an Executive Order on American Indian and Alaska Native Education. The new Executive Order clarifies that the mandates of the No Child Left Behind Act of 2001 shall be implemented in a manner consistent with tribal traditions, cultures and languages. NARF also assisted the National Congress of American Indians in hosting a tribal consultation on implementation of the new Executive Order.

In *Cobell v. Norton*, the widely publicized class action case on behalf of 500,000 individual Indian trust account holders filed in 1996, NARF and private co-counsel were successful in two decisions by a federal appeals court turning back a government argument that the district court lacked jurisdiction over information technology security matters and reaffirming that the district court has broad jurisdiction and authority to remedy the century old trust mismanagement. In an unexpected but welcome holding, the court of appeals also made clear that interest would be available to the individual

Indian account holders for monies held in trust.

NARF was awarded a grant of \$1,987,000 by the Department of Justice to fund Indian legal services programs throughout the country. The grant will be utilized to support thirty Indian legal services programs for civil and criminal representation in tribal courts and to develop tribal court projects on a host of areas in justice administration. Funding will also be provided for training and technical assistance to train legal services personnel and the tribal court personnel with whom they will be working.

In these cases and activities and hundreds of others over the last 35 years, the Native American Rights Fund has provided access to justice for Native American people across the country on some of the most important Native issues of our time and has proven that the legal system can work for Indian people. We could not have achieved this success without the financial support provided by our contributors throughout the nation. We thank all of you who have assisted us and encourage you to maintain your support so that we may continue to make progress on behalf of Native American people.

John E. Echohawk, *Executive Director*



BOARD OF DIRECTORS

The Native American Rights Fund has a governing board composed of Native American leaders from across the country – wise and distinguished people who are respected by Native Americans nationwide. Individual Board members are chosen based on their involvement and knowledge of Indian issues and affairs, as well as their tribal affiliation, to ensure a comprehensive geographical representation. The NARF Board of Directors, whose members serve a maximum of six years, provide NARF with leadership and credibility, and the vision of its members is essential to NARF's effectiveness in representing its Native American clients.

NARF's Board of Directors: (*Bottom row left to right*) **James Roan Gray** (Osage Nation – Oklahoma); **LaNada War Jack** (former Board member); **Nora McDowell** (Fort Mojave – California); **Elbridge Coochise** (Hopi – Arizona); **Karlene Hunter** (Oglala Lakota – South Dakota); **E. Ho'oiipo Pa, Chairwoman** (Native Hawaiian – Hawaii); **Vernita Herdman** (Inupiaq – Alaska); (*Top row left to right*) **Paul Ninham** (Oneida Nation of Wisconsin); **John Gonzales** (San Ildefonso Pueblo - New Mexico); **Jaime Barrientoz**, Vice-Chairman

(Grande Traverse Band of Ottawa & Chippewa Indians – Michigan); **Billy Frank** (Nisqually Tribe – Washington); **Woody Widmark** (Sitka Tribe – Alaska). (*Not Pictured*) **Mark Brown** (The Mohegan Tribe – Connecticut); **Anthony Pico** (Viejas Band of Kumeyaay Indians – California).

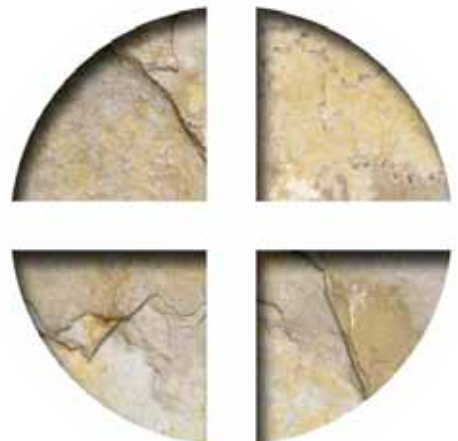


NATIONAL SUPPORT COMMITTEE

The National Support Committee (NSC) assists NARF with its fund raising and public relations efforts nationwide. Some of the individuals on the Committee are prominent in the field of business, entertainment and the arts. Others are known advocates for the rights of the underserved. All of the 52 volunteers on the Committee are committed to upholding the rights of Native Americans.

Owanah Anderson, *Choctaw*
Edward Asner
Katrina McCormick Barnes
John Bevan
David Brubeck
U.S. Senator Ben Nighthorse Campbell, *Northern Cheyenne*
Wallace Coffey, *Comanche*
Ada Deer, *Menominee*
Harvey A. Dennenberg
Michael J. Driver
Richard Dysart
Lucille A. Echohawk, *Pawnee*
Louise Erdrich, *Turtle Mountain Chippewa*
Jane Fonda
James Garner
Sy Gomberg
Carol Hayward, *Fond Du Lac Chippewa*
Richard Hayward, *Mashantucket Pequot*
John Heller
Emilie Heller-Rhys
Alvin M. Josephy, Jr.
Charles R. Klewin

Nancy A. Klewin
Wilma Mankiller, *Cherokee Nation of Oklahoma*
Chris E. McNeil Jr., *Tlingit-Nisga'a*
Billy Mills, *Oglala Sioux*
N. Scott Momaday, *Kiowa*
Clinton Pattea, *Ft. McDowell Yavapai*
Amado Peña Jr., *Yaqui/Chicano*
David Risling Jr., *Hoopa*
Pernell Roberts
Walter S. Rosenberry, III
Marc Rudick
Pam Rudick
Leslie Marmon Silko, *Laguna Pueblo*
Connie Stevens
Ernie Stevens, Jr., *Wisconsin Oneida*
Anthony L. Strong, *Tlingit-Klukwan*
Maria Tallchief, *Osage*
Andrew Teller, *Isleta Pueblo*
Verna Teller, *Isleta Pueblo*
Studs Terkel
Tenaya Torres, *Chiricabua Apache*
Richard Trudell, *Santee Sioux*
Rebecca Tsosie, *Pascua Yaqui*
Thomas Tureen
Tzo-Nah, *Shoshone Bannock*
Aine Ungar
Rt. Rev. William C. Wantland, *Seminole*
Dennis Weaver
W. Richard West Jr., *Southern Cheyenne*
Mary Wynne, *Rosebud Sioux*





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. Specifically, NARF's legal representation centers on sovereignty and jurisdiction issues, federal recognition and restoration of tribal status, and economic development. Thus, the focus of NARF's work involves issues relating to the preservation and enforcement of the status of tribes as sovereign governments. Tribal governments possess the power to regulate the internal affairs of their members as well as other activities within their reservations. Jurisdictional conflicts often arise with states, the federal government, and others over tribal sovereignty.

Tribal Sovereignty

The U.S. Constitution recognizes that Indian tribes are independent governmental entities with inherent authority over their members and territory. In treaties with the United States, Indian



Supreme Court has repeatedly affirmed the fundamental principle that tribes retain inherent sovereignty over their internal affairs. Beginning with the Supreme Court's 1978 decision in *Oliphant v. Suquamish Indian Tribe* and with increasing frequency over the past decade, however, the Supreme Court has begun to chip away at this fundamental principle – not only by limiting tribal jurisdiction, but by extending state jurisdiction into Indian country.



The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and was launched in conjunction with the National Congress of American Indians (NCAI) in 2001. The Project was created in response to a series of United States 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, and to thereby reverse – or at least reduce – the erosion of tribal jurisdiction by the Court.

tribes ceded millions of acres of land in exchange for the guarantee that the federal government would protect the tribes' right to self-government. From the early 1800s on, the

The Tribal Supreme Court Project is housed at NARF's office in Washington, D.C. and is staffed by one NARF attorney and support staff. In an effort to foster greater coordination in advocacy, an Advisory Board of tribal leaders, comprised of

NCAI Executive Committee members and other tribal leaders willing to volunteer their time, also assists the Project. The Board's role is to provide necessary political and tribal perspective to the legal and academic expertise. The Project has also established a Working Group – a group of more than 200 noted attorneys and academics from around the nation who participate in the Project as their interest, time and resources allow.

To achieve the goals of the Tribal Supreme Court Project, NARF monitors cases which appear to be headed for the Supreme Court, and organizes, coordinates and contributes to a nation-wide Indian amicus brief writing network. Also known as “friend of the court” briefs, amicus briefs allow those not directly involved in litigation, but potentially impacted by the outcome, to provide information and arguments directly to the Court. By bringing together experienced Indian law practitioners and scholars to discuss and agree upon a coordinated amicus brief writing strategy in each case, NARF ensures that the most effective and focused arguments are made before the Court on behalf of Indian Country. The Tribal Supreme Court Project has already achieved measurable success.

While only in existence for a few years, the success of the Tribal Supreme Court Project has been appreciable. Out of five cases decided by the Court since the Project began in 2001, tribes have lost only one. A dramatic success in the Project was the April 2004 victory in *U.S. v. Lara*, a case involving a tribe's exercise of jurisdiction over a non-member Indian. The authority of tribes to exercise such jurisdiction was expressly recognized and reaffirmed by Congress in response to an earlier Supreme Court decision, *Duro v. Reina*, in which the Supreme Court held that tribes do not have criminal jurisdiction over non-member Indians who commit misdemeanor

crimes on the reservation. Before the Supreme Court in *Lara* was the question of whether Congress may reaffirm an inherent authority of tribes when that tribal power has been found to be non-existent by a previous U.S. Supreme Court



decision. A majority of the Supreme Court held in *Lara* that notwithstanding its decision in *Duro*, Congress can indeed recognize the sovereignty of a tribe over misdemeanor crimes committed by non-member Indians within its jurisdiction.

In another impressive example of the Tribal Supreme Court Project in action, the U.S. Supreme Court, in October 2004, denied a petition for certiorari filed by the State of South Dakota in the case of *South Dakota v. Cummings*. As a result, a very good decision in which the South Dakota Supreme Court held that *Nevada v. Hicks* does not extend state criminal jurisdiction onto the reservations has been preserved. By quickly mobilizing resources and coordinating efforts in opposition to the State's petition, the





Project effectively persuaded the Supreme Court not to review the *Cummings* case, thereby preventing the further extension of state jurisdiction within reservation boundaries. In short, the Project has demonstrated that by uniting and coordinating, tribes can strengthen Indian advocacy before the Supreme Court and help shape the future direction of Indian law.

In the 1950s Congress experimented with terminating the federally recognized status of Native American tribes and forcing their assimilation under state law. This termination policy proved to be a disaster, compelling Congress decades later to restore federal recognition to these tribes. In turning the page back to the 1950s, the Alaska Legislature has for several years engaged in litigation against the Department of the Interior and Alaska tribes to terminate the federally recognized tribal status of Alaska Tribes. The Alaska Legislature's efforts have been actively supported by Alaska Senator Ted Stevens, who has directly urged Interior Secretary Gale Norton to reverse the Department's recognition of Alaska Tribes. Pending the outcome of this litigation, Senator Stevens commenced a new campaign to undermine tribal sovereignty.



