



Native American Rights Fund  
*Annual Report 2005*



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In this Annual Report we have chosen to honor our relatives "the animal nations" and in turn we honor the connectedness of all things. The animal nations taught us the lessons of observation and how to live through and by this connectedness. Through these observations we learned how to formulate our relationship with the natural world and the human family. The animal nations taught us these lessons through story and example. We were shown how to respect life and all that it provides for us. NARF thanks you for all that you do to help us ensure that this sacred balance continues.

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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.



## INTRODUCTION

Fiscal year 2005 saw the Native American Rights Fund (NARF), the national Indian legal defense fund, complete its thirty-fifth year of advocacy in Indian country. NARF continued to address the need in Indian country for creative legal assistance to enable Indian tribes, as sovereign governments, to regain control over their resources and their destiny. NARF assisted tribes in protecting human health and environmental integrity for Indian people and on Indian lands; guided tribes in exercising more control over their most precious resource, their children, through improvement of Indian education and tribal societies; helped tribes to develop and improve their infrastructures and provide more responsive governments; and, supported tribes in their unwavering fight to insure their rights to practice their religious beliefs and protect their cultures for generations to come.

NARF's efforts 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 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.

### NARF's Priorities

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 legal rights of Native Americans. The Committee developed five priorities that continue to lead NARF today:

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

Under the priority of the *preservation of tribal existence*, NARF works to construct the foundations that are necessary to empower tribes so that they

can continue to live according to their Native traditions, to enforce their treaty rights, to insure their independence on reservations and to protect their sovereignty.

Throughout the process of European conquest and colonization of North America, Indian tribes experienced a steady diminishment of their land base to a mere 2.3 percent of its original size. Currently, there are approximately 55 million acres of Indian-controlled land in the continental United States and about 44 million acres of Native-owned land in Alaska. An adequate land base and control over natural resources are central components of economic self-sufficiency and self-determination, and as such, are vital to the very existence of tribes. Thus, much of NARF's work involves the *protection of tribal natural resources*.

Although basic human rights are considered a universal and inalienable entitlement, Native Americans face an ongoing threat of having their rights undermined by the United States government, states, and others who seek to limit these rights. Under the priority of the *promotion of human rights*, NARF strives to enforce and strengthen laws which are designed to protect the rights of Native Americans to practice their traditional religion, to use their own language, and to enjoy their culture.

Contained within the unique trust relationship between the United States and Indian nations is the inherent duty for all levels of government to recognize and responsibly enforce the many laws

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

The coordinated *development of Indian law and educating the public about Indian rights, laws, and issues* is essential for the continued protection of Indian rights. This primarily involves establishing favorable court precedents, distributing information and law materials, encouraging and fostering Indian legal education, and forming alliances with Indian law practitioners and other Indian organizations.

## EXECUTIVE DIRECTOR'S REPORT

The Native American Rights Fund observed its 35th anniversary in 2005 and is honored to have played a significant role in the progress that Native Americans have made over the last 35 years. We continued our program of providing legal advice and assistance on many of the most pressing Native legal issues across the country and achieved some very significant results during the year.

NARF assisted the Gwich'in Steering Committee once again 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 Congress 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.

In *South Dakota v. United States*, NARF assisted the Lower Brule Sioux Tribe against the State of South Dakota's challenge to the authority of the United States to take land into trust for the Tribe under the Indian Reorganization Act of 1934. South Dakota

argued that Secretary of Interior lacks authority to place land into trust for tribes because the Act is an unconstitutional delegation of legislative authority from the Congress. A federal appeals court rejected the argument.

NARF assisted the Nez Perce Tribe of Idaho in approving a Congressional settlement of its water rights claims in the Snake River and its tributaries that have been pending for many years. By accepting the settlement, the Tribe will receive 50,000 acre-feet of water for on-reservation uses; instream flows on almost 200 Tribal priority streams to be held by the State of Idaho; use rights to 600 springs on federal lands in the Tribe's 1863 ceded area; over 11,000 acres of on-reservation federal lands transferred to the Tribe; and \$96 million in three separate funds for Tribal drinking water and sewer projects, water development projects, and other Tribal projects



John E. Echohawk

including cultural preservation and fishery habitat improvements.

The United States Supreme Court denied review in *Wyoming Sawmills, Inc. V. United States and Medicine Wheel Coalition* where a private timber company unsuccessfully challenged the legality of the U.S. Forest Service's Historic Preservation Plan for managing the Sacred Medicine Wheel in Wyoming, an area sacred to many tribes, arguing that the Plan was an unconstitutional establishment of religion. NARF represented the National Congress of American Indians as amicus curiae in the case supporting the constitutionality of the Plan.

In the *Cobell v. Norton* individual Indian trust fund mismanagement case, the Senate Indian Affairs Committee and the House Resources Committee set trust reform and settlement of the Cobell case as a priority. The leadership of the Senate Indian Affairs Committee introduced a bill that called for a settlement fund in the billions of dollars but did not specify a number for the historical accounting claim. The courts have ruled that the federal government is in breach of trust for mismanagement of approximately 500,000 current and past Indian trust accounts and must provide a legal accounting. As co-counsel in the case, NARF is seeking a fair settlement of the case which has been in litigation nearly ten years.

In 2002, NARF, the Native Hawaiian Legal Corporation and private counsel secured a court ruling for the Pele Defense Fund recognizing the rights of Native Hawaiians to hunt, gather and worship on the Wao Kele'o Puna rainforest on the Big Island of Hawaii as part of traditional and customary rights recognized in the Hawaii State Constitution. In 2005, with NARF's assistance, the Trust for Public Lands and the Office of Hawaiian Affairs secured an appraisal of the property and the purchase of these lands from a private party for the benefit of Native Hawaiians became a reality. Native Hawaiians for centuries have consistently used the property for traditional hunting, gathering and religious purposes and will continue to do so without interference.

These victories and accomplishments by NARF on behalf of Native Americans and many, many more over the past 35 years were made possible by the financial assistance of our donors and supporters. We thank all of you for your help and hope that you realize how much you have contributed to the progress that Native Americans have achieved with NARF's assistance. We also hope that your support will continue as we continue our legal advocacy efforts on many of the most pressing issues facing Native Americans today.

**John E. Echohawk**, *Executive Director*

## C H A I R M A N ' S   M E S S A G E

Greetings from Pueblo Country. On behalf of the Board of Directors I welcome you to the Native American Rights Fund. I am John Gonzales of San Ildefonso Pueblo, New Mexico. I thank you for the privilege of serving as Chairman and would like to use this opportunity to share with you one the most important challenges facing NARF today.

In 2005 the Native American Rights Fund celebrated its 35th Anniversary of defending the sovereign and human rights of Native American Tribes and individuals on important issues of water and fishing rights, authority to exercise civil and criminal

jurisdiction and in protecting environmental and treaty rights. Over the past 35 years NARF successfully undertook crucial legal battles, but it is now facing increasing financial challenges. My appeal to you is to support the Native American Rights Fund.

It has been within our lifetime that we as Native People have witnessed Tribes that have achieved tremendous economic success. These Tribes face new challenges in developing and directing charitable and philanthropic giving that enhances and sustains cultural, social and economic visions for their communities and their neighbors. Yet, as is



often the case, the media chooses to focus on Tribes who are caught in the lobbying web of unscrupulous consultants and fails to recognize how Tribes are utilizing their financial resources to support many worthwhile causes such as Hurricane Katrina relief efforts throughout the Southeastern states.

The hard work of NARF is often within the courtrooms, law libraries and in meeting with Tribes, Alaska Natives, Native Hawaiians, and individuals to discuss cases or pending action directly affecting human and sovereign rights. It is a common misunderstanding, that NARF is supported by fees from clients which is not the case at all. NARF is a non-profit organization that survives financially on the donations and contributions of philanthropic groups and on the generosity of Tribes, individuals and limited federal grants.

