**Native American Rights Fund**

**OFFICIAL MINUTES**

**BOARD OF DIRECTORS MEETING**

**Boulder, Colorado**

**May 13, 2016**

**Call to Order**

Chairman Moses Haia called the meeting to order at 9:03 a.m.

The following Board members were present: Chairman Moses Haia, Tex Hall, Gary Hayes, Michael Smith, Peter Pino, Kurt BlueDog, Julie Roberts-Hyslop, Anita Mitchell and Jefferson Keel. Unable to attend the meeting were Robert McGhee, Stephen Lewis, Richard Peterson and Larry Olinger.

Corporate Officers attending the meeting were: John Echohawk, Executive Director; Kim Gottschalk and Melody McCoy of the Litigation Management Committee; Mike Kennedy, Chief Financial Officer; Morgan O’Brien, Development Director; and Ray Ramirez, Corporate Secretary. NARF attorney staff and support staff were also in attendance at various times throughout the day.

After an opening prayer by Julie Roberts-Hyslop, each of the Board members recounted his or her activities since the last Board meeting as they related to issues of importance for their respective tribes and/or areas.

**Approval of Agenda**

**MOTION**: **Tex Hall** **moved that support for the Leonard Peltier Defense Committee be added to New Business.**

**SECOND: Kurt BlueDog**

**VOTE: Unanimous for the motion.**

**Approval of Minutes**

**MOTION: Kurt BlueDog moved that the minutes of the February 5, 2016 Board of Directors meeting held at the Agua Caliente Band of Cahuilla Indians in Rancho Mirage, California be accepted.**

**SECOND: Julie Roberts-Hyslop**

**VOTE: Unanimous for the motion**

**Executive Director's Report**

John Echohawk, Executive Director, welcomed those Board members present to the meeting and thanked them for their leadership and governance of the organization. John notified the Board that Board member Steven Lewis had a family emergency, Larry Olinger and Robbie McGhee had scheduling conflicts and Board member Richard Peterson is ill.

In financial matters, John reported that for fiscal year 2016 we are currently projecting a surplus in revenues over expenses of $47,776. The major reasons for this surplus projection is that we will be receiving about $1.3 million in attorneys’ fees and costs in the Toyukak voting rights case that we won in Alaska, $838,600 in attorneys’ fees for settling the Muscogee Creek tribal trust funds case, a $357,400 contribution from the Klamath Tribes for settling their tribal trust funds case, and over $800,000 being projected for investment income for the fiscal year. For fiscal year 2017 which begins October 1, 2016, we are currently projecting a deficit in expenses over revenues of $3.4 million. The major reasons for the deficit projection are that no large attorneys’ fees awards or payments are being projected like we had in FY16 in the Toyukak, Muscogee Creek and Klamath Tribes cases and we are not projecting as much investment income as we are in the FY16. Also note that the budget decreases by about $2 million because we are not projecting any further support from the Bureau of Justice Assistance to pass on to Indian legal services programs although such support is still a possibility. If the $3.4 million deficit projection persists and was covered by reserve funds, our reserve fund would decrease to $12.3 million.

In staffing matters, Brandy Lonchena, our Law Office Administrator, resigned in December and Shane Parashonts (Paiute) has been hired and will begin on May 23.

John reported that he continues to prioritize fundraising and management responsibilities. Those activities include working with our larger tribal and foundation contributors, other major contributors and the Board’s Tribal Fundraising Committee.

Other than fundraising and management, John attended and spoke at the National Congress of American Indians Winter Executive Council meeting, the National Indian Gaming Association Annual Convention and the National Reservation Economic Summit (RES). As a board member, he attended board meetings of the National Center for American Indian Enterprise Development and the Natural Resources Defense Council. He also attended the American Bar Association Water Law Conference, the National Native American Bar Association Annual Meeting and the Federal Bar Association Indian Law Conference. John attended meetings of the Ad Hoc Group on Indian Water Rights with the Western States Water Council in Washington, D.C. advocating for favorable Indian water rights settlement policies.

John concluded by reporting that NARF, acting as fiscal agent, is working with the Bears Ears Intertribal Coalition in their efforts to persuade President Obama to designate 1.8 million acres of federal lands in southeastern Utah as a national monument.

