**Native American Rights Fund**

**OFFICIAL MINUTES**

**Board Executive Committee Meeting**

**Mandan, Hidatsa and Arikara Nations, North Dakota**

**August 4, 2016**

**Call to Order**

Chairman Moses Haia called the meeting to order at 9:10 a.m.

Executive Committee members present: Chairman Moses Haia, Vice-Chairman Robert McGhee, Tex Hall and Larry Olinger were present at the meeting. Stephen Lewis was unable to attend.

Corporate Officers present: John Echohawk, Executive Director; Kim Gottschalk, Litigation Management Committee; Michael Kennedy, Chief Financial Officer; Morgan O’Brien, Director of Development; Ray Ramirez, Corporate Secretary; and Katrina Mora, Administrative Assistant. Also in attendance were NARF attorney Matt Campbell, Comptroller Debbie Thomas and Accounting Clerk Kalee Salazar.

After an opening prayer by Moses Haia, each of the Committee 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**

The agenda was approved with one change recommended by John Echohawk: add Native Hawaiian constitutional referendum funding issue as New Business item number 3.

**MOTION: Robbie McGhee moved that the Executive Committee approve the amended agenda.**

**SECOND: Larry Olinger**

**VOTE: Unanimous for the motion**

**Executive Director’s Report**

John Echohawk, Executive Director, thanked the Executive Committee members for their attendance and thanked Tex Hall for hosting the meeting. John informed the Committee that Debbie Thomas and Kalee Salazar just fininished monitoring the Indian Legal Services Program in New Town, North Dakota under our Bureau of Justice Assistant grant and will be here for this meeting.

For fiscal year 2016 which ends September 30, we are projecting a surplus of revenues over expenses of $322,106. The major reasons for this surplus projection are 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 mismanagement case, a $357,400 contribution from the Klamath Tribes for settling their tribal trust funds mismanagement case, and over $1 million being projected for investment income for the year based on current returns. For fiscal year 2017 which begins October 1, 2016, we are currently projecting a deficit of $3.3 million in expenses over revenues. The major reasons for the deficit projection are that no large attorneys’ fees or payments are being projected like we had in FY 16. For fiscal year 2018 and beyond, we anticipate continued large annual deficits unless they are met by increases in our fundraising programs from new funding sources we have not identified.

In staffing matters, the Office/Human Resources Administrator that began work with us in May after the Board meeting resigned a few weeks later because of unexpected high living costs in the Boulder area. We brought on Karla Bowman who is a Stockbridge-Munsee tribal member to replace him and she began work on July 18. She brings many years of human resources work experience with her from her time working for the Stockbridge-Munsee tribal government and casino in Wisconsin. We have also hired two new paralegals to replace two paralegals who recently resigned and we hired a new Office Services Assistant/Receptionist to replace the Office Services Assistant/Receptionist who resigned. We are also bringing on a new law school graduate in the Alaska office under a two year fellowship made available to us by one of our foundation funding sources.

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

Other than fundraising and management, John attended a retreat of the Green Group, a coalition of CEOs from national environmental organizations, as the only Native American member. Working with the First Nations Development Institute, he attended the first convening of large tribal philanthropists who hope to organize tribal philanthropy and influence and educate major philanthropy about Native American needs. John attended the Indigenous Water Justice Symposium that NARF co-hosted at the University of Colorado Law School.

As a board member, he attended a Keystone Policy Center board meeting and received an award at their annual dinner in Washington, D.C. for his work over the years in promoting tribal water rights settlements. He attended a Grand Canyon Trust board meeting where we work as fiscal agent for the Bears Ears Intertribal Coalition that advocates for 1.8 million acres of federal lands in southeastern Utah to be designated as a national monument. John attended the National Congress of American Indians Mid-Year Conference in Spokane, Washington where he chaired their Litigation and Governance Committee and also gave the Tribal Supreme Court Project report along with the NCAI General Counsel. Finally, John attended the Reservation Economic Summit (RES)-Oklahoma and moderated a panel on the Dollar General case in the Supreme Court.

John announced that James Anaya has been selected as the new Dean of the University of Colorado Law School. Previously, Dean Anaya served as the United Nations Special Rapporteur on the Rights of Indigenous Peoples and the James J. Lenoir Professor of Human Rights Law and Policy at the [University of Arizona](https://en.wikipedia.org/wiki/University_of_Arizona)'s [James E. Rogers College of Law](https://en.wikipedia.org/wiki/James_E._Rogers_College_of_Law).