Tribes across Indian Country must step in to contribute financially to NARF to ensure its survivability. NARF is at a critical stage in its history and without the support from Indian Country NARF's continued work may be in jeopardy, which is so vitally important to protecting and defending the existence of Tribal Nations.

For those Tribes who have contributed, our heartfelt appreciation. Your continued support is greatly appreciated. For Tribes who are in a position to support our efforts, now is the time to do so. Although one time donations are gladly accepted, it cannot sustain NARF as litigation and new cases are ongoing often for years. Please consider multiple year financial commitments. As NARF's Chairman and a former tribal leader, I am asking Tribes to carve out a place in their annual budget a portion

of their resources to go to such a deserving organization that has done so much for Indian Country. One only needs to flip through the pages of this report to find out just how worthy NARF is of your support.

What would it take for Tribal philanthropy to be a major part of NARF's annual operating budget? Is it tangible results to a particular Tribe before its Tribal Council decides to support NARF? If so, NARF may never achieve financial independence through the generosity of Tribes. It is the intangibles such as Supreme Court cases where the most impact is felt in Indian Country that NARF has been most effective. Consequences of rulings cut across Tribal boundaries no matter how large or small the Tribe. Thus, the importance of sustaining an organization such as NARF through Tribal support is imperative. NARF is in dire need of your support.

As Chairman of the Board of Directors of NARF, my term will be devoted to making NARF a financially independent organization. The task will be difficult to accomplish, but with your help this goal can be achieved. I ask you to open your hearts and come to the aid of this great organization. Indian Country can and must help its own. Won't you do your part?

**John Gonzales,**  
*Chairman*



John Gonzales



## 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)* **Lydia Olympic** (Yupik/Aleut - Alaska); **E. Ho'oiipo Pa** (past Chairwoman, Native Hawaiian - Hawaii); **Elbridge Coochise** (Hopi - Arizona). *(Second row left to right)* **Delia Carlyle** (Ak Chin Indian Community - Arizona); **Woody Widmark** (Sitka Tribe - Alaska). *(Top row left to right)* **John Gonzales** (San Ildefonso Pueblo - New Mexico); **Anthony Pico** (Viejas Band of Kumeyaay Indians - California); **Kunani Nihipali** (Native Hawaiian - Hawaii); **Paul Ninham** (Oneida Nation of Wisconsin); **Karlene Hunter** (Oglala Lakota - South Dakota). *(Not Pictured)* **Jaime Barrientoz**, Vice-Chairman (Grande Traverse Band of Ottawa & Chippewa Indians - Michigan); **Billy Frank** (Nisqually Tribe - Washington); **Jim Gray** (Osage Nation - Oklahoma).



## N A T I O N A L   S U P P O R T   C O M M I T T E E

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  
 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*  
 Richard A. Hayward, *Mashantucket Pequot*  
 John Heller  
 Emilie Heller-Rhys  
 Alvin M. Josephy, Jr.  
 Charles R. Klewin  
 Nancy Klewin  
 Wilma Mankiller, *Cherokee Nation of Oklahoma*  
 Chris E. McNeil, Jr., *Tlingit-Nisga'a*  
 Billy Mills, *Oglala Lakota*

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 Onieida*  
 Anthony L. Strong, *Tlingit-Klukwan*  
 Maria Tallchief, *Osage*  
 Andrew Teller, *Isleta Pueblo*  
 Verna Teller, *Isleta Pueblo*  
 Studs Terkel  
 Tenaya Torres, *Chiricahua Apache*  
 Richard Trudell, *Santee Sioux*  
 Rebecca Tsosie, *Pasqua Yaqui*  
 Thomas Tureen  
 Tzo-Nah, *Shoshone Bannock*  
 Aine Ungar  
 Rt. Rev. William C. Wantland, *Seminole*  
 Dennis Weaver  
 W. Richard West, *Southern Cheyenne*  
 Mary Wynne, *Rosebud Sioux*

It is with great sadness that we say goodbye to our National Support Committee members who have passed on. They have all served NARF long and well and they will be missed. We send our heartfelt

condolences to the family and friends of Alvin M. Josephy, Jr., David Risling, Jr. (David Risling was an original NARF Board member), Walter S. Rosenberry, III, and Dennis Weaver.



## 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 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 to the 1980s, the Supreme Court repeatedly affirmed the fundamental principle that tribes retain inherent sovereignty over their internal affairs. As many of the battles in Indian country are being fought in the courtroom, many judges, who lack an understanding of the fundamental principles underlying federal Indian law and who are unfamiliar with the practical challenges facing tribal governments, are making decisions that threaten the continued sovereign existence of Indian tribes. Perhaps the greatest threat to Indian tribes comes from the recent decisions of the United States Supreme Court. In the past two decades, Indian tribes have lost approximately 80% of their cases before the Supreme Court. And these losses have been severe. The Court has in recent

years taken a very aggressive approach to eroding tribal sovereignty and jurisdiction. At the same time, the Court has been increasing state jurisdiction over reservations

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.

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 perspectives 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.

Now in existence for just over four years, the Tribal Supreme Court Project can look back to review its theory in practice. Since 2001, the Project has been involved in seven cases argued before the U.S. Supreme Court with four solid wins, two disappointing losses and one draw. This winning percentage is a vast improvement from the deplorable win-loss record Indian tribes have suffered before the Court in the past two decades. And this winning record does not reflect a number of cases where the Project has worked “behind the scenes” to ensure that victories won at the U.S. Circuit Courts of Appeal are denied discretionary review by the Supreme Court.

In the most recent loss, the Supreme Court dealt another blow to tribal sovereignty in the *Wagnon (formerly Richards) v. Kansas Prairie Band Potawatomi Nation* case. The Supreme Court ruled

that the state could impose a tax on motor fuel sold to a reservation gas station by non-Indian wholesalers. The Tribe imposes a tribal tax equal to that of the state to build and maintain roads on the reservation. The Court focused on the incidence of the tax being on the non-Indian wholesalers and did not apply the balancing test that considers the impact of the tax on the Tribe. This decision could have dire consequences in the future for other tribes. In working on this case, the Tribal Supreme Court Project worked closely with the attorneys representing the Nation and attorneys from throughout Indian country, coordinating four tribal amicus briefs on behalf of NCAI, the Intertribal Transportation Alliance, the National Intertribal Tax Alliance, a group of Kansas tribes and over 30 individual Indian tribes. The Project also worked closely with the Prairie Band in persuading the U.S. Solicitor General’s Office to support of the Tribe.

In preparing for the October 2005 Term, the Tribal Supreme Court Project evaluated the impact of the confirmation of John G. Roberts as the new Chief Justice of the United States. Before she withdrew, the Project was evaluating the qualifications and experience of Harriet Miers, and also evaluated Samuel A. Alito, Jr., as the new nominee to replace



Justice Sandra Day O'Connor. The Project continues to monitor numerous cases at various stages of appeal within both state and federal courts, while directly participating in the preparation of amicus briefs in the U.S. Supreme Court and the U.S. Circuit Courts of Appeals.

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 233 tribes under a unified system of government. And again in 2004, the Senate Appropriations Committee (which was chaired by Senator Stevens) 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.

Senator Steven's efforts were based on the assumption or accusation that Alaska tribes are inefficient.



However, recent GAO reports showed that Alaska tribes were very efficient and accountable. A Rural Justice Commission report recommended that the State of Alaska needs to work closely with tribes and cooperate with tribal courts.

### **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 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 govern-



ment-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.