**Litigation Management Committee (LMC) Report**

NARF attorney and LMC member Melody McCoy provided the Board with a general recap of several cases listed in the Board report and updated a few cases that recorded new developments.

Reporting on the Tribal Supreme Court Project, Richard Guest detailed several cases that have been decided by the Supreme Court. On March 22, 2016 in *Nebraska v. Parker* the Court issued a unanimous (8-0) opinion written by Justice Thomas which affirmed the decisions of the U.S. Court of Appeals for the Eighth Circuit and the U.S. District Court for the District of Nebraska which had held that an 1882 Act of Congress did not diminish the Omaha Indian Reservation in Oklahoma. On March 22, 2016, in *Sturgeon v. Masica,* the Court issued a unanimous (8-0) opinion written by Chief Justice Roberts which vacated an Indian-law related decision of the U.S. Court of Appeals for the Ninth Circuit which had held that the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) did not prevent the National Park Service from imposing its generally applicable regulations on non-federal lands within conservation system units in Alaska. On January 25, 2016, the Court issued its decision in *Menominee Indian Tribe v. United States* to resolve a conflict between the U.S. Courts of Appeals for the DC Circuit and the Federal Circuit regarding the appropriate standard for obtaining equitable tolling of the statute of limitations for filing claims against the Indian Health Service for unpaid contract support costs. In a unanimous (9-0) opinion written by Justice Alito, the Court held that equitable tolling is not available to preserve contract claims that were not timely presented to a federal contracting officer because there were no extraordinary circumstances beyond the tribe’s control. The Court heard oral argument in *United States v. Bryant* on review of a petition filed by the United States seeking reversal of a decision by the U.S. Court of Appeals for the Ninth Circuit which had held that tribal court criminal convictions for domestic violence may be used in federal court prosecutions as a habitual offender under 18 USC §117 only if the tribal court guarantees a right to counsel. The Court also heard oral argument in *Dollar General v Mississippi Band of Choctaw Indians* which challenges Tribal Court jurisdiction over tort claims brought by a tribal member against a non-Indian corporation doing business on trust lands leased from the Tribe. The Question Presented is: “Whether Indian tribal courts have jurisdiction to adjudicate civil tort claims against nonmembers, including as a means of regulating the conduct of nonmembers who enter into consensual relationships with a tribe or its members.”

In the Judicial Selection Project, the big news is the vacancy at the Supreme Court of the United States as the result of the death of Justice Antonin Scalia in February. There is a major partisan battle brewing in Washington, D.C. over his replacement. On March 16, 2016, President Obama announced the nomination of Chief Judge Merrick Garland, United States Court of Appeals for the D.C. Circuit, to fill the vacancy. Garland has a very limited record on issues effecting Indian tribes, having only participated in five Indian law cases during his tenure on the D.C. Circuit, authoring only two opinions. His vote against tribal interests in *San Manuel v. NLRB* raises specific concerns for Indian tribes. The Project will continue to research Garland’s record and share its findings in order to help inform any decision on whether to support or oppose Garland for a life-time appointment on the Court.

On January 28, 2015, the Pamunkey Indian Tribe’s Final Determination on federal acknowledgement became effective as a result of the IBIA’s final dismissal of the request for reconsideration. On February 23, 2016, in the Agua Caliente Band of Cahuilla Indians tribal water rights case, the court granted the Tribe’s and United States’ motions for partial summary judgment, ruling that the defenses asserted by the water agencies could not, as a matter of law, be asserted against an Indian water rights claim. In climate change matters, the rights of indigenous peoples and indigenous peoples knowledge have been recognized at the United Nations in the Paris Climate Change Agreement. It is clear that without the presence of Indigenous Peoples’ representatives, the Paris Agreement and Decision would have had no reference to them. While the indigenous caucus did not achieve all that it sought, it did achieve some very significant references which can be built on going forward. NARF attended an Expert Workshop in Geneva in April 2016 on the review of the mandate of the Expert Mechanism on the Declaration on the Rights of Indigenous Peoples, as well as other indigenous mechanisms, with the goal of strengthening the mandate to enable it to review states’ compliance with the Declaration.