**Litigation Management Committee Report**

Litigation Management Committee member Kim Gottschalk reported that the Supreme Court October Term 2015 (OT15) ended in anti-climactic fashion with an equally divided (4-4) Court affirming the ruling of the U.S. Court of Appeals for the Fifth Circuit in *Dollar General v. Mississippi Band of Choctaw Indians*. The Fifth Circuit had firmly upheld tribal court jurisdiction over tort claims brought against a non-Indian corporation doing business on the reservation. In reviewing the close of the Supreme Court term for the year, and in addition to the victory in *Dollar General*, Indian country scored unanimous (8-0) wins in both *U.S. v. Bryant* and *Nebraska v. Parker*. In *U.S. v. Bryant*, the Court reversed the decision of the U.S. Court of Appeals for the Ninth Circuit and held “[b]ecause Bryant’s tribal-court convictions occurred in proceedings that complied with ICRA [the Indian Civil Rights Act] and were therefore valid when entered, use of those convictions as predicate offenses in a prosecution does not violate the Constitution.” In *Nebraska v. Parker*, the Court rejected arguments by the State of Nebraska and the Village of Pender to depart from its long-standing *Solem* test to evaluate whether a surplus land act diminished the Omaha Indian Reservation and to adopt a test of *de facto* diminishment based on whether an area has lost its “Indian character.” Indian country suffered its only loss in *Menominee Tribe v. United States* where the Court found that equitable tolling is not available to preserve Indian self-determination contract claims that were not timely presented to a federal contracting officer when there are no extraordinary circumstances beyond the tribe’s control. With the end of this term, the overall win-loss record of Indian country before the Roberts’ Court stands at 5-wins and 10-losses (marking a substantial improvement from the 0-wins and 7-losses from 2005-2011).

Kim detailed the language in the U.N. Paris Agreement regarding Indigenous Peoples. NARF also provided input to the federal Departments of the Interior, Agriculture, Defense, and Energy, which signed a Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites to improve the protection of, and tribal access to, Indian sacred sites through enhanced and improved interdepartmental coordination and collaboration.

NARF has been working with the Organization of American States (OAS) on an American Declaration on the Rights of Indigenous People. Nineteen rounds of negotiations were held between member states and indigenous peoples, and in a final session of negotiations that was held May 17-19, 2016 in Washington, D.C., an agreement on a Declaration was reached. The General Assembly of the OAS approved the American Declaration on the Rights of Indigenous People in June in the Dominican Republic. This Declaration marks a major victory for indigenous peoples. The American Declaration goes beyond the UN Declaration in several respects including, among others, treaties, the rights of children, and the rights of peoples in voluntary isolation. The American Declaration is important because of these provisions and because it will be used by the Inter-American Court on Human Rights and the Inter-American Commission on Human Rights to build on an existing body of decisions supporting indigenous rights. The United States objects to the text of the Declaration and Canada has not yet taken a position on the text.

Alaska has been the only state in the nation that categorically refuses to recognize Indian child support orders from tribes. On March 25, 2016, in *State of Alaska v. Central Council of Tlingit and Haida Indian Tribes of Alaska,* the Alaska Supreme Court issued its decision affirming that the State of Alaska must recognize tribal child support orders. June 23 was the deadline for the State to appeal the case to the U.S. Supreme Court. The State did not appeal so the Alaska Supreme Court’s decision stands. 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. On July 1, 2016, the Court published its decision in favor of the Tribal Appellees.

**Financial Report**

Michael Kennedy, Chief Financial Officer, reported that the funding source report for fiscal year 2016 shows a projected operating budget of $12,220,542 and projected revenue from approved and probable sources at $12,542,648 which reflects a projected increase (surplus) position of $322,106. NARF signed a grant agreement with the San Manuel Band of Mission Indians for $600,000 for three years for the Tribal Supreme Court Project. For fiscal year 2017, we are projecting an operating budget of $10,356,019 and projected revenue from approved and probable sources at $7,013,958 leaving a projected deficit position of $3,342,061. NARF’s investments as of June 30, 2016 shows gains of $1,063,444 since September 30, 2015, approximately a 6.7% return.

Mike then reported that following up on discussions at the May 13 Board meeting, he sent updated drafts on the proposed new Investment Policies in June. Mike requested that the Executive Committee approve these new policies.