The Shinnecock Indian Nation, located in Southampton, New York, with NARF's assistance, filed a petition for Federal recognition in 1998. In response, the Bureau of Indian Affairs (BIA) sent a letter of technical assistance to the Nation that pointed out alleged omissions or deficiencies in the petition. Pursuant to the federal acknowledgment regulations, the Nation filed a response to the letter in 2003 and the BIA placed the Nation's petition on the "Ready, Waiting for Active Consideration" list. The placement on the list is a milestone for the Nation after years of hard work to fully document the petition. The Nation is well on its way to federal recognition.

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. Substantial work was done to strengthen the Tribe's petition and the final submissions were made in 2005. The Tribe has also secured representation for their efforts in seeking legislative recognition.

### **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 continued 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.

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. During the 2005 Congressional sessions, drilling for oil in ANWR was once again hotly debated in Congress as the Senate budget reconciliation bill language allowed for drilling in ANWR and the House version did not, but it was defeated. It was then attached to the defense spending bill and was once again defeated.



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.

NARF, working with the Tribe's Environmental Health Technical Team (EHTT), has assisted the Oglala Sioux Tribe (OST) of South Dakota in developing water-related environmental codes. NARF is working with the OST Department of Water Maintenance and Conservation and the EHTT on the 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 ["Tap-in" ordinance], as well as a Solid Waste Management Code. The "Tap-in" ordinance, which was adopted by the Tribal Council, will provide for the protection of the integrity of the pipeline which delivers drinking water to the public water systems on the reservation. NARF is working with the OST Department of Water Maintenance and Conservation to bring the final revisions to the

Tribal Council resulting from the creation of that Department. A final Draft has been completed and will go before the EHTT review and approval.

The Solid Waste Management Code will provide enforceable standards and a fee structure for solid waste collection and disposal of solid and hazardous waste. The EHTT has presented the respective codes to various communities on the Reservation for their review and comment. The OST Solid Waste Team is developing the support documents for the implementation of the Code; including the necessary forms, permits and model applications for the Department of Waste Management. The Solid Waste Code was adopted by the Tribal Council in 2005. The Tribe's Environmental Protection Program has asked for drafts of codes for the management of salvage vehicles and discarded automotive oil, as well as for a regulatory agency to monitor the management of solid waste. Drafts of these provisions have been provided to the Tribe's Environmental Protection Program.



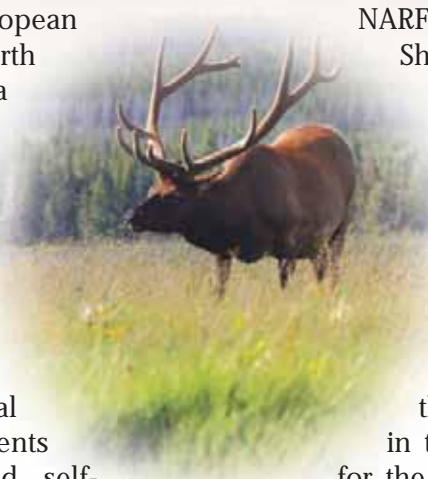
## THE PROTECTION OF TRIBAL NATURAL RESOURCES

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.

### 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.

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. 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 challenged the Secretary's reconsidered, and again favorable, decision to place the land in trust. In 2004, the Federal District Court upheld the Secretary's decision and was once again appealed to the Eighth Circuit Court of Appeals. The Eighth Circuit issued a favorable decision in 2005 upholding the constitutionality of Section 465. The Attorney General moved for rehearing and the Tribe, through NARF, filed an amicus brief opposing rehearing.



NARF has been retained by the Eastern Shoshone Tribe of the Wind River Indian Reservation in Wyoming to research the legal status of the boundaries of their reservation. In addition, NARF has been asked to assist in researching several other issues of importance to the Tribe.

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 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.

### **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 unadjudicated 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 outstanding 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.

In early 2005, the Nez Perce Tribal Executive Committee (NPTEC) accepted the final terms of the water rights claims in the State of Idaho’s Snake River Basin Adjudication. By accepting the proposed settlement, the Nez Perce Tribe has agreed to: 50,000 acre feet of water decreed to the Tribe for on-reservation uses; instream flows decreed on almost 200 Tribal priority streams to be held by the State of Idaho; 600 springs claims decreed on about 6 million acres of Federal land in the Tribe’s 1863 ceded area; over 11,000 acres of on-reservation Bureau of Land Management land transferred to the Tribe in trust; and, \$96 million in three separate funds, for Tribal drinking water and sewer projects, water development projects, in addition to various Tribal projects including cultural preservation and fishery habitat improvements.

NARF has represented the Nez Perce Tribe in Idaho in the SRBA – both litigation and settlement phases – for over 16 years. Congress enacted the Snake River Settlement Act of 2004 and President Bush signed it into law the same year. The Idaho Legislature approved the agreement and the







Governor signed the approval legislation in 2005. The approval by NPTEC represented the final sign-off by the three sovereigns. The Idaho water court will now undertake the final approval of the settlement and the entry of decrees to the water rights for the Tribe.

This is a major accomplishment for the Nez Perce Tribe and its members. This settlement represents the merging of traditional Indian water rights settlement elements with other major environmental issues confronting all of the people of Idaho. It could well be looked at by other states and tribes and federal land management agencies in the west seeking to sort out Indian water claims and other challenges presented by the federal Endangered Species Act and the Clean Water Act. NARF will continue working with the Nez Perce Tribe to secure final approval of the settlement by the SRBA water court, and in the federal appropriations process.

NARF represents the Klamath Tribes of Oregon who 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

asserting and defending their treaty-based water rights in the adjudication, and prosecuting contests against many junior water rights claims filed by non-Indian water users.

NARF filed about 150 contests on behalf of the Tribes against unsubstantiated private water right claims and actively prosecuted them for the past four years. During 2004 and 2005, in one of the largest contests, a four-week trial was held concerning water rights for the Bureau of Reclamation's Klamath Project. A ruling on evidence issues allowed the introduction of NARF's evidence and currently parties are preparing extensive post-trial briefs on the merits in this complex water rights case. Adjudication of the Tribes' water rights claims became active and various briefings and rulings on preliminary procedural issues were had. The parties are currently in the summary judgment stage developing briefs to dispose of legal issues.

NARF represents the Tule River Indian Tribe of California in on-going negotiations to settle the Tribe's claims to reserved water rights on its Reservation. The Tule River Reservation is located in a mountainous region and is crossed by the South Fork of the Tule River. Flow from the river is abundant in the early spring, dropping off precipitously in the summer. With no reservoir and

delivery facilities on the Reservation, water supply for the Tribe's growing domestic needs is severely limited and water supply for significant irrigation is nonexistent. Without confirmation of its reserved water rights, the Tribe will not be able to provide for its future water needs.

After legal and technical analysis of its water rights claims, the Tribe decided to pursue a negotiated settlement of its water rights claims before engaging in litigation. Competing downstream users include a Ditch Company, riparians, and four irrigation companies. The Department of the Interior appointed a Federal Negotiation Team to assist the Tribe in settling its water rights claims. 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 no or minimal adverse impact on other water users. Settlement negotiations among the Tribe, the United States, and non-tribal downstream users (the Settling Parties) have been in progress for several years. The Settling Parties have made great progress toward reaching a water rights settlement agreement and continue to negotiate remaining issues.

NARF is working with the Three Affiliated Tribes of the Fort Berthold Indian Reservation's Office of

Environmental Program, Tribal Reservation Attorneys, and the Tribal Council to complete a revised application that has been pending before USEPA Region 8 in Denver, Colorado since 1997. The application addresses the delegation to set water quality standards for the surface water of the Reservation. USEPA recently responded to Tribal requests to act on that application. The Tribes' Manager of Environmental Programs retained NARF to assist the Tribe in assuring that the application is current, complete, and adequate to obtain delegation.