**Alaska Report**

Alaska office attorneys Heather Kendall-Miller and Matt Newman provided the Board with an overview of Alaska Native issues and cases. Central Council of Tlingit and Haida Indian Tribes of Alaska (Central Council) operates a Title IV-D child support program and has sued the State of Alaska in state court for its refusal to recognize and enforce Central Council’s child support orders. On March 25, 2016, the Alaska Supreme Court issued its decision affirming that the State of Alaska must recognize tribal child support orders. In 2006, the Akiachak Native Community, the Chilkoot Indian Association, the Chalkyitsik Village Council, and the Tuluksak Native Community IRA, represented by NARF, brought suit in federal district court for the District of Columbia seeking judicial review of 25 C.F.R. Part 151 as it pertains to federally-recognized tribes in Alaska. This federal regulation governs the procedures used by Indian tribes and individuals requesting the Secretary of the Interior to acquire title to land in trust on their behalf. At the time, the regulation barred the acquisition of land in trust in Alaska other than for the Metlakatla Indian Community or its members. A three judge panel of the D.C. Circuit heard oral argument in the case on March 4, 2016. A decision in the case is pending.

In *John Sturgeon v. Sue Masica, et al.*, the federal courts upheld the right of the National Park Service to prohibit the use of a hovercraft on a river inside a National Park or Preserve. In appeal to the Supreme Court, NARF elected to file an amicus brief on behalf of subsistence users in support of the federal government at the Supreme Court level because of concern that the case may inadvertently implicate subsistence fishing rights established by the *Katie John* litigation. Oral argument was held on January 20, 2016 and the Court issued an opinion reversing and remanding to the lower court on March 22, 2016. NARF assisted in the creation of the United Tribes of Bristol Bay (UTBB). UTBB is a consortium of federally- recognized tribes in the region. It was formed in order for tribes to directly address regional large-scale mining proposals threatening salmon rearing streams—such as the proposed Pebble Mine, which would sit on the headwaters of the largest salmon-producing river in Bristol Bay. Judge Holland issued a broad order quashing Pebble’s subpoenas, specifically finding that the Company’s efforts pushed the federal discovery rules to their very limits. After Judge Holland issued his order, Pebble withdrew its remaining subpoenas, but less than four months later the Pebble Limited Partnership began severing narrower subpoenas on third parties. The case is continuing through the discovery phase, which is not slated to be completed until June 2016. In the interim, Judge Holland’s preliminary injunction remains in effect.

The National ICWA Defense Project, made up of NARF, the National Indian Child Welfare Association (NICWA), the National Congress of American Indians (NCAI), and the Association of American Indian Affairs (AAIA) was formed to develop a response to and monitor challenges to ICWA. The BIA published its new revisions to the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings to promulgate binding federal regulations governing the implementation of ICWA. These reforms, however, have drawn the ire of ICWA opponents nationwide. The National Council for Adoption, the Academy of Adoption Attorneys and the Goldwater Institute filed lawsuits challenging the constitutionality of ICWA and the revised Guidelines. In addition to the federal cases listed above, the ICWA Defense Project is monitoring important cases in Michigan, Oklahoma, Utah, California, and Washington.

In January 2015, NARF proposed an ambitious new project: gathering voting rights advocates, lawyers, experts, and tribal advocates into one room to discuss current problems with voting in Indian Country and begin to develop solutions to these problems. In the wake of the U.S. Supreme Court’s decision in Shelby County, numerous state legislatures have passed new election laws that impose significant barriers to AIAN voters. Currently, individuals and organizations working on AIAN voting rights issues do so independent of one-another, with no coordinated strategy in place to address voting rights issues in Indian Country. To date, this work has been generally (but not exclusively) reactive – in response to an immediate threat – rather than proactive or planned in advance of a specific election. That is what this project hopes to change. With the completion of the initial meetings, the participants developed an ongoing project called the Native American Voting Rights Coalition (NAVRC). It meets on a monthly basis, as do its subgroups on redistricting, litigation, capacity building and data gathering. The NAVRC is actively working on its 2016 work as well as fundraising for the group itself. At least six new partnerships have been formed as part of this Coalition, meaning members of this group who had not previously worked together have initiated a new case or similar project to advance the voting rights of American Indian and Alaska Native people.