This campaign has been undertaken under the guise of “regionalization” of tribal funding sources and is being systematically carried out through riders to appropriations bills. In 2003, legislative riders to a consolidated spending bill eliminated funds to tribal courts and tribal law enforcement programs in Alaska Native Villages, and authorized the establishment of a joint Federal-State Commission to develop recommendations for bringing Alaska's 231 tribes under a unified system of government. And again in 2004, the Senate Appropriations Committee (which was chaired by Senator Stevens) has attached to an Indian Health Service spending bill a rider which makes permanent a previously temporary moratorium against Alaska tribes operating local health care services under the Indian Self Determination Act.

The effect of these and similar measures, if enacted, would be to cut off the ability of Alaska

Native Tribes to function by denying them the ability to provide for the health, safety and welfare of their communities. In remarks to the press in 2003, Senator Stevens made clear that his regionalization campaign is not about improving service delivery to Alaska Natives, but about terminating the sovereignty of Alaska tribes. Stevens is pushing regionalization because he believes that tribal sovereignty poses a threat to statehood. If Senator Stevens' proposals become policy, such action would undermine the sovereign rights of all tribes, would denigrate the fundamental importance of federal recognition, and set a dangerous precedent that would reflect a new Congressional policy of acquiescing to the whims of congressional members who favor the termination of federal recognition of tribes.

NARF is leading efforts to give voice to tribal governments by organizing a national campaign to alert tribal leaders of the pending threat of termination. To educate tribes and develop a strategy against the increasing use of legislative riders to undermine tribal sovereignty, NARF worked with tribes to organize and facilitate a Tribal Forum on Regionalization. The Forum, which was convened in Anchorage, Alaska in August 2004, was attended by over 400 participants from 136 Alaska Tribes. At the end of the three day forum tribal delegates adopted a Tribal Position Statement in Opposition to Regionalization and an action plan to fight against regionalization/termination. NARF will continue to assist Alaska tribes in this effort by 1) bringing the issue to national attention both before the National Congress of American Indians and tribes in the Lower '48; 2) educate members of Congress on how legislative riders are being used by the Alaska delegation to shift federal policy and terminate the rights of Alaska's federally recognized tribes; and 3) build a coalition of tribal and

other interest groups to fight against regionalization/termination.

Federal Recognition of Tribal Status

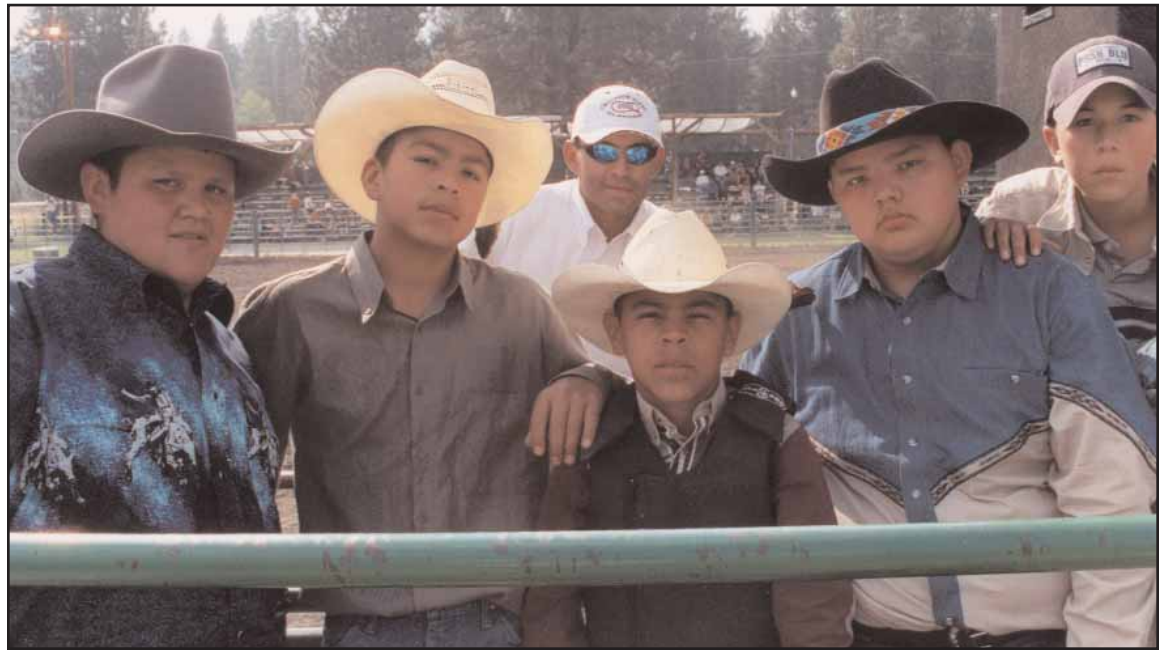
Achieving legal status as an Indian tribe is very important to preserving tribal existence and self-



government. Some tribal groups do not have this status because they have never been formally recognized as tribes by the federal government. NARF provides representation to those tribal groups who have a right to become federally recognized tribes.

NARF currently represents five Indian communities who have survived intact as identifiable Indian tribes but who are not federally recognized. These Indian tribes, for differing reasons, do not have a government-to-government relationship between themselves and the federal government. Traditionally, federal recognition was accorded to a tribe through treaty, land set aside for a tribe, or by legislative means. The majority of these NARF clients are seeking an administrative determination by the Bureau of Indian Affairs





(BIA) that they, in fact, have continued to exist as Indian tribes from the time of significant white contact to the present day and have continued to govern themselves and their members. NARF, therefore, prepares the necessary historical, legal, and anthropological documentation to support a petition for acknowledgment. For more than 100 years, these Indian communities have been denied the benefits of a formal relationship with the federal government. Through the process

of administrative acknowledgment, NARF is now trying to bridge that gap.

Federal recognition is an arduous process that takes many years to complete. Petitioning tribes must prove that they have been identified by reliable external sources on a substantially continuous basis as an Indian entity; they must prove that they have maintained a continuous community from historical times to the present day; they must show that they have maintained political authority or influence on a substantially continuous basis from historical times until the present day; they must prove that current tribal members, as a whole, descend from a historic tribe or tribes which amalgamated; they must prove that their members are not mostly members of an already recognized tribe; and, their members cannot be from groups which were terminated by legislation. This process requires the testimony of many experts and thorough documentation of each requirement.

In 1997, the BIA Branch of Acknowledgment and Research (BAR) placed the Little Shell Tribe

of Chippewa Indians of Montana's federal recognition petition on active review status. In 2000, after many delays, the Assistant Secretary published a preliminary finding in favor of recognition. Work will continue to be done to finalize the Tribe's response to the proposed findings in 2005.

With NARF's assistance, the Shinnecock Indian Nation located on Long Island, New York, filed a petition for Federal recognition in 1998. The petition was recently placed on the BIA's ready-for-active-consideration list, the last procedural step before actual review and a milestone for the Nation after years of hard work to fully document the petition.

Petitions were also filed by NARF on behalf of the United Houma Nation of Louisiana and the Mashpee Wampanoag Tribe of Massachusetts. The Mashpee petition is currently under active consideration, and the Houma petition awaits a final determination. Responsibility for these two petitions has shifted to other attorneys and researchers. NARF's work on a petition for the Pamunkey Tribe in Virginia continues.

Environmental Law and Policy Initiative

NARF has played a key role in the implementation of federal environmental law and policy that recognizes tribal governments as the primary regulators and enforcers of the federal environmental laws on Indian lands. NARF continues to work with tribes, the National Tribal Environmental Council and other Indian organizations to maintain the progress that has been made with the Environmental Protection Agency (EPA) and other federal agencies. With a representative on the Green Group, a coalition of national environmental leaders, NARF continues to coordinate with and educate the environmental community on the role of tribal governments in environmental law and policy.

NARF is working with the Oglala Sioux Tribe's Department of Water Maintenance and Conservation and Environmental Health Technical Team (EHTT) on a revision of the Tribe's Ordinance for the Protection of the Oglala Sioux



Rural Water Supply System and Other Public Water Systems Within the Pine Ridge Indian Reservation. This Ordinance will provide for the protection of the integrity of the pipeline, which delivers drinking water to the public water systems on the reservation. NARF has also assisted the Tribe in developing a Solid Waste Management Code, which will provide enforceable standards and a fee structure for solid waste collection and disposal of solid and hazardous waste. The Solid Waste Code is currently undergoing final revision and will be presented to the Tribal Council after community review and comment.





THE PROTECTION OF TRIBAL NATURAL RESOURCES

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.

Protection of Indian Lands

Without a sufficient land base, tribal existence is difficult to maintain. NARF helps tribes establish



ownership and control over lands which are rightfully theirs.

Since 1981, NARF has represented the Alabama-Coushatta Tribe of Texas in their quest to secure compensation for the loss of use of millions of acres of fertile forest land they once occupied in southeast Texas. In 2002, the United States Court of Federal Claims ruled in favor of the Alabama-Coushatta Tribe of Eastern Texas in

their breach-of-trust claim against the United States, holding the Government liable for the Tribe's loss of use of over 2.85 million acres of land between 1845 and 1954. The Court also ruled that 5.5 million acres of aboriginal title has never been extinguished. Negotiators for the United States and Tribe reached an agreement on the amount of damages for the loss of the land – \$270 million – and the Court recommended the agreement to Congress in 2002. NARF, private counsel, and the Tribe are now working to garner Congressional approval for the payment of this amount under the Congressional reference procedure.

NARF represents the Pottawatomi Nation of Canada, a band of descendants from the Historic Pottawatomi Nation, which from 1795 to 1833 signed a series of treaties with the United States. These treaties provided for the payment of certain annuities, among other things. The ancestors of the present-day Canadian Pottawatomi fled to Canada following the signing of the final treaty and were never paid their annuities as promised. While the American Pottawatomi bands recovered the payment of annuities in the Indian Claims Commission (ICC), the Canadian Pottawatomi members could not bring a claim in the ICC.

In 1993, NARF brought suit on behalf of the Canadian Pottawatomi in the Court of Federal Claims, by way of Congressional reference, to seek redress. After years of fact-finding, discovery and briefing in the case, the parties reached an agreement in principle which was approved by the Court in 2000 and recommended to Congress in 2001. In 2002, Senator Inouye introduced a bill "For the Relief of the Pottawatomi Nation in Canada for Settlement of Certain Claims Against the United States." The bill was passed by unanimous consent in the Senate in 2002, but did not pass the House prior to the end of the session.

The bill was reintroduced by Senator Inouye in 2003, was referred to the Senate Judiciary Committee, but did not pass in 2004. NARF continues to work with the Senate Committee on Indian Affairs, the Senate Judiciary Committee and the House Resources Committee to see this matter through to final resolution.