NARF has also worked to address a major problem in water rights settlements – the lack of federal funding for settlements. To this end, NARF continues to facilitate a favorable 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 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.

#### **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.

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 five Chugach Villages 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 paramountcy doctrine. NARF argued that the paramountcy 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 2004, the Ninth Circuit en banc vacated the decision of the District Court and remanded for determination of whether the tribes can establish aboriginal rights in the traditional-use areas. 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. The Chugach chose not to file a motion for summary judgment given the remaining fact disputes, but the government did submit one. After gathering updated evidence, the Chugach filed their opposition in 2005. The government filed its reply, submitting with it a new expert witness and eleven exhibits. Given the new evidence submitted, the Chugach have made a motion to the court asking for leave to file a sur-reply. Oral argu-



ment on the motion for summary judgment should take place in the summer of 2006.

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 and 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. Final rule-



making expanding the RACs to accommodate a quota for sport and commercial interests was issued in 2004. The Court then lifted its stay and requested a status report from the parties. Tribal intervenors filed their summary judgment motion (based on the new record) in 2005. The Government and Safari Club filed their briefs in opposition, and the Plaintiffs filed their Joint Reply in late 2005. A decision is now pending.

In January 2005, the State of Alaska filed a lawsuit in the District of Columbia challenging the final rule implementing the mandate in the prior subsistence case, *John v. United States*. This prior NARF case established that the United States must protect subsistence uses of fisheries in navigable waters where the United States possesses a reserved water right. The State challenges the Secretaries' implementation of the mandate by arguing that the reserved waters doctrine requires a quantification of waters necessary to fulfill specific purposes. Alaska Native subsistence user Katie John filed a motion for limited intervention for purposes of

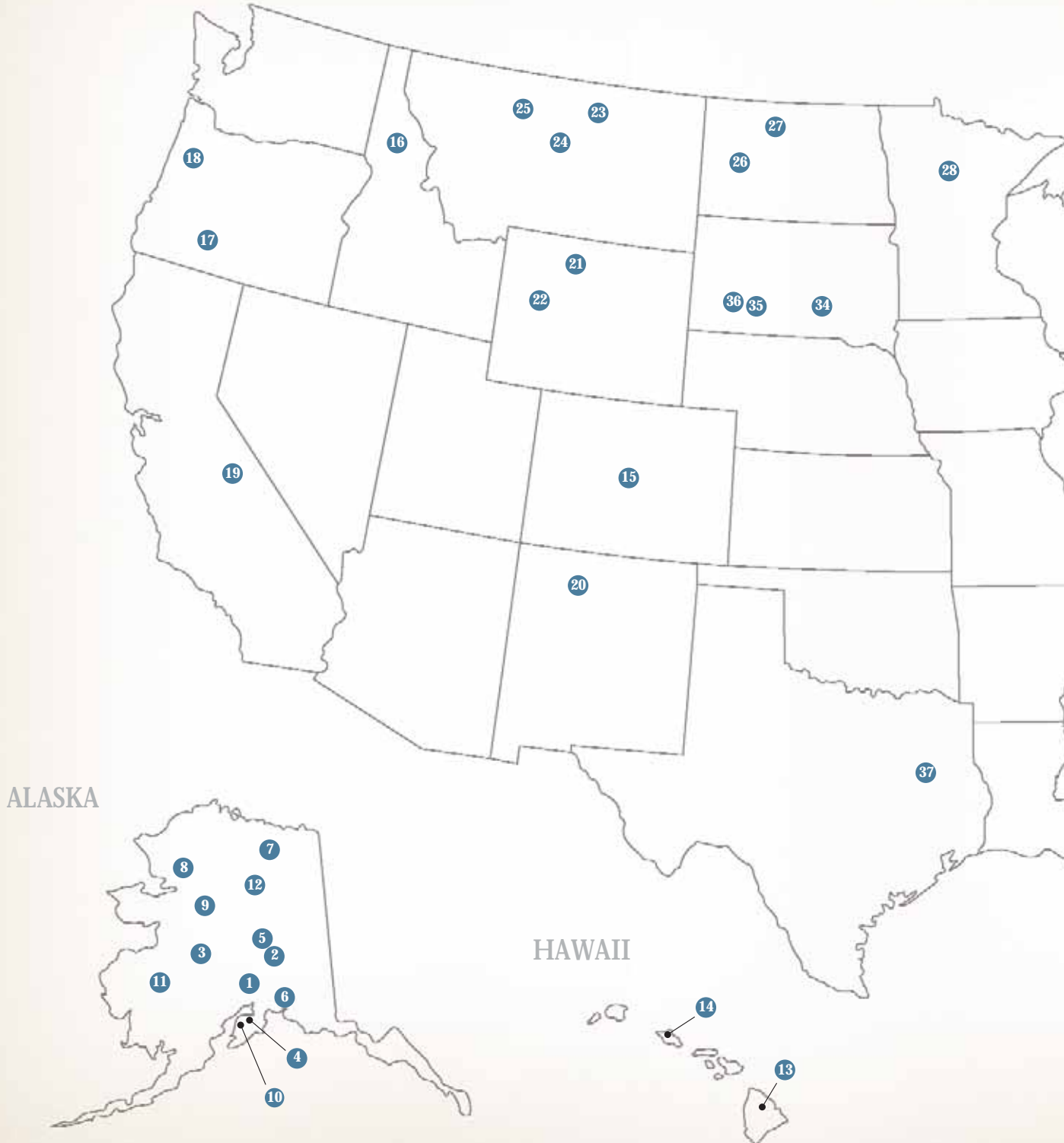
filing a motion to dismiss for failure to join an indispensable party. The United States filed a motion to transfer venue to Alaska. The court entered an Order transferring the case to the District of Alaska. The case was then consolidated with *John v. Norton* filed by Katie John.

Katie John had filed *John v. Norton* in the District of Alaska challenging the Secretaries' final rule implementing the prior Katie John mandate as being too restrictive in its scope. Katie John's complaint alleges that the Secretaries should have included Alaska Native allotments as public lands and further that the federal government's interest in water extends upstream and downstream from the Conservation Units established under ANILCA. The federal government has moved for an extension of time in which to file an answer. The Court entered an order staying the case until September 2006 by which time the two cases should be consolidated. The Court has yet to schedule a status conference in the consolidated cases.