**Financial Report**

Mike Kennedy, Chief Financial Officer, reported that for fiscal year 2016, the funding source report shows a projected operating budget of $11,928,597. With projected revenue from approved and probable sources at $11,976,373, we are projecting a surplus of $47,776 and a projected reserve fund of $15,746,931 at the end of fiscal year 2016. For fiscal year 2017, we are now projecting a deficit of $3,442,520. This deficit projection has decreased approximately $200,000 from February’s report, mostly due to additional grant money related to our work in Alaska.

As of March 31, 2016, we have recorded $835,603 (before fees) in income and gains on our investments since September 30, 2015, which is approximately a 5.30% return (net of fees) over the six month period. Mike reported that drafts of the new investment policies have been given to the Investment Committee (Moses Haia, Stephen Lewis, and Michael Smith) and to the Board Treasurer Tex Hall. Once all questions and comments are addressed, the new investment policies will be sent to the entire Board for review.

Audit Committee members (Julie Roberts-Hyslop, Peter Pino and Robert McGhee) are recommending that NARF retain the audit firm BKD, LLP to perform the fiscal year 2016 audit.

**MOTION: Kurt BlueDog moved that the Board of Directors formally approve NARF** **Resolution #2016-01 to retain BKD, LLP to perform the fiscal year 2016 audit.**

**SECOND: Michael Smith**

**VOTE: Unanimous for the motion.**

**Development Director's Report**

Morgan O’Brien, Development Director, reported that NARF’s fundraising program is comprised of multiple initiatives, including direct mail, internet, foundation grants, bequests, major gifts and tribes and Native organizations. At the midpoint of our fiscal year, fundraising from all categories is up 17.5% over the same period last year before one-time gifts from tribes reaching trust fund settlements are counted, and up 28% in total. Morgan reported that the Muckleshoot Tribe will be contributing $50,000 and also thanked Tzo`-Nah for her continued support of NARF.

The Board Fundraising Committee met by phone on April 26, 2016. Committee members, John and Morgan discussed the elements comprising our tribal fundraising program, and how Board members can assist in those efforts. These include helping update our tribal contact lists to reflect recent elections, arranging invitations to present at regional tribal gatherings, as well as help in solicitations. Morgan distributed tribal assigned lists to each Board member.

Fundraising growth continues to slowly reduce projected annual deficits. Our revenue forecasting tends to be conservative and final deficits in most years are materially lower than initially projected. Still, we project deficits into the foreseeable future. The needs of tribes for NARF’s services remain high, and we strive to meet as many of them as we can. This can put upward pressure on spending. In the discussion forum at this Board meeting, we will talk about pending case settlements that are beginning to look more and more possible. If realized, they will dramatically alter NARF’s revenue/expense equation.

**Discussion Forum Topic**

At the February Board meeting at Agua Caliente, the Board expressed concern about the projected budget deficits in the coming years and had questions on how we plan to deal with them. We had some discussion of the plan there and the Board wanted further discussion of the plan at this meeting.

In recent years, contributions and attorneys’ fees from our settlement of tribal and individual trust fund mismanagement cases against the United States have been a great addition to our budget and are responsible for the current reserve fund of $15,699,155 that we have. The reserve fund would enable us to meet annual projected $3 million budget deficits over the coming few years with Board approval. We are always trying to increase our foundation funding and individual and tribal contributions, but the growth is not anticipated to be sufficient to cover the projected deficits in the coming few years. The $15,699,155 reserve fund that we plan on using to meet future budget deficits with Board approval may grow substantially larger with the settlement of more trust fund mismanagement cases against the United States that we have listed as possible funding sources in the funding source report. Although we cannot say that contributions and attorneys’ fees from these cases are probable, we believe that there is a very strong possibility that we will be receiving a substantial amount of funds from the settlement of these cases before the Obama administration is over.