NARF is working with the Lower Brule Sioux Tribe against the State of South Dakota's challenge to the United States' decision to place approximately 91 acres of land into trust for the Lower Brule Sioux Tribe under Section 465 of the Indian Reorganization Act. In *South Dakota v. United States*, the State is alleging, among other things, that the Secretary lacks authority to place land into trust because Section 465 is an unconstitutional delegation of legislative authority. In an earlier proceeding regarding this same 91 acres of land, the Eighth Circuit Court of Appeals did hold that Section 465 was unconstitutional, but the U.S. Supreme Court vacated that opinion and remanded to the Secretary for further reconsideration. The State is now challenging the Secretary's reconsidered, and again favorable, decision to place the land in trust. In April 2004, the Federal District Court upheld the Secretary's decision and the State appealed. Now the Lower Brule Sioux Tribe, acting as Amicus Curiae, and the United States are again before the Eighth Circuit Court of Appeals to defend the Secretary's decision and the constitutionality of Section 465.

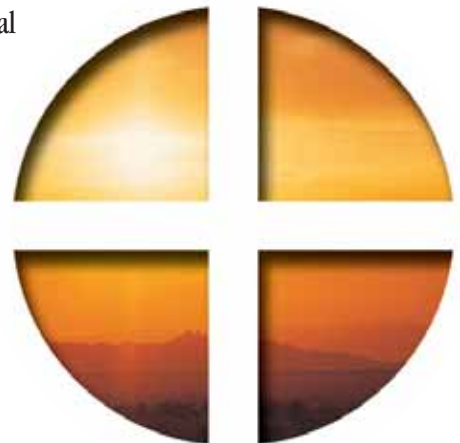
NARF represents the Native Village of Tuluksak in Alaska in their quest to have the land owned by the Village corporation transferred in fee simple to the Village tribal council. The Department of Interior would then be petitioned to place the land into trust on behalf of the Village. The Department of the Interior is in the process of revising regulations governing the process of taking land into federal trust for Native Americans. NARF

worked with the NCAI Tribal Leaders' Task Force on Land Recovery, on behalf of Tuluksak, to develop comments to the proposed regulations and has been waiting for the Secretary of the Interior to issue final regulations. The Department



of the Interior has decided to further postpone consideration of a new regulation, after an assessment of ongoing policy work, available personnel and resources. The Native Village of Tuluksak has decided to pursue litigation to establish the right of Alaska Tribes to petition the Secretary to place lands in trust. Pleadings are in the process of being drafted.

NARF has worked with several tribes to protect important lands from commercial exploitation. In Alaska, NARF assists the Gwich'in Steering Committee in their efforts to protect the Arctic National Wildlife Refuge (ANWR) from oil development. The Gwich'in, which means 'People of the Caribou', are the northernmost Indian nation living across northeast Alaska and northwest Canada. There are about 7,000 Gwich'in people who live on or near the migratory route of the





Porcupine Caribou Herd. For thousands of years, the Gwich'in have relied on the caribou for food, clothing, tools, and a source of respect and spiritual guidance. The calving grounds of the Porcupine River caribou herd inside ANWR is considered sacred. The Gwich'in call it "Vadzaih googii vi dehk'it gwanlii" (The Sacred Place Where Life Begins). The Gwich'in will not journey into these sacred grounds for hunting, even in times of great need or food shortage. Oil development in ANWR would not only harm the caribou and threaten the future of the Gwich'in

people, but would also threaten more than 180 species of birds, and numerous mammals including polar bears, musk ox, wolves, wolverine, moose, Arctic and red foxes, black bears, brown bears, and the white Dall sheep. NARF successfully worked with a coalition of environmental groups and organizations to stop the U.S. Senate from approving oil drilling in ANWR in 2001 and 2002. Language was again introduced in the 2003 Congress to allow for oil drilling in ANWR and was once again defeated in 2004. As the Administration has vowed to continue to press for the passage of this bill, NARF will continue to assist the Gwich'in Steering Committee in their efforts to stop the approval of oil development in ANWR.

Water Rights

Establishing tribal rights to the use of water in the arid west continues to be a major NARF priority. The goal of NARF's Indian water rights work is to secure allocations of water for present and future needs for three Indian tribes represented by NARF and other western tribes generally.

Under the precedent established by the United States Supreme Court in 1908 in *Winters v. United States* and confirmed in 1963 in *Arizona v. California*, Indian tribes are entitled under federal law to sufficient water for present and future needs, with a priority date at least as early as the establishment of their reservations. These tribal reserved water rights are superior to all state-recognized water rights created after the tribal priority date. Such a date will in most cases give tribes valuable senior water rights in the water-short west. Unfortunately, many tribes have not utilized their reserved water rights and these rights are adjudicated or unquantified. The major need in each case is to define or quantify the amount of water to which each tribe is entitled through litigation or settlement negotiations. Tribes are generally able to claim water for present and future use of their practicably irrigable acreage, maintenance of treaty hunting and fishing rights, and municipal and industrial needs.

NARF represents the Nez Perce Tribe of Idaho in its water rights claim in the Snake River Basin Adjudication (SRBA). The Nez Perce Tribe is located in northern Idaho near the confluence of the Snake and Clearwater Rivers. The current reservation boundaries contain approximately 700,000 acres, or about one-tenth of the original seven million acre reservation reserved in the Treaty of 1855 with the United States. That treaty also reserved to the Tribe off-reservation fishing rights at all “usual and accustomed” sites on and off the reservation. Subsequent treaties and agreements reduced the size of the reservation, but expressly left intact the Tribe’s on and off-Reservation treaty fishing rights. These rights are exercised by the Tribe’s members at ceremonial, subsistence and commercial fisheries.

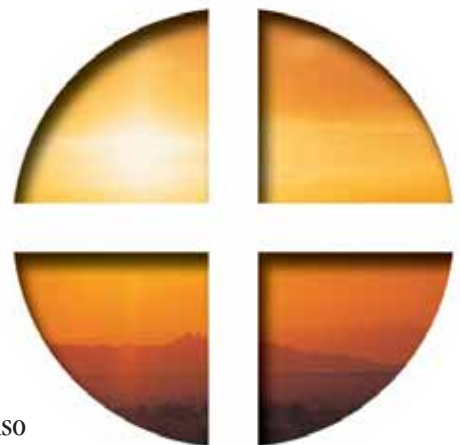
The Nez Perce Tribe’s claims to water rights for instream flows in the Snake River and its

primary tributaries, the Salmon and Clearwater Rivers, to springs on lands ceded by the Tribe in 1863, and to on-reservation consumptive uses of water, were filed in the SRBA in 1993. The Nez Perce claims dispute has been the biggest out-



standing dispute in the SRBA, which includes a legal inventory of about 180,000 water rights claims in 38 of Idaho’s 44 counties. The Tribe’s main claim is for sufficient in-stream flows to maintain its treaty rights to fish for salmon and steelhead that migrate down the Snake River to the Columbia River and out to the ocean before returning to spawn.

Since 1998, the Nez Perce Tribe, the United States, the State of Idaho, and local communities and water users in Idaho have engaged in court-ordered mediation to resolve the claims of the Nez Perce Tribe. In 2003, all parties to the negotiations signed on to a comprehensive term sheet agreement, which also calls for the suspension of all litigation regarding Nez Perce claims in the SRBA. The Idaho Supreme Court and the SRBA Court both agreed to suspend all litigation to permit





settlement negotiations to proceed. A landmark settlement agreement was reached in this case in April 2004. A bill directing the Secretary of Interior and the heads of other federal agencies to carry out the agreement was introduced by Senators Craig and Crapo of Idaho in June 2004.

The Snake River Water Rights Act of 2004 was approved by the Congress prior to adjournment on November 20, 2004. This Act is one piece of the complex settlement of claims by the Nez Perce Tribe in the SRBA. Remaining pieces of the settlement include approval processes by the Idaho Legislature and the Nez Perce Tribe.

The federal legislation: 1) recognizes the Tribe's right to 50,000 acre-feet of water for consumptive uses on reservation lands; 2) recognizes Nez Perce access and use rights to



water springs on federal public lands within the Tribe's original 1855 reservation boundaries; 3) transfers \$7 million worth of Bureau of Land Management lands from within its current reservation boundaries to the Tribe; 4) establishes three trust funds for the Tribe – \$60.1 million water and fisheries development fund, \$23 million water and sewer improvement fund, and a \$38 million habitat trust fund, one-third of which will

be controlled by the Tribe; 5) directs that the United States Fish and Wildlife Service and the Tribe will enter into agreements providing for Nez Perce management of the Kooskia National Fish Hatchery and co-management of the Dworshak National Fish Hatchery; and 6) directs that the Tribe and the United States, with State of Idaho input, will enter into an agreement for the use of 200,000 acre-feet of water from the Dworshak Project on the North Fork Clearwater River as part of an improved flow augmentation plan for salmon.

NARF represents the Tule River Indian Tribe of California in its efforts to settle its claims to reserved water rights on its Reservation. The Tule River Reservation is located in a rocky, mountainous region and is crossed by the South Fork of the Tule River. Flow from the river, like the flows of many mountain streams, are abundant in the early spring but drop off precipitously as the summer months wear on. Water from the South Fork of the Tule River is fully appropriated. Competing users include a downstream Ditch Company, downstream riparians, and four irrigation companies organized as the Tule River Association (TRA) which contracts with the United States for irrigation water from the Lake Success Reservoir supplied in part by the South Tule River.

With the assistance of NARF and technical consultants, the Tule River Tribe analyzed its water rights claims under both federal and state law. In light of this information the Tribe decided to pursue establishment of its water rights through a negotiated settlement. The Department of the Interior appointed a Federal Negotiation Team to assist in settling water rights issues for the Tribe. The Tribe's goal is to negotiate a settlement that will provide the Tribe with sufficient water to create a permanent sustainable

homeland for its people with little or no adverse impact on other water users.

As confirmed by the federal courts nearly twenty years ago, the Klamath Tribes hold reserved water rights in the Klamath River Basin to support their treaty hunting, fishing and gathering rights, as well as to satisfy the agricultural purposes of the Klamath Reservation. These reserved rights are currently being quantified in the context of a state-wide water adjudication in Oregon. NARF represents the Klamath Tribes in the adjudication and is currently litigating scores of tribal contests against unsubstantiated non-Indian water right claims in the basin. Briefing on the Tribes' claims commences in 2005.

NARF has also worked to address a major problem in water rights negotiations – the lack of federal funding for settlements. To this end, NARF continues to facilitate Indian water rights settlement policy in the Congress by working with our state and private partners in the Ad Hoc Group on Indian Reserved Water Rights – the Western Governors' Association, the Western States Water Council and the Western Business Roundtable. NARF participates in the Joint Federal-Tribal Water Funding Task Force in order to encourage the Administration to support funding for Indian water rights settlements. NARF also continues to be involved with the Western Water Alliance (WWA) along with the General Service Foundation and others. WWA brings together organizations and funders involved in western water issues to advance sustainable and equitable water policy in the west.