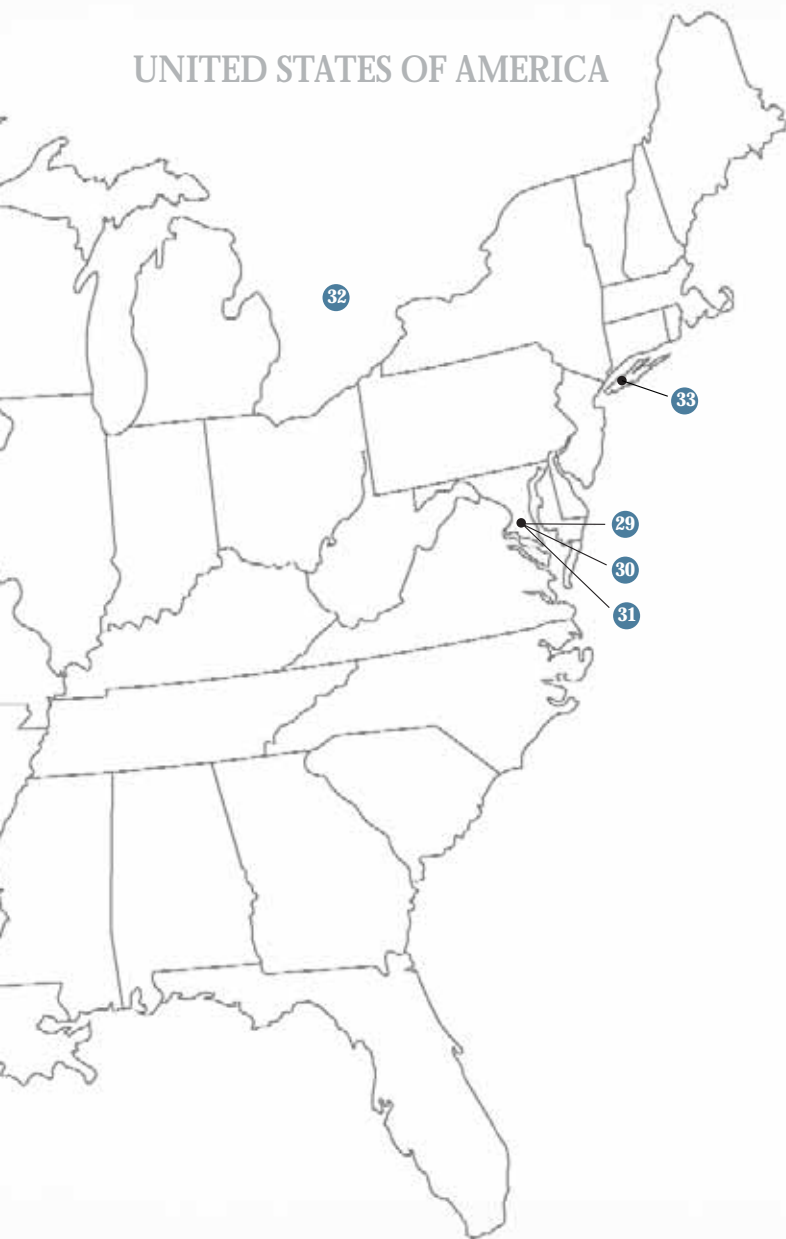
# MAJOR ACTIVITIES 2005

## NARF CASE MAP





## UNITED STATES OF AMERICA



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|--|--|
| 1 NARF ANCHORAGE OFFICE  | 21 Medicine Wheel National Historic Landmark - Sacred Site (Wyoming)               |
| 2 Alaska Inter-Tribal Council v. Alaska - Equal Protection (Alaska)  | 22 Eastern Shoshone Tribe - Land Issue (Wyoming)                                   |
| 3 Curing v. Alaska - ICWA (Alaska)   | 23 Fort Peck Tribes - Education (Montana)  |
| 4 Katie John v. Norton - Subsistence (Alaska)  | 24 Chippewa-Cree Tribe of the Rocky Boys Reservation - Trust Claims (Montana)      |
| 5 English Only Initiative (Alaska)   | 25 Little Shell Tribe - Recognition & Trust Claim (Montana)                        |
| 6 Native Village of Eyak, Tatitlek, Chenega, Nanwalek, and Port Graham - Subsistence & Aboriginal Title (Alaska) | 26 Fort Berthold Reservation - Education & Water (North Dakota)                    |
| 7 Gwich'in Steering Committee - Environmental/Subsistence (Alaska)   | 27 Turtle Mountain Reservation - Trust Claim (North Dakota)                        |
| 8 Native Village of Kiana - Education (Alaska)   | 28 White Earth Band of Chippewa Indians - Trust Claim (Minnesota)                  |
| 9 Native Village of Nulato - Education (Alaska)  | 29 NARF WASHINGTON, D.C. OFFICE  |
| 10 Ninilchick Tribe - Subsistence (Alaska)   | 30 Cobell v. Norton & Tribal Supreme Court Project (Washington, D.C.)              |
| 11 Native Village of Tuluksak - Trust Lands (Alaska)   | 31 Harjo et al v. Washington Redskin Football - Cultural Rights (Washington, D.C.) |
| 12 Native Village of Venetie - Subsistence (Alaska)  | 32 Northern Lakes Pottawatomi Nation - Land Claim (Canada)                         |
| 13 Pele Defense Fund - Aboriginal Rights (Hawaii)  | 33 Shinnecock Indian Nation - Recognition (New York)                               |
| 14 Rice v. Cayetano - Voting Rights (Hawaii)   | 34 Lower Brule Sioux Tribe - Trust Lands (South Dakota)                            |
| 15 NARF HEADQUARTERS BOULDER, COLORADO   | 35 Rosebud Sioux Tribe - Education & Cultural Property Rights (South Dakota)       |
| 16 Nez Perce Tribe - Water Rights (Idaho)  | 36 Oglala Sioux Tribe - Environmental (South Dakota)                               |
| 17 Klamath Tribes - Water Rights (Oregon)  | 37 Alabama-Coushatta Tribe - Land Claim (Texas)                                    |
| 18 Bonnichsen v. United States ("Kennewick Man case") - Repatriation (Oregon)                                    | Draft Declaration on the Rights of Indigenous Peoples (International)              |
| 19 Tule River Tribe - Water (California)   |  |
| 20 Jicarilla Apache Tribe - Education (New Mexico)   |  |

## 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.

NARF offered testimony in 2004 and 2005 before the Senate Committee on Indian Affairs at an Oversight Hearing on the implementation of the American Indian Religious Freedom Act of 1978 concerning the manner in which the Act and follow up legislation have been implemented in two main areas, repatriation and the protection of sacred sites. On behalf of the Working Group on Native American Culturally Unidentifiable Human Remains, NARF is working on legislation to amend NAGPRA to correct problems created by the Ninth Circuit decision in the *Bonnichsen* case as well as providing comments on various proposed regulations and policies implementing NAGPRA.

NARF is part of a legal team working on an amicus curiae brief to be filed in the Spirit Cave repatriation litigation captioned *Fallon Paiute-Shoshone Tribe v. United States Bureau of Land Management*. NARF is representing the National Congress of American Indians, Morning Star Institute, Association of American Indian Affairs and the Medicine Wheel Coalition of Sacred Sites in North America in this important NAGPRA repatriation litigation. The brief supports the Fallon Paiute-Shoshone Tribe's efforts to repatriate the remains of their ancestor from the United States Bureau of Land Management. The brief will address the role of the NAGPRA Review Committee, the standard in which BLM's actions are reviewed and an evaluation of whether the BLM acted in an arbitrary and capricious manner. The



brief will be filed in 2006 in the United States District Court of Nevada.

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 Espírita Beneficente União 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 the Tenth Circuit Court of Appeals en banc ruled in favor of the UDV. Oral





were heard by the United States Supreme Court and a decision is now pending.

The United States Court of Appeals for the Tenth Circuit, in 2004, affirmed a previous ruling by the United States District Court for the District of Wyoming regarding the legality of the United States Forest Services Historic Preservation Plan for managing the Sacred Medicine Wheel in Wyoming. In *Wyoming Sawmills, Inc. 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 Sacred Medicine Wheel on constitutional (establishment of religion) and other grounds. NARF first filed an amicus curiae brief in the District Court on behalf of the National Congress of American Indians urging the Court to uphold the Plan on statutory and constitutional grounds. The District Court did not address the constitutionality of the HPP because it found that Wyoming Sawmills lacked standing to raise a First Amendment Establishment Clause claim. Wyoming Sawmills appealed this decision to the Federal Appeals Court in Denver. The Appeals Court also

rejected Wyoming Sawmills First Amendment claim for lack of standing, and affirmed the lower Court on federal statutory grounds.

The 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." In 2005, Wyoming Sawmills filed its Petition for Supreme Court Review. The U.S. Supreme Court denied *cert* review, thereby ending the litigation.

The Medicine Wheel National Historic Landmark was created in 1969 to preserve the Medicine Wheel, a prehistoric stone circle that was constructed by the aboriginal peoples of the area. Archeological evidence indicates that human presence in the area goes back for 7,500 years or more. The Medicine Wheel is considered sacred to Native American tribes indigenous to the area. The Medicine Wheel is located on Medicine Mountain in the Bighorn National Forest in north central Wyoming.