We believe that there is strong possibility that our reserves may double or even triple in size if these possible funding sources come through for us in the coming months. Our reserve fund may even be of such size that we may want to think about putting some of the reserves in a quasi-endowment fund controlled by the Board that would be invested, but could be spent on program with Board approval.

For this discussion the Litigation Management Committee provided brief descriptions and updates of several cases where NARF represents tribes and tribal organizations in claims against the federal government for breaches of trust. Most of these cases are in various stages of active settlement at the political level with the Obama Administration. NARF has recently learned that the political appointees of the U.S. Department of Justice are likely to extend an invitation to the leaders and attorneys (including NARF) of certain tribes (including our *Sisseton* case clients) who are in active settlement negotiations with the government over historical breach of trust claims to attend an in-person government-to-government-at-the-political-level joint general session in late May 2016. As these negotiations are confidential at this time, details will not be recorded in these minutes.

Once settlement of these trust fund cases are finalized, NARF’s financial standing will increase dramatically.

Updates on Previous Discussion Forum Topics

John provided the Board with updates on the United Nations Paris Agreement, on Indian education, sacred sites and ICWA.

**Discussion Forum Topic Suggestion for the November 2016 Winter Meeting**

The following discussion forum topics were suggested for the November 2016 Fall Board of Directors meeting:

1. Discussion on the results of the 2016 election and how the results might impact tribes.
2. Discussion on reclamation of gas/oil sites and how tribes can access the resources for clean-up efforts.

**New Business/Board Actions**

Executive Director’s Evaluation

As required by NARF’s policies, the Executive Director must be evaluated every two years by the Board appointed Executive Director’s Evaluation Committee (Michael Smith, Kurt BlueDog and Moses Haia). The Committee received thirteen evaluations from Board and Administrative staff members. On May 12, 2016, the Committee met and reviewed the evaluation policy, discussed the evaluation process, conducted a detailed review of all evaluations, met with the Executive Director, and interviewed four staff members. The Committee then recommended that the Board of Directors approve the Executive Director’s evaluation and approve renewal of the Executive Director’s employment contract for two years.

**MOTION: Julie Roberts-Hyslop moved that the Board of Directors approve the Executive Director’s evaluation and approve the renewal of the Executive Director’s employment contract for two years.**

**SECOND: Tex Hall**

**VOTE: Unanimous for the motion.**

Board Elections and Nominations:

The Board Nominations Committee (Kurt BlueDog, Robert McGhee, Anita Mitchell, Julie Roberts-Hyslop) conferred with Executive Director John Echohawk after he had communicated with the three current Board members whose terms are expiring but are eligible for re-election to the Board. The Board Nominations Committee makes these recommendations: Current Board member Stephen Lewis is recommended for re-election to his third term on the Board. Current Board member Peter Pino is recommended for re-election to his third term on the Board. Current Board member Robbie McGhee is recommended for re-election to his second term on the Board.

**MOTION: Julie Roberts-Hyslop moved that the Board of Directors re- elect Board members Stephen Lewis and Peter Pino to their third term on the Board and Board member Robbie McGhee to his second term on the Board.**

**SECOND: Michael Smith**

**VOTE: Unanimous for the motion**

Board Executive Committee

Vice-Chairman Robbie McGhee is eligible for re-election as Board Vice-Chairman and Executive Committee Alternate Member Stephen Lewis is eligible for re-election as Executive Committee Alternate Member.

**MOTION: Kurt BlueDog moved that the Board of Directors re-elect Robbie McGhee as Vice-Chairman and Stephen Lewis as Executive Committee Alternate Member.**

**SECOND: Julie Roberts-Hyslop**

**VOTE: Unanimous for the motion**

Site selection for the August Executive Committee meeting

The Board of Directors voted to have the August 2016 Executive Committee meeting at the Mandan, Hidatsa and Arikara Nations in North Dakota hosted by Board member Tex Hall.

The business for the Fall Board of Directors meeting was concluded and adjourned at 4:54 p.m.

**CERTIFICATION**

The minutes of the NARF Board of Directors meeting of May 13, 2016, were duly approved on November 10, 2016.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Moses Haia, Chairman

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Ray Ramirez, Secretary