Protection of Hunting and Fishing Rights in Alaska

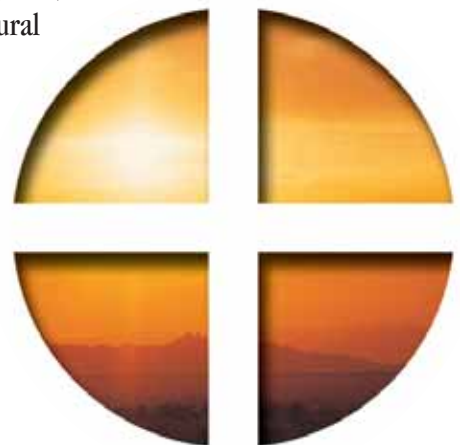
The subsistence way of life is essential for the physical and cultural survival of Alaska Natives. Most of the two hundred small Native villages in

Alaska are located on or near the shores of a river or a lake, or located on the coast of the North Pacific or Arctic Ocean. The proximity to water is no accident and reflects the dependence of Natives on the harvest of fish stocks for



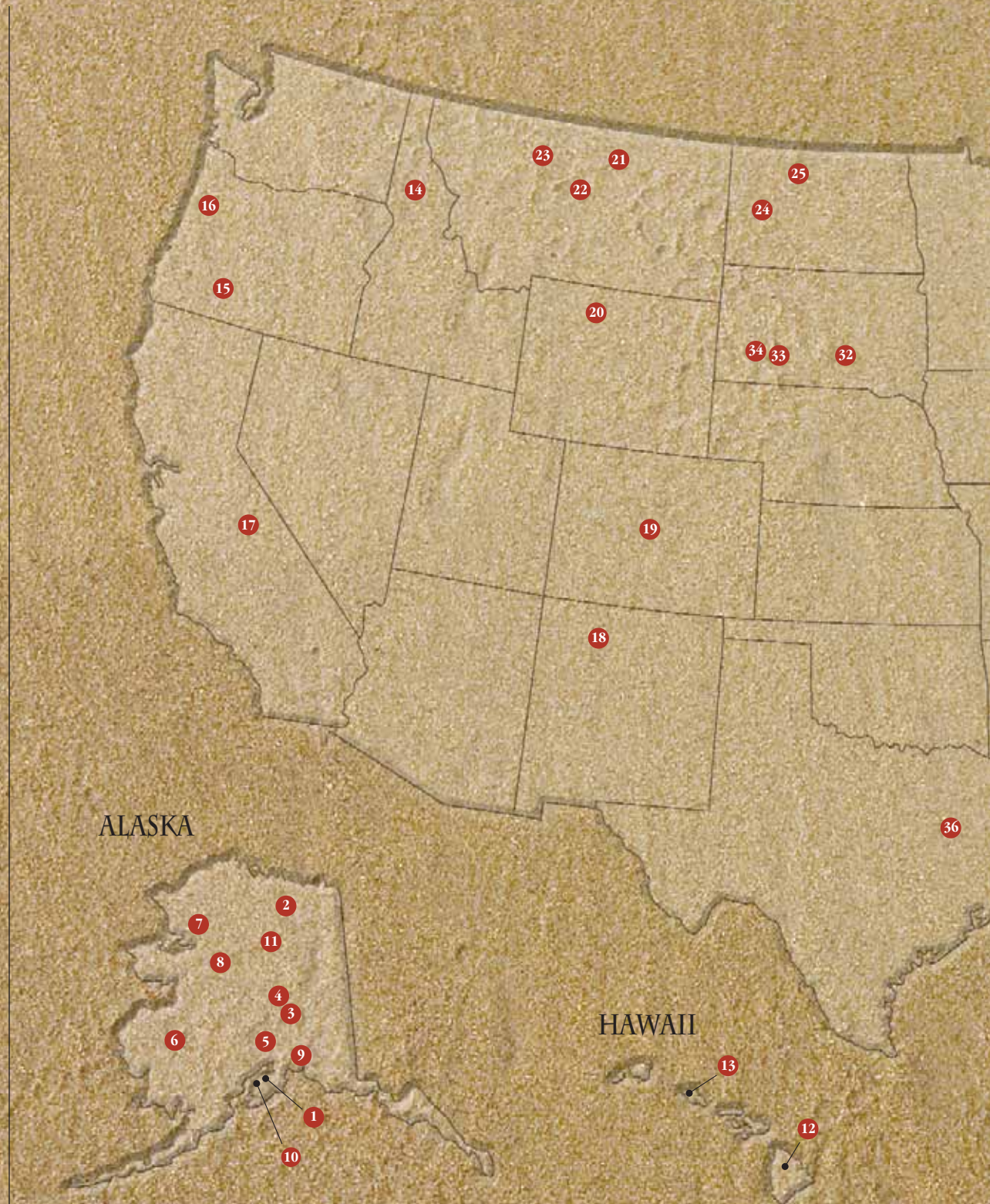
sustenance and the basis of their traditional way of life. In many Native villages fresh meat, fish and produce are unavailable except through the subsistence harvest. Annually, subsistence harvest amounts to less than 10% of the total take of fish and game.

As important as Native hunting and fishing rights are to Alaska Natives' physical, economic, traditional, and cultural existence, the State of Alaska has been and continues to be reluctant to recognize the importance of the subsistence way of life. The State views subsistence as nothing more than a taking of a natural resource, and as something that all citizens of the state should be entitled to engage in on an equal opportunity basis with little distinction between commercial, sport and trophy hunting, and subsistence needs.





MAJOR ACTIVITIES - 2004 - CASE MAP



UNITED STATES OF AMERICA



- 1 Kenaitze Indian Tribe - Subsistence (Alaska)
- 2 Gwich'in Steering Committee - Environmental/Subsistence (Alaska)
- 3 Alaska Inter-Tribal Council/Native Village of Akiak - Equal Protection (Alaska)
- 4 Native Village of Alakayak - Language Initiative (Alaska)
- 5 NARF ANCHORAGE OFFICE
- 6 Native Village of Tuluksak - Trust Lands (Alaska)
- 7 Native Village of Kiana - Education (Alaska)
- 8 Native Village of Nulato - Education (Alaska)
- 9 Native Village of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham - Subsistence & Aboriginal Title (Alaska)
- 10 Ninilchick Tribe - Subsistence (Alaska)
- 11 Native Village of Venetie - Subsistence (Alaska)
- 12 Pele Defense Fund - Aboriginal Rights (Hawaii)
- 13 Rice v. Cayetano - Voting Rights (Hawaii)
- 14 Nez Perce Tribe - Water Rights (Idaho)
- 15 Klamath Tribes - Water Rights (Oregon)
- 16 *Bonnichsen v. United States* ("Kennewick Man case") - Repatriation (Oregon)
- 17 Tule River Tribe - Water (California)
- 18 Jicarilla Apache Tribe - Education (New Mexico)
- 19 NARF HEADQUARTERS BOULDER, COLORADO
- 20 Medicine Wheel National Historic Landmark - Sacred Site (Wyoming)
- 21 Fort Peck Tribes - Education (Montana)
- 22 Chippewa-Cree Tribe - Water & Trust Claim (Montana)
- 23 Little Shell Tribe - Recognition & Trust Claim (Montana)
- 24 Fort Berthold Reservation - Education (North Dakota)
- 25 Turtle Mountain Reservation - Trust Claim (North Dakota)
- 26 NARF WASHINGTON, D.C. OFFICE
- 27 IIM Case & Tribal Supreme Court Project (Washington, D.C.)
- 28 Northern Lakes Pottawatomi Nation - Land Claim (Canada)
- 29 Mashpee Wampanoag Tribe - Recognition (Massachusetts)
- 30 Shinnecock Tribe - Recognition (New York)
- 31 Pamunkey Tribe - Recognition (Virginia)
- 32 Lower Brule Sioux Tribe - Trust Land (South Dakota)
- 33 Rosebud Sioux Tribe - Education & Cultural Property Rights (South Dakota)
- 34 Oglala Sioux Tribe - Environmental (South Dakota)
- 35 United Houma Nation - Recognition (Louisiana)
- 36 Alabama-Coushatta Tribe - Land Claim (Texas)





NARF represents the Alaska Native Villages of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham seeking to establish nonexclusive aboriginal hunting and fishing rights to their traditional-use areas on the Outer Continental Shelf (OCS) in the Gulf of Alaska. The issue presented is whether the Tribes may possess non-exclusive aboriginal hunting and fishing rights to waters on the OCS. The lawsuit challenges the Department of Commerce's Individual Fishing Quota (IFQ) regulations for halibut and sable fish on the ground that they prohibit tribal members from fishing within their traditional fishing grounds without IFQ's. In 1998, the Ninth Circuit Court of Appeals ruled that claims for aboriginal title, including exclusive hunting and fishing rights, on the Outer Continental Shelf were barred by the federal paramouncy doctrine. NARF argued that the paramouncy doctrine did not extinguish aboriginal title to the seabed and waters off Alaska because aboriginal title does not interfere with the federal government's ability to protect the nation or to regulate international trade. The Court, however, expressly reserved the question whether Native tribes might hold non-exclusive hunting and fishing rights.



The question of whether the Villages have nonexclusive aboriginal fishing rights was remanded for determination by the District Court, which ruled against the Villages in 2002. An appeal was filed by NARF to the Ninth Circuit Court of Appeals and oral argument was held in 2003. In January 2004, the Ninth Circuit ordered briefing on whether the case should be heard initially en banc, and in April 2004, the court issued an order for a hearing en banc to take place in San Francisco in June 2004. In July 2004, the Ninth Circuit vacated the decision of the District Court and remanded for determination of whether the tribes can establish aboriginal rights in the traditional-use areas. In August 2004, the District Court ordered the parties to submit their views "as to how the court should proceed." NARF submitted a report on behalf of the Villages requesting additional briefing on aboriginal use, to which the District Court agreed

in September 2004. Motions for summary judgment were submitted in the case in November 2004.

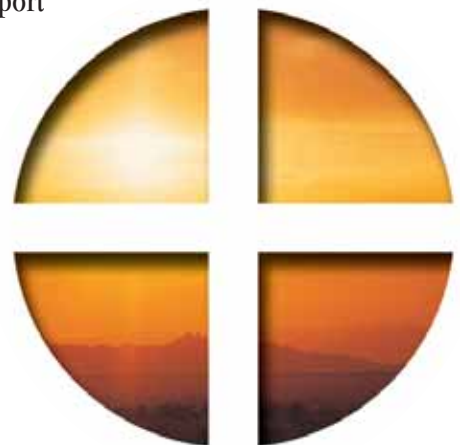
NARF is representing the Native Village of Venetie Tribal Government, the Ninilchik Tribal Government, and individuals as proposed interveners in a case that was initially brought by the Safari Club, a sporting club, to challenge regulations promulgated by the Secretaries of Interior and Agriculture implementing the subsistence preference established by the 1980 Alaska National Interest Lands Conservation Act (ANILCA). ANILCA establishes a preference for customary and traditional uses of fish and wildlife by according a priority for the taking of fish and wildlife on federal public lands in Alaska for non-wasteful subsistence uses by rural Alaska residents. The Federal Subsistence Board (FSB) has made over 180 determinations as to which areas or communities of Alaska are rural and which are not, based on the recommendations of ten Regional Advisory Councils (RACs). The customary and traditional use determinations are critically important because eligibility to take a particular resource may then be limited to those residents of rural areas or communities so designated, and all other individuals may be prohibited, in some manner, from taking that resource based on the limitations. The Safari Club challenged the validity of all 180 customary and traditional use determinations under ANILCA, and challenged the composition of RACs as not adequately representing sport, recreational and commercial interests.