### Cultural Rights

While cultural rights are fundamental for every human being, they are 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.

NARF, in conjunction with NCAI, is working with a coalition of civil rights organizations under the direction of the Leadership Conference on Civil Rights (LCCR) to ensure that Congress reauthorizes certain remedial provisions within the Voting Rights Act (VRA) which are scheduled to expire in 2007. Section 4(b) of the VRA contains a formula defining which jurisdictions are subject to, or "covered" by, the special remedial provisions. Jurisdictions are "covered" if they used a "test or device" (e.g., literacy tests; voting materials in English only) for voting and less than half of the voting age residents were registered or voting in the 1964, 1968 and 1972 presidential elections.



The remedial provisions include: (1) the language assistance provision, §203 of the VRA, which requires certain states and local jurisdictions to provide voting materials in languages other than English, including Native American and Alaska Native language; (2) the preclearance provision, §5 of the VRA, requires certain “covered” jurisdictions to get approval prior to implementing any changes in their voting laws or procedures; and §§6-9 of the VRA which authorize the U.S. Attorney General to assign federal examiners and observers to certain “covered” jurisdictions to document and deter inappropriate conduct during elections.

As part of this Project, NARF worked with *Native Vote 2004* to prepare a report, *Native Vote 2004*. Published in 2005, this report documents the findings of the Native Vote Election Protection efforts and identifies potential areas of voting rights litigation in Indian country. NARF is currently working with the Lawyers’ Committee for Civil Rights Under the Law to evaluate potential §203 litigation in Alaska and has been contacted by the Civil Rights Division with the U.S. Department of Justice in relation to other potential litigation. Also in 2005, NARF co-sponsored a national conference, *Past and Prologue: The 40th Anniversary Conference Commemorating the Historic Voting Rights Act of 1965*, which included voting rights experts and grassroots activists from around the country, including Indian country.

In preparation for upcoming legislative hearings, NARF prepared testimony and developed reports to be included in the Congressional record. NARF, in conjunction with NCAI, provided written and oral testimony at a hearing before the National Commission on the Voting Rights Act – *Examining the Degree of Racial Discrimination in Voting and the Impact of the Voting Rights Act Since 1982: A Perspective From Indian Country* – held in September 2005, in Rapid City, South Dakota. In addition, NARF has participated in the preparation of two reports highlighting the status of the Voting Rights Act in Indian Country covering the State of South Dakota and the State of Alaska. We anticipate that legislation will be introduced in April 2006, with committee hearings being scheduled shortly thereafter.



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 filed an amicus brief in the case of *Harjo et al v. Washington Redskin Football* in the U.S. Court of Appeals for the District of Columbia 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 in support of the Indian appellants. The brief argued that the federal trademark for the football team should be cancelled because the use of the “Redskin” mark is racially disparaging in violation of federal trademark law. A decision was rendered in 2005 holding that the case may have been prematurely dismissed as to the youngest Indian petitioner. The case was remanded to the district court to consider whether the youngest Indian plaintiff, who was a year old when the Redskins trademarks were first registered, should be barred from bringing his claim because of delay in bringing the claim. NARF will continue to monitor this important case on remand.

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.

In 2004, the Native American Rights Fund filed an amicus brief on behalf of a number of Alaska Tribes in the Alaska Supreme Court in *Curiung v. Alaska*.



The question presented in *Curiung* is whether federally recognized Tribes can bring suit under Section 1983 in state court on behalf of themselves and their members to vindicate important statutory rights under the ICWA and other federal and state laws after the United States Supreme Court ruling in *Inyo County*. *Inyo County* involved the core issue of whether the Paiute Shoshone Indian Community was immune from execution of a state search warrant of tribal employment records issued in connection with the investigation of potential off-reservation welfare fraud by certain unnamed tribal employees. The Tribe sought declaratory and injunctive relief against the County and its officers on the ground that they had exceeded their jurisdiction because the warrant interfered with the Tribe's sovereign immunity and its right to self-government. The Tribe also sought compensatory damages under Section 1983 for violation of the Tribe's rights. The Supreme Court held that Tribes are not persons for purposes of bringing Section 1983 claims against a state for damages for infringement of sovereign interests. In *Curiung*, however, the amici tribes argue that *Inyo County* does not preclude their Section 1983 claims because the rights asserted are private rights that are grounded in statute. Oral argument took place in 2004 and we are now awaiting a decision.

In 2005, the Villages of Tanana, Nulato, Akiak, Kalskag, Lower Kalskag and Kenaitze filed a complaint against the State of Alaska Attorney General and various state agencies challenging the policy adopted by the Attorney General stating that state courts have exclusive jurisdiction over child custody proceedings involving Alaska Native children, and that Tribes in Alaska do not have concurrent jurisdiction to hear children's cases unless the child's tribe has successfully petitioned the Department of Interior to reassume exclusive or concurrent jurisdiction under the ICWA, or a state superior court has transferred jurisdiction of the child's case to a tribal court in accordance with 26 U.S.C.

Plaintiffs filed their opening brief for summary judgment and the State filed a Petition for Review to the Alaska Supreme Court of the lower court's decision that the case was ripe and should proceed on the

merits. The State also moved for a stay of the lower court proceedings pending a decision by the Alaska Supreme Court on the State's Petition for Review. Such stay was granted and a decision on the State's Petition from the Alaska Supreme Court is pending.

### Education

From the founding of this country federal policy effectively stripped Indian tribes of control over the education of their children. The federal government set up a boarding school system that removed many Indian children from their families and communities. The government also contracted with Christian missionaries to educate and convert Indian children. The use of education as a means to force assimilation of Indians continued as these two education systems dissolved and were replaced by public schools established on or near reservations. Ninety percent of Indian children now attend state public schools. The state public school systems have also failed to honor and respect the culture and heritage of the Indian children that they are serving.

The disempowerment of tribes over education has been devastating. In most tribal communities, formal schooling is resented and rejected. Tribal students suffer from generations of overall poor academic attendance, achievement, and attainment levels. Statistics show that when compared to other ethnic/race groups, Native American children are the poorest academic performers; are the least likely to do well on assessment tests; are the least likely to enroll in advanced placement classes; and are the most likely to drop out.

Through a grant by the W.K. Kellogg Foundation, NARF worked closely with six tribal communities – 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 has been able to assist these six Indian tribes in creating a foundation for working collaboratively with public school districts, states, and other parties. Partnerships were established; basic aggregate student data was gathered and analyzed; initial

collaborative strategies were determined; and, tribal education codes and policy were developed and adopted. NARF's client tribes are now on firm ground for equal partnerships with school districts and states in improving the education of tribal students. This remarkable progress solidifies our belief that partnerships and collaboration among tribes and other key stakeholders in Indian education are critical to effectuating needed change and to achieving the ultimate goal of improving the education of tribal students.

NARF is now seeking additional funding for a second project to improve education for American Indian youth through community-based collaborative partnerships. This project is designed to assist tribes in moving to the next level of developing collaborative relationships with school districts and states. NARF will provide legal and technical assistance to tribes, working collaboratively with school districts and states to identify particular education challenges facing tribal children, to prioritize these challenges, to jointly plan tribal and district responses to the challenges, and to implement the chosen action(s).

There is great potential for change when communities (including tribal governments, tribal departments of education, school districts, individual schools, parents, and other service providers in the community) build coherence and strong collaborative relationships to focus on improving the education for community members. This collaborative approach is truly innovative in Indian education and NARF believes will ultimately result in systemic change in environments where formal education takes place and within entities that historically worked independently of each other. Changes will occur in community education systems, including the tribal governments and schools, enabling them to work together to achieve greater student success in education. Community-based systems, whether tribal, state, or federal, will be united to improve Indian education by incorporating tribal knowledge and wisdom into the formal education of tribal students.