NARF sought to intervene in the case on behalf of its clients in order to defend the FSB's subsistence use-determinations for their respective communities and to protect their entitlement to take fish and wildlife on federal public lands in Alaska. NARF also challenged a recent decision

by the FSB to expand RAC membership to include seats for sport, recreational and commercial interests. The court granted the Tribe's motion to intervene in 2003, and in January 2004, issued an order upholding the FSB's customary and



traditional use determinations and enjoining the FSB from implementing its new policy with respect to expanded RAC membership until a proper rule-making procedure is undertaken. The case is currently stayed pending completion of the rule-making process, in which NARF intends to submit comments opposing expansion of RAC membership to accommodate the interests of sport and commercial users.





THE PROMOTION OF HUMAN RIGHTS

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. 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. NARF also works with Tribes to improve education for and ensure the welfare of their children. In the international arena, NARF is active in efforts to negotiate declarations on the rights of indigenous peoples.

Religious Freedom

Because religion is the foundation that holds Native communities and cultures together,



religious freedom is a NARF priority issue. As a result, NARF has utilized its resources to protect First Amendment rights of Native American religious leaders, prisoners, and members of the Native American Church, and to assert tribal rights to repatriate burial remains. Since Native American religious freedom affects basic cultural

survival of Indian tribes, NARF believes that American law and social policy must provide adequate legal protection.

NARF was a leading proponent of the Native American Graves Protection and Repatriation Act (NAGPRA) which was signed into law in 1990. The Act requires federal agencies and private museums that receive federal funding to inventory their collections of Native American human remains and funerary objects, notify the tribe of origin, and return the ancestral remains and funerary objects upon request to the tribe. It makes clear that Indian tribes have ownership of human remains and cultural items which are excavated or discovered on federal or tribal land and that they alone have the right to determine disposition of Indian human remains and cultural remains discovered in these areas. The Act prohibits the trafficking of Native American human remains and cultural items where the items are obtained in violation of the Act and requires federal agencies and private museums that receive federal funds to create a summary of sacred objects in their possession. If a tribe can prove a right of possession to these objects then they must be returned upon request of the tribe. NARF continues to provide guidance to tribes that are asserting NAGPRA claims.

The Native American Rights Fund represented the National Congress of American Indians (NCAI) as an amicus in the case of *Bonnichsen v. United States*, sometimes referred to as the “Kennewick Man case.” The case arose from the discovery of 9000 year old human remains along the Columbia River. Several northwest tribes collectively filed a claim for possession of the remains with the Department of Interior (DOI) under NAGPRA. The Tribes sought to repatriate the remains in accordance with tribal religious traditions.

Several scientists (*i.e.*, anthropologists, archeologists, and museumologists) petitioned DOI for permission to conduct extensive studies of the remains before reburial by the Tribes. DOI denied the scientists' petition, but in 2002, the U.S. District Court for the District of Oregon issued a ruling requiring the DOI to transfer the remains to the scientists for study. The Tribes appealed, asserting that this far-reaching decision removed any barriers that would prevent scientists from demanding access to all Native American human remains for their research and study, regardless of whether the remains were 20 or 20,000 years old. The Ninth Circuit Court of Appeals issued an order staying the District Court's ruling pending resolution of the appeal. NARF filed an amicus brief on behalf of the Association on American Indian Affairs and the Morning Star Institute in 2003, but the Ninth Circuit unfortunately affirmed the District Court ruling in February 2004. Supreme Court review was not sought in the case, effectively ending the dispute over the Kennewick Man remains. NARF has now turned its attention to securing a legislative remedy.

In July 2004, NARF offered testimony before the Senate Committee on Indian Affairs at an oversight hearing on this matter. NARF advised the Committee of the need for certain amendments to NAGPRA made necessary by the Ninth Circuit's decision in *Bonnicksen*. NARF also reminded the Committee of the longstanding need to enact enforceable legislation to protect sacred sites and offered recommendations. A follow-up meeting on these recommendations with Committee staff was held in September 2004.

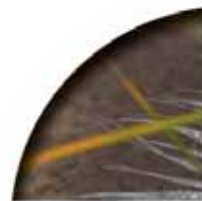
In addition to NAGPRA, NARF also played a key role in the 1994 enactment of Public Law 103-344, which exempts the religious use of peyote by

Indians in bona fide traditional ceremonies from controlled substance laws of the federal and state governments. It also prohibits discrimination against Indians for such religious use of peyote, including the denial of otherwise applicable



benefits under public assistance programs. The bill closed the door to governmental prohibition of sacramental use of peyote by Indians and effectively reversed a 1990 United States Supreme Court decision in *Smith v. Oregon* that denied First Amendment protection to the Native American Church.

NARF is representing the Native American Church of North America in the case *O Centro Espirita Beneficente Uniao Do Vegetal (UDV-USA) v. Ashcroft*. The UDV is a Christian religious organization duly formed under the laws of Brazil, with its headquarters in Brasilia, Brazil. The UDV-USA is the United States branch of the UDV whose principal offices are in New Mexico. The UDV claims that the federal government is violating its constitutional right of equal protection by permitting Native American





Church members to possess and use peyote for religious purposes while denying them the religious possession and use of ayahuasca by UDV members.

NARF and the Church assisted the United States Department of Justice in defending current federal law which protects the religious use of peyote by Indian Church members. In 2002, the Federal District Court in New Mexico rejected the UDV's equal protection argument, but accepted its argument that it was protected under the Religious Freedom and Restoration Act (RFRA). The NAC took no position on the UDV's RFRA claims against the United States. The government appealed to the Tenth Circuit Court of Appeals and the Tenth Circuit affirmed in 2003 in favor of UDV's RFRA claim, but also rejected the UDV's equal protection claims that threatened the NAC's special status under federal law. The government filed a petition for reconsideration and on November 12, 2004, the Tenth Circuit Court of Appeals en banc ruled in favor of the UDV. The government has now requested review by the United States Supreme Court.

In *Wyoming Sawmills v. United States and Medicine Wheel Coalition*, a private timber

company in Wyoming challenged the legality of the United States Forest Service's Historic Preservation Plan (HPP) for managing the Medicine Wheel National Historic Landmark on constitutional (establishment of religion) and other grounds. The Medicine Wheel was designated a National Historic Landmark in 1969, and is considered sacred to Native American tribes indigenous to the area. The Forest Service HPP recognizes explicitly that the cultural and historic importance of the Medicine Wheel is an element for many Native Americans' religious traditions: "The purpose of this HPP is to ensure that the Medicine Wheel and Medicine Mountain are managed in a manner that protects the integrity of the site as a sacred site and a nationally important traditional cultural property."

NARF filed an *amicus curiae* brief on behalf of the National Congress of American Indians urging the United States District Court for the District of Wyoming to uphold the Plan on statutory and constitutional grounds, which it did in a decision in 2002. The District Court did not address the constitutionality of the HPP because it found that Wyoming Sawmills lacked standing to raise an Establishment Clause claim. Wyoming Sawmills

appealed this decision to the federal appeals court. In September 2004, the United States Court of Appeals for the Tenth Circuit affirmed the District Court ruling.

Cultural Rights

While cultural rights are fundamental for every human being, they particularly important for Native Americans. In the midst of the economic, political, social and other challenges they continue to face, traditional culture is a source of pride and strength for Native Americans.

In 1998, an “English Only” initiative was passed in the State of Alaska. The initiative was written in very broad terms and will have a major impact upon Alaska Natives. Unlike other official English measures that are primarily symbolic, this measure prohibits the use of any language except English in all governmental functions and actions. In response to the initiative, NARF filed suit on behalf of twenty-seven Native individuals and organizations, challenging the constitutionality of the English Only law. In 1999, the Alaska Superior Court granted a preliminary injunction that enjoined the State of Alaska from the operation and enforcement of Alaska’s Official English Initiative. Alaskans for a Common Language sought and were allowed to intervene in 2000. In 2002 the Alaska Superior Court struck down the English-only law as a violation of the free speech clause of the Alaska Constitution. The State of Alaska chose not to appeal, but Alaskans for a Common language filed an appeal to the Alaska Supreme Court. Oral argument was heard in 2003 and NARF is now awaiting a decision.

NARF recently filed an amicus brief in the case of *Harjo et al v. Washington Redskin Football* on behalf of the National Congress of American Indians, National Indian Educational Association, National Indian Youth Council, and the Tulsa

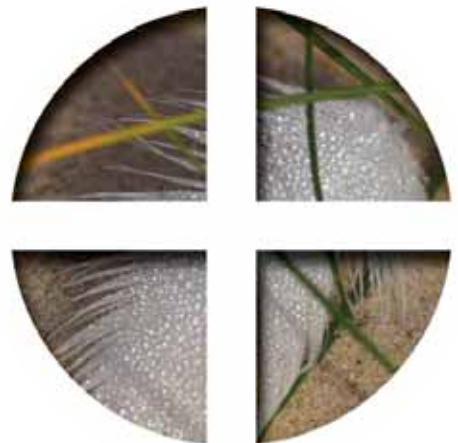
Indian Coalition Against Racism in Sports. The brief argues that the federal trademark for the football team should be cancelled because the “Redskin” mark is racially disparaging in violation of federal trademark law. Oral argument was held



before the U.S. Court of Appeals for the District of Columbia in November 2004.

NARF recently conducted an extensive analysis of intellectual property laws and policies and their current impact on Native American intellectual property and cultural property issues. The analysis will form the basis of an action plan that will be presented to the National Congress of American Indians. This review constitutes phase I of a proposed two phase project to initiate concrete efforts to improve the legal protection of indigenous intellectual and cultural property rights.

NARF also assisted the Rosebud Sioux Tribe of South Dakota in developing a Cultural Resources Management Code by which the Tribe can regulate its cultural and intellectual property on its reservation.





In 1978, the United States Congress enacted the Indian Child Welfare Act (ICWA). The Act states as its purpose: “The Congress hereby declares that it is the policy of this Nation to protect the best interest of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which



will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family programs.” The Act established substantive, procedural and jurisdictional protections for tribes and Indian families in cases of adoption, pre-adoptive placement, foster care placement, and termination of parental rights proceedings involving Indian children. Because these protections are challenged or may conflict with state law, policy or

practice, there have been several hundred state and federal court decisions interpreting the Act. Congress has also attempted to amend the Act to resolve concerns related to the enforcement of the Act.