### **International Recognition of Indigenous Rights**

The development of international laws and standards to protect the rights of indigenous

peoples can be beneficial to Native American people as well as other indigenous peoples around the world. Native American tribes therefore need to be involved in these efforts and enlist the support of the United States since it is so influential in international circles.

NARF and the National Congress of American Indians entered into an attorney-client relationship approximately four years ago for the purpose of working in the international arena to protect indigenous rights. To date, this work has focused on the Draft Declaration on the Rights of Indigenous Peoples 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. A caucus meeting was held in Washington, D.C. in 2005 to prepare for the next drafting session. The most recent drafting session was held in Guatemala City in October 2005. The atmosphere between the states and indigenous peoples was positive and during this session the provisions dealing with uncontacted peoples and a large part of the labor law provisions were approved. These are the first provisions ever approved.

In addition, a strong document in this hemisphere will bolster the process in the United Nations where a Draft Declaration on the Rights of Indigenous Peoples is also being considered. Conversely, if the OAS document is adopted in weakened form, it may be used to dilute the United Nations draft declaration, which has widespread indigenous approval. 2004 was the last year of the Working Group's mandate. Drafting sessions conducted during 2004 made sufficient progress so as to enable the Working Group to ask the Human Rights Commission to extend the mandate to 2005. NARF and NCAI supported the request for an extension. The Human Rights Commission granted the extension and additional drafting sessions were held in 2005. The session held in December was the most productive session ever, resulting in tentative adoption of approximately 20 provisions and preambular paragraphs. This compares to two provisions tentatively adopted in the previous ten years.



## 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.

The *Cobell v. Norton* case was filed on June 30, 1996. It is brought on behalf of approximately 500,000 past and present individual Indian trust beneficiaries. The Courts have rendered over eighty published decisions since the inception of this case.

The individual Indian money account holders (plaintiffs) seek a full accounting of their trust assets for the entire period that such assets have been held in trust – since 1887. Trustees, without exception, have a duty to provide accurate and complete statement of accounts to each beneficiary at regular intervals and a complete and accurate accounting upon demand. Yet, the United States has never provided an accounting to individual Indian trust beneficiaries. It has never provided beneficiaries accurate and complete statement of accounts. In addition, plaintiffs seek that the account balances of the Trust be corrected, restated and distributed to the correct beneficiary in the correct amount. Finally, plaintiffs seek reform of the trust management and accounting system. Such reform will ensure that trust duties are discharged prudently and the government's liability does not continue to increase exponentially.

Plaintiffs have prevailed on the merits throughout this litigation. The government argued, among other things, that it did not have a duty to provide a full accounting of trust assets in conformity with generally applicable trust law. The government's position was repudiated by the Federal District



Court in Washington, D.C. in 1999. The Court held that the government is in breach of the trust duties it owes the plaintiff class and must render a complete and accurate accounting of "all funds." Defendants' attempt to limit the accounting to some "subset" of assets was expressly rejected by the District Court.

Despite the clarity of the District Court decision and the D.C. Circuit Court of Appeals ruling in 2001, affirming that decision, defendants have continued to resist providing plaintiffs the complete and adequate accounting to which the each beneficiary is entitled. Defendants have refused to take affirmative steps to bring themselves into compliance with their trust duties. Indeed, at every turn defendants have obstructed the proceedings and attempted to escape their plain legal obligations. It is because of this resistance and refusal to discharge their legal obligations that this case now approaches its tenth year in the courts.

The Senate Indian Affairs Committee and House Resources Committee have now set trust reform and settlement of the Cobell case as a priority. At the request of these Committees, NARF, the National Congress of American Indians, the Intertribal Monitoring Association, other tribal leaders and the Cobell plaintiffs presented a set of fifty trust principles for settlement.

In 2005, the Senate Indian Affairs Committee introduced a bill referred to as a starting point for discussion. Among other things, it called for a settlement fund in the billions of dollars - but did not specify a number for the historical accounting claim. Chairman McCain stated that further discussions would be held with the parties and hopefully reach a consensus number for the settlement. There are some serious deficiencies with the bill as currently structured, but NARF continues to work with Committee staff to address these concerns and

create a bill that will lead to resolution in a fair manner. Plaintiffs continue to seek prompt resolution of the *Cobell* case, but NARF will not sacrifice fairness on the altar of political expediency to the detriment of the plaintiff class of 500,000 individual Indians.

In a related Court of Federal Claims action, NARF represents the Turtle Mountain Band of Chippewa in North Dakota, the Chippewa-Cree of the Rocky Boys Reservation in Montana the Little Shell Tribe of Chippewa in Montana, and the White Earth Band of Minnesota Chippewa Indians 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. In 2005 the Court heard oral argument on three pending matters: Plaintiff's motion for summary judgement on the existence and scope of a cause of action (whether the investment duties of the government derive from "money-mandating" statutes; Defendant's motion to dismiss on statute of limitations grounds; and, Plaintiff's motion for class certification"). A ruling on these matters is expected at any time. The Court's resolution of some or all of the issues will shape the future of litigation and negotiations in the case.

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 *Cobell* 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. 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. In 2005, the Alaska Supreme Court affirmed the trial court and held that Alaska's dual public safety system does not violate federal or state equal protection. A Petition for Reconsideration was filed, but it was subsequently denied by the Alaska Supreme Court. The plaintiffs decided not to petition for review in the United States Supreme Court.

NARF and the Colorado Commission of Indian Affairs ("CCIA") were first asked in 2003 to become involved in the City of Boulder's process to decide whether to site two facilities – a biosolids composting facility and a fire training center – at Valmont Butte, located just east of the City. The City had purchased the 105 acre parcel of land in 2000 solely with these purposes in mind, and had begun various internal and external bureaucratic and legal processes to eventually annex the land and construct these facilities. In the midst of these legal processes, a curious phenomena began to unfold. Given a voice and means of expression by NARF and CCIA's involvement, the Native American community came forward with powerful evidence that (1) the Butte is a place of significant prehistoric connections to Native peoples who inhabited Boulder Valley long before Euroamerican settlers came into the area in the 19th Century; and (2) the





Butte is a place of contemporary religious importance to many Indian people in the metropolitan Denver area, as well as to Indian people of Ute, Arapaho and Cheyenne descent who reside on reservations in Oklahoma, Wyoming and Southwest Colorado. Important spirit voices are believed to reside in the around the Butte itself, and it is the locus of an active sweatlodge being utilized by several Indian religious leaders.

In 2005, the City Council heard and respected the wishes of the Indian Community, and rejected the planning staff recommendations to locate the composting and fire training facilities on the Butte property. NARF is working with the CCIA, the local Indian community in the Denver metropolitan area, the interested tribes, and the residents of the Valmont Butte area, to identify a means of acquiring the property from the City. The ultimate goal is to build an Indian cultural center on the Butte property that would make the Butte a place of learning and education about the past, a place of healing, and a place of reconciliation between Indian people and those who have come to Boulder Valley since the time of Chief Niwot. NARF has also been talking with the Trust for Public Lands, and its Tribal Lands Program, about assisting in efforts to leverage capital to purchase the property.

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 five 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 been involved in the Hawaiian rights movement, commencing with our assistance in the founding of the Native Hawaiian Legal Corporation (NHLC) in 1974. For years, NARF has co-counseled with the NHLC 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 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 the Hawaii Constitution. In 2005, with NARF's assistance, the Trust for Public Lands (Hawaii Office) and the Office of Hawaiian Affairs secured an appraisal of the property and the purchase of these lands became a reality. NARF will continue to assist with the planning and management of the lands.