Tribal courts, already understaffed, underfunded, and lacking legal resources, are fighting an uphill battle to fully implement the ICWA. A threshold obstacle to the success and implementation of the ICWA is the fact that many tribes lack knowledge of their rights under the ICWA. Tribes themselves have acknowledged that there is an immediate need for resources to enhance tribal court operations in order to empower them to utilize ICWA. Indian tribes, through their tribal courts, attorneys, and social workers, often respond to the receipt of statutory notice under the ICWA by intervening in state court proceedings to protect the interest of their children of the tribe. Tribes have identified that tribal courts and tribal officials need resources and assistance in intervening in such state court proceedings and exercising their federal rights under the ICWA, such as moving the state court to transfer jurisdiction of the state court proceeding to tribal court. In addition, tribal court personnel and social workers currently lack the necessary knowledge and materials to fully exercise their rights under the ICWA.

To assist with this critical issue, the Administration for Native Americans (HHS-ACF) has provided funding to NARF to assist tribes in resolving these issues through the development of an ICWA Resource Guide that will address these issues and benefit tribal courts and tribal social services programs.

Education

In 2002, NARF received a generous three-year grant of \$1.6 million from the Kellogg Foundation.

The purpose of the grant is to help tribes in improving the learning outcomes for Native American children in schools by utilizing a collaborative approach in which tribes work closely with school officials to identify obstacles to improvement in education, to identify and implement potential solutions, and to establish and implement a tribal system of gathering and updating basic data measuring achievement of tribal students.

NARF is currently working closely with six tribes under the Kellogg grant – the Assiniboine and Sioux Tribe of the Fort Peck Reservation in Montana, the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota, the Jicarilla Apache Nation in New Mexico, the Native Villages of Kiana and Nulato in Alaska, and the Rosebud Sioux Tribe in South Dakota. NARF is providing legal and technical assistance to help these tribes establish or reorganize tribal departments of education. An important part of this effort involves the development and implementation of legal instruments such as tribal education codes and intergovernmental agreements that formalize collaborative activities which increase the role of tribal governments in the schools that educate Indian children. Another important part of the project is to assist tribes in developing systems and processes by which basic data concerning the educational status of tribal children will be collected, tracked on a regular basis, and used to measure the progress of the collaborative activities. In addition, NARF is assisting tribes in acting as catalysts to bring together tribal, state, and federal agencies and resources to work in concert to improve the learning experience of Indian students.

In October 2004, following the second full year of the three-year project, NARF education attorneys worked with an evaluation consultant to

prepare the second annual evaluation of the Project's progress. The Project evaluation concluded that all six tribes had accomplished the majority of the objectives for the second year and



put them in a position of moving forward with the project more expeditiously in the third year.

In addition to the Kellogg grant, U.S. Department of Education Office of Indian Education funding has enabled NARF to establish a new national organization for tribal education departments and to develop the new organization's web site. With the help of Education Directors of the Suquamish Tribe, the Cheyenne-Arapaho Tribes, and the Confederated Salish and Kootenai Tribes, the Tribal Education Departments National Assembly (TEDNA) was formed and incorporated in 2003. The purpose of the TEDNA is to bring together tribal education directors, staff and policy makers so that they can share information, strategize and problem solve on common issues of education governance, policy and advocacy at the tribal, regional and national levels.





Through the efforts of NARF, TEDNA and other Native organizations, President George W. Bush signed an Executive Order on American Indian and Alaska Native Education on April 30, 2004. The new Executive Order clarifies that the mandates of the No Child Left Behind Act of 2001 shall be implemented in a manner consistent with tribal traditions, cultures, and languages. NARF helped the National Congress of American Indians (NCAI) host a tribal consultation on implementing the Executive Order at NCAI's Annual Session in October 2004. NARF is also helping NCAI plan for the National Indian Education Conference called for by the Executive Order and tentatively scheduled for March 2005.

International Recognition of Indigenous Rights

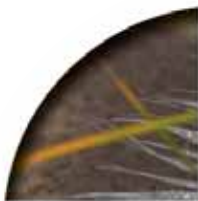
At the direction of the NARF Board of Directors, NARF recently entered into the international arena to protect indigenous rights. The impetus for this decision was the lack of success in recent years in domestic fora, especially the U.S. Supreme Court. Because NARF is a client-based institution, we entered into an attorney-client

relationship with NCAI for the purpose of participating in the development of internationally-recognized baseline standards on indigenous peoples rights. To date, this work has focused on two Draft Declarations and the World Conference Against Racism. One Draft Declaration on the Rights of Indigenous Peoples is being considered by the Organization of American States (OAS). This document will be invaluable in establishing baseline rights for indigenous peoples in the Western Hemisphere. The other Draft

Declaration is being considered by the United Nations (UN), and will be world-wide in scope. NARF has obtained consultative status at the UN and is also accredited at the OAS. NARF was also accredited for and participated in the 2001 World Conference Against Racism. Over the past several years, NARF has participated on behalf of NCAI in numerous drafting sessions of the OAS and UN Working Group on the Draft Declaration.

While the Draft Declarations cover a broad range of rights, of central importance will be solidification of the status of indigenous peoples as "Peoples" possessing group rights, including the right to self-determination under international law. Through a relentless campaign by a coalition of tribes and Indian rights organizations including NCAI, NARF and the Indian Law Resource Center, the United States announced in 2001 that it was adopting a more forward-looking policy on rights for "Indigenous Peoples." The announcement occurred at the World Conference Against Racism, and resulted in the issuance of a policy statement by the National Security Council as President Clinton left office.

The new policy does three things which indicate movement by the United States: (1) it acknowledges a right to "self-determination" (albeit only an 'internal' right), (2) it accepts that certain rights of "indigenous peoples" are "group rights", and (3) it accepts the use of the term "Peoples" (albeit in the limited context of internal self-determination). While far from perfect, this policy shift is a step in the right direction and will set the necessary foundation to begin a more constructive dialogue with the United States and other states during negotiations surrounding the UN and OAS Declarations on the Rights of Indigenous Peoples.



THE ACCOUNTABILITY OF GOVERNMENTS

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 government accountability to Native Americans.

In 1996, NARF and other attorneys filed a class action lawsuit, *Cobell v. Babbitt* (now *Cobell v. Norton*), against the federal government on behalf of 500,000 Individual Indian Money (IIM) account holders seeking redress for government mismanagement of trust accounts through which billions of dollars of Indian money has flowed over the years. The suit charges the federal government with illegal conduct in what is viewed as the largest and most shameful financial scandal ever involving the United States government. Commonly referred to as the “Cobell case,” this litigation is intended to force the United States as trustee to: (1) perform a complete, accurate and reliable accounting of all trust assets held to the benefit of individual Indian trust beneficiaries; (2) properly restate the trust fund accounts in conformity with that accounting; and (3) create an accounting and trust management system that is reliable and will safely and soundly manage the trust funds of individual Indians in the future.

In 2001, the Court of Appeals for the District of Columbia upheld a landmark 1999 Federal District Court decision holding the United States in breach of trust and requiring the government to provide an accounting to the IIM beneficiaries. These decisions constitute two of the most important opinions ever issued on the trust responsibilities of the government to Native Americans.

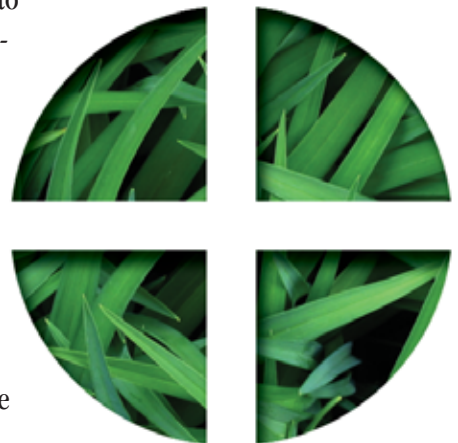
Later in 2001, the District Court’s special master finalized a report on the Interior Department’s

information technology (IT) systems and concluded that Interior’s computer systems were wholly lacking in security and did not effectively prevent intrusion by computer hackers. As a result of these findings and Interior’s recognition



of significant deficiencies in security, the District Court ordered that such IT systems giving access to individual Indian trust data be disconnected from the Internet. Nevertheless, in 2003 the District Court entered another injunction ordering disconnection because Interior had still failed to properly address the deficiencies. In response, Interior asserted that they had fixed the security problems, but refused to certify and verify such amelioration of the deficiencies. Based on recent reports on the continuing problems with these systems – including a government report that gave Interior an “F” for IT security – the District Court entered another injunction in March 2004 requiring immediate disconnection of the IT systems. The government appealed.

On the central issues in the case – the accounting and trust management reform –





the District Court held a two month trial in 2003 and issued a structural injunction establishing the specific affirmative steps and appropriate timetable for Interior to meet in performing the historical accounting and trust reform. The government also appealed the structural injunction.

In December 2004, the Court of Appeals for the District of Columbia decided both the IT security appeal and the structural injunction appeal. The Court of Appeals vacated the IT injunction on narrow procedural grounds, holding that the District Court should have had yet another evidentiary hearing prior to issuance of the injunction. Importantly, the Court of Appeals wholly repudiated the government's arguments that the District Court did not have jurisdiction over IT security matters and that the District Court could not take the necessary steps to ensure that individual Indian trust assets and information were not corrupted.

Similarly, the Court of Appeals vacated the structural injunction, in part, but the Court once again reaffirmed the broad jurisdiction and authority of the District Court to remedy the century old trust mismanagement. Further, the decision did not reach the merits of the historical accounting part of the structural injunction because Congress had temporarily delayed its effect in a legislative act. The Court of Appeals held that the Congressional action was constitutional only because of its temporary nature. In an unexpected but welcome holding, the Court of Appeals also made clear that interest would be available to the individual Indian account holders for monies held in trust. The government has always argued that they would not have to pay interest on whatever corrections are made in the accounts.

Taken together, the decisions set a proper foundation for continued enforcement of the

rights of the individual Indian trust beneficiaries and circumscribe the limits of Congressional interference in this case. At the same time, the Court of Appeals determined that interest would be due to the Indian beneficiaries for any correction of accounts.

While NARF is strongly committed to seeing this important litigation through, the parties are exploring avenues to mediate the *Cobell* case at the invitation and urging of the Chairmen and Ranking members of both the House Resources Committee and the Senate Committee on Indian Affairs. In late March 2004, the parties agreed to mediators – specifically, the Honorable Charles B. Renfrew and John Bickerman, Esq. While NARF will participate in the mediation process in the hope that it will lead to a fair resolution, litigation will continue.

In a Court of Federal Claims related action, NARF represents the Turtle Mountain Band of Chippewa in North Dakota, the Chippewa-Cree of the Rocky Boys Reservation in Montana and the Little Shell Tribe of Chippewa in Montana against the Bureau of Indian Affairs for mismanagement of the Pembina Judgment Fund. The tribes allege misaccounting, misinvestment, and mismanagement by the federal government of their \$50 million tribal trust fund since the inception of the fund in 1964. The parties in this case continue to explore a negotiated settlement of the Tribes' claims. After several years of negotiations, the parties recently reached agreement on 99% of \$67 million worth of non-investment transactions in the fund from 1964 through 1992. The parties are proceeding to review the Tribes' investment claims for that same time period. At the same time, the parties have asked the court to clarify the threshold issue of who are the proper plaintiffs in this action involving a trust fund with multiple beneficiaries. In 2003, the White Earth

Band of Minnesota Chippewa moved to be named a party plaintiff in this action. If that motion is granted, NARF will represent White Earth along with the other three Pembina Chippewa Tribes. In July 2004, individuals from the tribal member and non-member groups of beneficiaries of the fund also sought the court's approval to be named class representatives and be represented by NARF. The government will have an opportunity to respond before the court rules on these motions.