The rainforest is valuable on multiple levels. Wao Kele o Puna is extremely important to Native Hawaiians, who for centuries have consistently used the property for traditional hunting, gathering, and religious purposes. In addition, the vast rainforest provides essential wildlife habitat for more than 200 native Hawaiian plant and animal species, including several that are listed as threatened or endangered. The vast forest will serve as a protected corridor for native birds traversing from mauka to makai. Wao Kele o Puna is also critical to protecting drinking water quality in Hawaii County, covering over twenty percent of the Pahoa aquifer, the single largest drinking water source on the island.



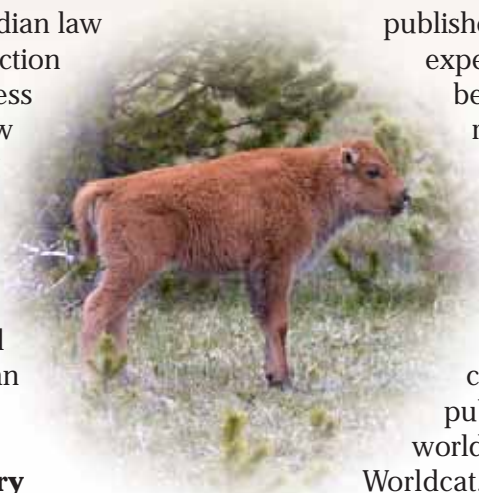
## THE DEVELOPMENT OF INDIAN LAW

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 and the public. Over the past thirty-three years NILL has collected nearly 9,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions in the United States; legal pleadings from major American Indian cases; law review articles on Indian law topics; handbooks; conference materials; and government documents. Library users can access the searchable catalog which includes bibliographic descriptions of the library holdings. In addition to making its catalog and extensive collection available to the public, the National Indian Law Library provides reference and research assistance relating to Indian law and tribal law. The Indian Law Bulletins are published by NILL in an effort keep NARF and the public informed about Indian law developments. NILL publishes timely bulletins covering new Indian law cases, U.S. regulatory action, law review articles, and news on its web site.

In an effort to provide Colorado Lawyers and the general legal community with a useful guide to Indian law research, NILL published two short articles on Indian law research in the *Colorado Lawyer* (a publication of the Colorado Bar Assn.). "Basic Indian Law Research Tips - Federal Indian Law" was published in the May, 2005 issue and "Basic Indian Law Research Tips - Tribal Law" was



published in the August issue. NARF expects that these practical guides will be useful and will highlight the research skills of the NILL staff. The articles can be accessed through NILL's Law Review Indian Law Bulletin website.

As part of NILL's long-standing goal to make the unique NILL collection more accessible to the public, the library has joined the world-wide bibliographic utility called Worldcat, which allows librarians and library users to find out what is in the collections of libraries nationwide. NILL will report its holdings over time beginning with items not found in other collections. To date, it has reported that it owns 18 different publications. Beginning this Fall, NILL began to report holdings of tribal law materials, and was the first library nationwide to catalog the new edition of the *Navajo Nation Code Annotated*.

This project allows NILL to make information about its unique library titles (or catalog records) available to other libraries for purposes of interlibrary loan; allows NILL to participate in a Library of Congress project to help establish name authorities or naming standards for tribal nations and other names to be used by librarians nationwide when cataloging or indexing their library holdings; and, NILL can more efficiently and economically request and receive books and other materials needed by NARF attorneys and staff by processing interlibrary loans utilizing the Worldcat system.

### 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. ILSC continues to send out regular correspondence to Indian Legal Services programs, handling requests for assistance, and working with Indian legal services programs to secure a more stable funding base from the Congress.

In December 2000 Congress enacted 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. Congress appropriated \$2 million in FY 2003 under the Act. NARF Indian legal services programs worked with the Department of Justice to devise an allocation methodology. The Department of Justice awarded a grant of \$1,987,000 to NARF in 2004. Most of the grant funds have been contracted out to the Indian legal services programs with a small portion used to cover NARF administrative costs. NARF continues to be actively involved with local ILS programs in the administration of the grant and in developing training events to meet local program needs. NARF recently received notice of an award of additional funding in the amount of \$1,726,626 for calendar year 2006 for the project.

### **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.





## 2005 FINANCIAL REPORT

Based on our *audited* financial statements for the fiscal year ending September 30, 2005, the Native American Rights Fund reports total unrestricted revenues of \$7,144,693 against total expenditures of \$7,281,814. Total net assets at the end of the year came to \$5,285,944. 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 \$259,482, causing a decrease to NARF's reserve fund. There have been cuts in federal awards as well as in various foundation grants. Conversely, revenue from fee cases showed an increase, mostly related to the Shinnecock Tribe case.

Revenue and Expense comparisons between fiscal year 2005 and fiscal year 2004 are shown below.

## UNRESTRICTED SUPPORT AND REVENUE COMPARISON

	2005		2004	
	dollars	percents	dollars	percents
Contributions	\$ 2,599,669	36.4%	\$ 2,622,033	35.2%
Federal Awards	1,490,509	20.9%	1,657,712	22.2%
Foundation Grants	1,370,529	19.1%	1,557,570	20.9%
Legal Fees	957,609	13.4%	785,570	10.5%
Return on Investments	709,026	9.9%	802,272	10.8%
Other	17,351	0.3%	26,582	0.4%
<b>TOTALS</b>	<b>\$ 7,144,693</b>	<b>100%</b>	<b>\$ 7,451,739</b>	<b>100%</b>

## EXPENSE COMPARISON

	2005		2004	
	dollars	percents	dollars	percents
Litigation and Client Services	\$ 4,850,670	66.6%	\$ 5,208,975	66.6%
National Indian Law Library	262,086	3.6%	340,277	4.4%
<b>Total Program Services</b>	<b>5,112,756</b>	<b>70.2%</b>	<b>5,549,252</b>	<b>71.0%</b>
Management and General	925,508	12.7%	902,913	11.5%
Fund Raising	1,243,550	17.1%	1,369,965	17.5%
<b>Total Support Services</b>	<b>2,169,058</b>	<b>29.8%</b>	<b>2,272,878</b>	<b>29.0%</b>
<b>TOTALS</b>	<b>\$ 7,281,814</b>	<b>100%</b>	<b>\$ 7,822,130</b>	<b>100%</b>

*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](http://www.narf.org)*

## N A R F   A C K N O W L E D G M E N T   O F   C O N T R I B U T I O N S :

We thank each and every one of our supporters for their commitment to the goals of NARE. NARE'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 2005 (October 1, 2004 through September 30, 2005).

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Whirlpool Foundation  
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Aspect Matching Gift Program  
Avon Products Foundation  
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Charitable Gift Fund  
David & Lucille Packard Foundation  
Eastern Bank Charitable Foundation  
ExxonMobil Foundation  
Fannie Mae Foundation Matching Gifts Center  
Ford Foundation  
Gordon and Betty Moore Foundation

Houghton Mifflin  
Illinois Tool Works Foundation  
ING Community & Volunteer Matching Gifts Programs  
J.P. Morgan Chase Foundation  
Mattel Children's Foundation Matching Gifts Program  
National Grange Mutual Insurance Company  
NUMMI, Team Member Giving Campaign  
Pepsico Foundation  
Pfizer Foundation  
Pioneer Hi-Bred International  
Qualcomm  
Sun Microsystems Foundation  
The Ford Foundation  
The Millipore Foundation  
The Pfizer Foundation  
The Washington Post  
United Airlines Employee Charitable Giving Program  
Vivendi Universal US Holding Co.  
World Reach, Inc.  
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**Peta Uha Membership** – 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](mailto: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.

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**Endowments** – 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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**E-Action** – 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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