In another related matter, NARF filed suit in the Court of Federal Claims against the government seeking damages for breach of trust on behalf of the Chippewa Cree Tribe of the Rocky Boys Reservation in Montana. The Tribe alleges misaccounting and misinvestment of the Tribe's trust funds based on oil and gas, timber, and grazing resources. NARF is seeking an accounting of certain Tribal accounts and has asked the Court to assign the case to the judge in the IIM case. At this time, the litigation is on hold to allow the parties to explore a negotiated settlement of the Tribe's claims.

On behalf of the Alaska Inter-Tribal Council, ten Native villages and seven Native individuals, NARF filed a civil lawsuit in 1999 in the Superior Court for the State of Alaska seeking declaratory and injunctive relief against the State of Alaska for failure to provide minimally adequate police protection to off-road Native villages and for discriminating against them in the provision of State law enforcement services. In *Alaska Inter-Tribal Council v. Alaska*, NARF alleged that the actions of the State in unlawfully prohibiting Native villages from keeping the peace in their traditional ways, while failing to provide them even minimally-adequate police protection under the State law enforcement system, violated the Villages' rights to Due Process of law and basic law enforcement

protection guaranteed by the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution. NARF also alleged that the State's discriminatory treatment of Native villages in the provision of police protection is based on race and therefore violates the Villages' rights to Equal Protection of the law under the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution. An adverse decision was rendered by the Superior Court in 2002 in favor of the State of Alaska. NARF appealed this decision to the Alaska Supreme Court and argument was heard in 2003. A decision is expected shortly.

In 1993, the United States Congress enacted the Hawaiian Apology Joint Resolution, Public Law 103-150, admitting that the role of the United States military in removing the Hawaiian monarch, Queen Lili'u'okalani, from power and installing the provisional government was illegal under American and international law. Prior to the overthrow, Hawaii was regarded internationally as one of the family of nations which had concluded numerous treaties of trade, commerce and friendship with several countries including the United States. The Apology was a watershed event in American history, seen by many Hawaiian people as the first step in making reparations for the illegal overthrow. The overthrow has been viewed by Native Hawaiians as the ultimate atrocity committed against their sovereign nation, the culmination of the enormous political, social, cultural, economic and spiritual changes wrought on the Hawaiian people since the 1778 arrival of Captain Cook.





The Apology has fueled the passions of the Hawaiian people involved in the sovereignty movement. The United States' admission that the overthrow was illegal, immoral, and unjust is seen as but a first step in the long process of establishing "ho'opono'ono" – the Hawaiian traditional system for "making things right."

Rice v. Cayetano involved a challenge by a non-Native to the voting restriction in the state constitution allowing only Native Hawaiians to vote for trustees of the Office of Hawaiian Affairs (OHA). The OHA administers income received from certain trust lands for the benefit of Native Hawaiians. Rice argued that the restriction violates the Fourteenth and Fifteenth Amendments to the U.S. Constitution. The Ninth Circuit Court of Appeals upheld the voting restriction, but the United States Supreme Court reviewed that decision. One of Rice's arguments is that since there are no tribes in Hawaii, the voting restriction is purely race-based and subject to strict scrutiny. The Supreme Court case of *Morton v. Mancari* held that legislation as to Indian tribes is based on the political relationship between tribes and the United States and need only be rationally

related to Congress' unique obligation toward Indian tribes. The question was whether the same standard applies to legislation passed for the benefit of Native Hawaiians. NARF filed an *amicus curiae* brief in support of Native Hawaiians on behalf of the National Congress of American Indians in the Supreme Court. However, in 2000, the Supreme Court ruled

against the Native Hawaiians declaring that the state restriction on voting for OHA trustees to Hawaiians was based on race and, therefore,

violated the Fifteenth Amendment which prohibits denying anyone the right to vote based on race.

The aftermath of the *Rice* decision, while not technically deciding the equal protection issue, sent signals to opponents of state Hawaiian programs that it was open season on what some see as "race-based special benefits." Over the past four years a flurry of litigation has ensued. NARF continues to monitor numerous challenges by non-Native Hawaiians to programs and legislation that have been enacted to benefit to Native Hawaiians.

For many years, the Native American Rights Fund has co-counseled with the Native Hawaiian Legal Corporation ("NHL") and private counsel in representing the Pele Defense Fund in efforts to prevent large-scale geothermal development in the Wao Kele'O Puna rainforest on the Big Island, and to regain Native Hawaiian access rights to Wao Kele lands. These efforts culminated with the entry in August 2002 of a stipulated judgment and order by the state court in Hilo, Hawaii recognizing the rights of Native Hawaiians to hunt, gather, and worship on the Wao Kele lands – as part of the bundle of "traditional and customary rights" protected, preserved and enforced under Article XII, Section 7 of the Hawaii Constitution. Efforts are now underway for the acquisition of the Wao Kele'O Puna rainforest lands. Discussions continue regarding the sale of over 25,000 acres of rainforest to a non-profit land trust, thereby assuring perpetual access rights for Native Hawaiians. With NARF's assistance, the Trust for Public Lands (Hawaii Office) recently secured an appraisal of the property and efforts are now underway to purchase the land.



THE DEVELOPMENT OF INDIAN LAW

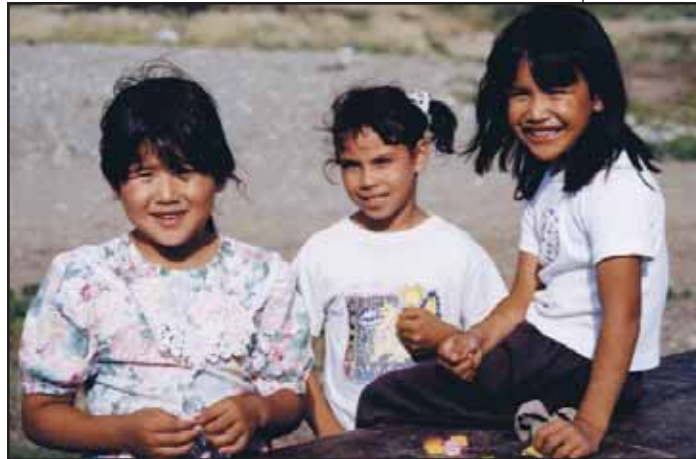
The systematic development of Indian law is essential for the continued protection of Indian rights. This process involves distributing Indian law materials to, and communicating with, those groups and individuals working on behalf of Indian people. NARF has two ongoing projects which are aimed at achieving this goal, the National Indian Law Library and the Indian Law Support Center.

The National Indian Law Library

The National Indian Law Library (NILL) is a national public law library devoted to American Indian law which serves both the Native American Rights Fund (NARF) and the public. The mission of NILL is to develop and make accessible a unique and valuable collection of Indian law resources and to assist people with their research needs. Special emphasis is placed on helping individuals and organizations working on behalf of Native Americans who have the greatest potential to positively influence their lives. As the only law library in the United States devoted solely to Indian law, NILL fills the needs of the often-forgotten areas of the nation known as Indian country. NILL handles close to 1,800 research and information requests per year and serves a wide variety of public patrons including attorneys, tribal governments, tribal organizations, researchers, students, prisoners, the media, and the general public.

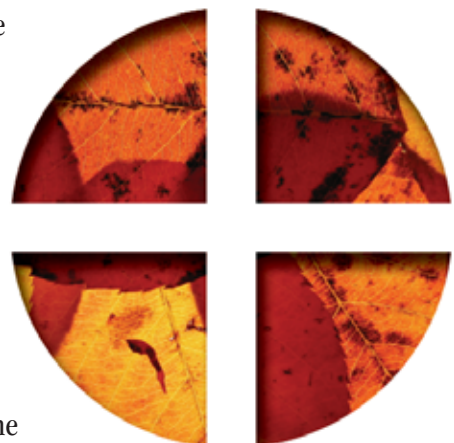
Since 1972, NILL has been collecting a wealth of materials relating to federal Indian law and tribal law that include such tribal self-governance materials as constitutions, codes and ordinances, legal pleadings from major Native American law cases, law review articles, handbooks, conference materials, and other information. Now the general public can access bibliographic descriptions of these materials from the electronic library catalog on the NILL website.

(See: <http://nillcat.narf.org/>) This searchable catalog provides free access to current descriptions of more than 10,000 holdings in the library collection. Once relevant documents are located, patrons can review materials at the Boulder,



Colorado library, request copies at a nominal fee, or borrow materials through interlibrary loan. In addition, the library web pages provide research links, full-text copies of tribal codes and constitutions, and the Indian Law Bulletin current awareness service.

A longstanding goal has been to make NILL's unique collection more accessible to the public. In January 2005, the library will make a major step towards achieving this goal by joining a world-wide bibliographic utility which provides access to library holdings for thousands of libraries. The library will also continue to work toward providing access to tribal law through its leadership role in the Tribal Law Collaborative Collection Development Project of the American Association of Law Libraries Native Peoples Law Caucus.





Indian Law Support Center

Since 1972, NARF's Indian Law Support Center (ILSC) has served as a national support center on Indian law and policy for the national Indian legal services community and the 32 basic field programs serving Native American clients. In its first two decades of operation, the ILSC answered hundreds of requests for assistance in all areas of Indian law annually. Because of the unique and complex nature of Indian law and the geographic remoteness of Indian legal services programs, complicated by the difficulty of attracting and maintaining experienced staff, ILSC has performed a vital and cost-effective support function to Indian programs and other legal services providers across the country for many years.

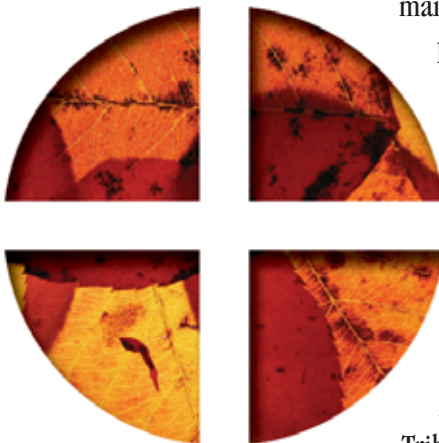
Due to the loss of Legal Services Corporation funding in 1995, ILSC has been unable to carry on at traditional levels its program of working with Indian legal services lawyers nationwide through advice, research, recent Indian legal information, litigation and training. However, ILSC has been able to continue some assistance to Indian legal services programs throughout the year. ILSC continues to send out regular mail-outs to Indian legal services programs, handles requests for assistance, sponsors an annual training conference on tribal courts, and works with the National Association of Indian Legal Services (NAILS) to secure a more stable funding base from the Congress. ILSC was involved in the passage of the Indian Tribal Justice and Legal Assistance Act of 2000 which President Clinton signed into law. The Act authorizes the Department of Justice to provide supplemental

funding to Indian legal services programs for their representation of Indian people and tribes which fall below federal poverty guidelines. In 2003, ILSC worked with NAILS to secure the first appropriation for the Act, \$2 million.

In June 2004, the Department of Justice awarded a grant of \$1,987,000 to NARF to fund Indian legal services programs throughout Indian country. The grant will be utilized to support thirty Indian legal services programs for civil and criminal representation in tribal courts and to develop tribal court projects on a host of areas in justice administration. Funding will also be provided for training and technical assistance to train legal services personnel and the tribal court personnel with whom they will be working with. A kick-off meeting for the grant was held in July 2004.

Other Activities

In addition to its major projects, NARF continued its participation in numerous conferences and meetings of Indian and non-Indian organizations in order to share its knowledge and expertise in Indian law. During the past fiscal year, NARF attorneys and staff served in formal or informal speaking and leadership capacities at numerous Indian and Indian-related conferences and meetings such as the National Congress of American Indians Executive Council, Midyear and Annual Conventions and the Federal Bar Association's Indian Law Conference. NARF remains firmly committed to continuing its effort to share the legal expertise which it possesses with these groups and individuals working in support of Indian rights and to foster the recognition of Indian rights in mainstream society.

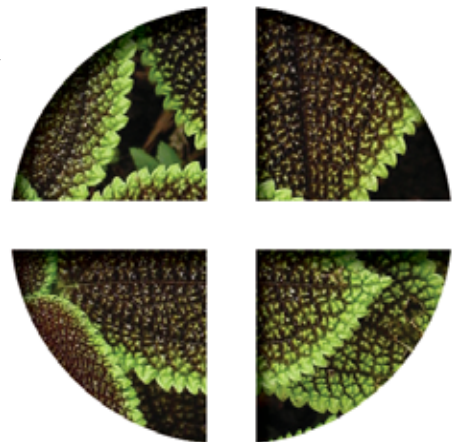


2004 FINANCIAL REPORT

Based on our *audited* financial statements for the fiscal year ending September 30, 2004, the Native American Rights Fund reports total unrestricted revenues of \$7,451,739 against total expenditures of \$7,822,130. Total net assets at the end of the year came to \$6,078,643. Due to presentation requirements of the audited financial statements in terms of recognizing the *timing* of certain revenues, they do not reflect the fact that, based on NARF's internal reporting, operating expenses and other cash outlays actually exceeded revenue by \$182,385, causing a decrease to NARF's reserve fund. NARF received the final

installment of a major bequest in fiscal year 2003, which accounts for the main difference between fiscal years 2004 and 2003. NARF received additional funding of federal awards and foundation grants in fiscal year 2004.

Revenue and Expense comparisons between fiscal year 2004 and fiscal year 2003 are shown below.



SUPPORT AND REVENUE COMPARISON

	2004		2003	
	dollars	percents	dollars	percents
Contributions	\$ 2,622,033	35.2%	\$ 3,780,856	47.9%
Federal Awards	1,657,712	22.2%	1,147,310	14.5%
Foundation Grants	1,557,570	20.9%	1,342,339	17.0%
Legal Fees	785,570	10.5%	752,989	9.5%
Other	26,582	0.4%	15,293	0.2%
Return on Investments	802,272	10.8%	857,027	10.9%
TOTALS	\$ 7,451,739	100%	\$ 7,895,814	100%

EXPENSE COMPARISON

	2004		2003	
	dollars	percents	dollars	percents
Litigation and Client Services	\$ 5,208,975	66.6%	\$ 4,734,537	59.6%
National Indian Law Library	340,277	4.4%	477,087	6.0%
Total Program Services	5,549,252	71.0%	5,211,624	65.6%
Management and General	902,913	11.5%	993,953	12.5%
Fund Raising	1,369,965	17.5%	1,736,627	21.9%
Total Support Services	2,272,878	29.0%	2,730,580	34.4%
TOTALS	\$ 7,822,130	100%	\$ 7,942,204	100%

Note: This summary of financial information has been extracted from NARF's audited financial statements on which the accounting firm of JDS Professional Group expressed an unqualified opinion. Complete audited financials are available, upon request, through our Boulder office or at www.narf.org.



NARF ACKNOWLEDGMENT OF CONTRIBUTIONS:

We thank each and every one of our supporters for their commitment to the goals of NARF. NARF's success could not have been achieved without the generosity of our many donors throughout the nation.

We gratefully acknowledge these gifts received for fiscal year 2004 (October 1, 2003 through September 30, 2004).

Living Waters Endowment

Helen and Sidney Ungar
Memorial Endowment Fund
Edward & Verna Gerbic
Family Foundation
Susan K. Griffiths Memorial Fund
Mary Lou Mosca-Ragona Memorial Fund
Marvin W. Pourier, Sr./Donna M. Deans
Memorial Fund
Kathleen and Ruth Dooley Family Fund
Frank J. McCormick Family Fund
Jerome Davis Living Waters
Endowment Fund
Elwood H. Brotzman Memorial Fund

Foundations, Corporations and Organizations

The Ford Foundation
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Lutheran Community Foundation
Native American Land Group, LLC
North Star Foundation
Open Society Institute
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Quadriga Art, Inc.
R.M.F. Foundation
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Thomas Foundation
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Aon Foundation
Aspect Matching Gift Program
B.D. Matching Gift Program
Bank of America Foundation, Inc.
Charitable Gift Fund
Communicator Inc.
Computer Associates
David & Lucille Packard Foundation
Edison International
Fannie Mae Foundation
Matching Gifts Center
Four Wind's Trading Company
Glaxo Wellcome, Inc.
Gordon and Betty Moore Foundation
Harris & Eliza Kempner Fund
Illinois Tool Works Foundation
J.P. Morgan Charitable Trust
Microsoft Matching Gifts Program

National Grange Mutual
Insurance Company
Pepsico Foundation
Sidney Stern Memorial Trust
Sun Microsystems Foundation
The Eastern Bank Charitable Foundation
The Ford Foundation
The Freddie Mac Foundation
The Washington Post
Verizon Foundation
Vivendi Universal US Holding Co.
World Reach, Inc.
Xcel Energy Foundation

Tribes and Native Organizations

Agua Caliente Band Of Cahuilla Indians
Akiak Native Community IRA
Alaska Rural Partners, Inc.
Aleut Community of St. Paul Island
Chickaloon Village Traditional Council
Colusa Indian Casino & Bingo
Confederated Tribes of the Chehalis
Reservation
Confederated Tribes of the Colville
Reservation
Cow Creek Band Of Umpqua Tribe
Drumbeat Indian Arts, Inc.
Forest County Potawatomi Community
of Wisconsin
Grand Traverse Band of Ottawa and
Chippewa Indians
Kiowa Tribe of Oklahoma
Kodiak Area Native Association
Little Traverse Bay Bands of Odawa
Indians
Louden Tribal Council
Mashantucket Pequot Tribe
Mille Lacs Band Of Ojibwe Indians
Morongo Band Of Mission Indians
Native American Church of
Navajoland Inc.
Native Village of Eyak
Native Village Of Port Lions
Orutsararmuit Native Council
San Manuel Band Of Mission Indians

FISCAL YEAR 2004

Shoonaq' Tribe of Kodiak
Southern Ute Tribe
St. Croix Chippewa Indians of Wisconsin
Tanana Chiefs Conference, Inc.
The Kittamaquundi Community
Tlingit and Haida Indian Tribes of Alaska
Viejas Band of Kumeyaay Indians

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Peta Uha in the Lakota (Sioux) language means firekeeper. One that honors tribal members who made a solemn commitment to ensure that the sacred flame, source of light, heat and energy for his people, always be kept burning. Like the firekeepers of old, members of the Peta Uha Council can demonstrate constancy and vigilance by helping to ensure that the critical work of the Native American Rights Fund continues to move ever forward. For benefits associated with each level of Peta Uha membership, please contact Donald Ragona, 303.447.8760 or e-mail him at petauha@narf.org.

Tsanáhwit Circle

Tsanáhwit is a Nez Perce word meaning equal justice. Tsanáhwit Circle members provide a regular source of income to NARF by pledging and making monthly contributions at any level of your choice. You may sign up to receive monthly pledge reminders in the mail or your credit card may be billed automatically.

Otu'han Gift Membership

Otu'han is the Lakota Sioux word translated as giveaway. Otu'han is a memorial and honoring gift program modeled after the tradition of the Indian giveaway in which items of value are gathered over a long period of time to be given away in honor of birthdays, marriages, anniversaries, and in memory of a departed loved one.

Circle of Life

NARF's Circle of Life are donors who provide a lasting legacy to the Native American Rights Fund by including NARF in estate planning or deferred gifts. The circle is an important symbol to Native Americans representing unity, strength and the eternal continuity of life. These lasting gifts help ensure the future of NARF and our Indian clients nationwide.

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NARF has two established endowments, the 21st Century Endowment and the Living Waters Endowment. The 21st Century Endowment is a permanent fund in which the principal is invested and interest income is used for NARF's

programs. This endowment is designed to provide a permanent, steady income that can support the ever-increasing costs of providing legal representation to our tribal clients.

The Living Waters Endowment directly funds the 21st Century Endowment. It allows donors to honor friends and loved ones by making an endowment gift of \$10,000 or more. By designating a gift to either endowment, you can be sure that your contribution will continue to generate annual funds in perpetuity. Endowment supporters are recognized on a special wall plaque displayed at NARF. Supporters will also receive a memorial piece for their home and be acknowledged in NARF's annual report.

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Currently, more than 30 foundations and corporations nationwide make matching gifts to NARF on a regular basis. Employers match their employees' contributions sometimes doubling or even tripling their donation. Please check with your human resources office and request a matching gift form.

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Sign up for our e-action network by providing NARF with your email address. This is a great way to get periodic case updates, calls-to-action, special events information, invitations and other activities. Your e-mail address is confidential and we will not share it with any outside sources. For further information about any of the programs or services, please contact NARF's Development Department at 303-447-8760. *Thank you.*





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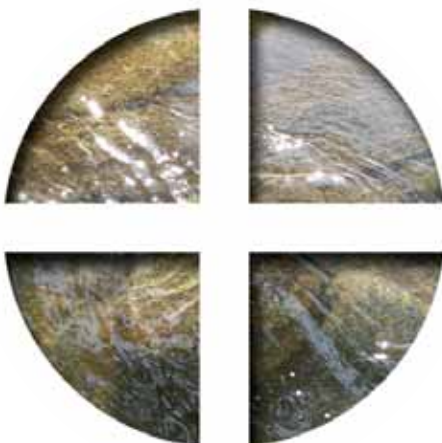
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