 **MOTION: Executive Committee member Tex Hall moved that the Executive Committee approve the new Investment Policies with the following changes that were recommended by the Board at their May meeting: Table of Contents pages 2 and 4 – Switched the order of “Financial Advisor” and “Investment Managers;” Page 1 – Amended the “Primary Objectives” to include that returns exceed the appropriate benchmarks; and, Page 5 – Amended the “Restrictions” to include tribes and tribal entities as exceptions.**

**SECOND: Robbie McGhee**

**VOTE: Unanimous for the motion**

**Development Director’s Report**

Development Director Morgan O’Brien thanked the Executive Committee for their participation and for their support.

The Native American Rights Fund’s fundraising program is comprised of multiple initiatives, including direct mail, internet, foundation grants, bequests, major gifts and tribes and Native organizations. Fundraising from all categories is up 19% over the same period last year before one-time gifts from tribes reaching trust fund settlements are counted, and up 26% in total. The increases are fairly well balanced across all giving categories. We expect to make our projections for the fiscal year.

NARF currently projects a deficit of more than $3 million for fiscal year 2017. Our revenue forecasting is based on what we now know, and the final deficit may be lower than now projected, depending on developments. Still, the gap is real. Morgan reviewed charts that show that NARF has experienced continuous growth in fundraising over the last five years. This revenue growth has not kept pace with additional spending over the same period. We have relied on investment performance, sale of assets and, most especially, case settlement dollars to bridge the gap. That will remain the case over the next several years.

**Discussion Forum**

NARF attorney Matt Campbell discussed the case *Brakebill, et al. v. Jaeger.* Seven Native Americans from North Dakota filed suit under the Voting Rights Act and the U.S. and North Dakota Constitutions challenging North Dakota’s recently enacted voter ID law on the grounds it disproportionately burdens Native Americans and denies qualified voters the right to vote. Matt informed the Committee that a temporary restraining order against enforcement of the law was obtained on August 11.

North Dakota House Bills 1332 and 1333 put in place the most restrictive voter ID law in the nation. North Dakota voters are now required to present one of only four qualifying IDs with a current residential address printed on it in order to vote. Before enactment of these laws, North

Dakota required a poll clerk to request an ID, but a voter without one could still vote if the clerk

vouched for their qualifications or the voter signed an affidavit of identity. While other states also have voter ID requirements, North Dakota is the only state without a fail-safe provision. Additionally, North Dakota’s list of acceptable IDs is much more limited than other states, which allow U.S. passports and military IDs to be used.

Matt informed the Committee that what we are asking for is the same proven, high-quality election system that was in place before the new voter ID law. North Dakota’s voting laws were more voter friendly before the recent legal changes, and under those laws voter fraud was virtually non-existent. We want to ensure that everyone that is qualified has the right and the opportunity to vote – particularly Native Americans.

More than 72,000 voting eligible citizens in North Dakota lack a qualifying ID to be able to vote,

according to the Plaintiffs. That includes 7,984 Native Americans, or 23.5% of the total voting

eligible Native American population (as compared to only 12.0% of the non-Native Americans

that lack a qualifying ID). For Native Americans who face high levels of poverty and lower

access to transportation, the burden to travel, in some cases, more than 120 miles round trip to

obtain a state ID is substantial.

**New Business**

NARF staff salary survey

Pursuant to NARF policies and procedures regarding attorney salaries, administrative staff and law clerk salaries, and support staff salaries, we have undertaken salary surveys to determine whether NARF salaries remain competitive with salaries for comparable positions. We last conducted these salary surveys in 2014.

The Executive Committee approved the following adjustments for NARF staff salaries:

* NARF's current attorney 2016 salary scale is over the national data by less than 1%, therefore, no changes will be made to the NARF attorney scale, hence no additional funds will be added to the budgets for FY 2016 and FY 2017. In 2017 and 2018, we will continue our usual attorney salary policy and procedure and give each attorney a raise based on an additional year of legal experience according to the salary scale plus an annual cost-of-living adjustment based on the consumer price index.
* Adjustments to administrative and law clerk salaries will add $417 to FY 2016 and $5,000 to FY 2017. In 2017 and 2018, we will continue our usual administrative staff salary policy and procedure and give each administrative staff member who is not frozen an additional $1,000 as a longevity increment plus an annual cost-of-living adjustment based on the consumer price index even for those employees who have been frozen. Law clerk salaries will remain at $24 per hour.
* Adjustments to support staff salaries will add $158 to the FY 2016 budget and $1,897 to the FY 2017 budget. The support staff who will receive raises would go into effect with our next pay period on September 1, 2016. In 2017 and 2018, each support staff member will receive an additional $900 as a longevity increment unless they are frozen plus an annual cost-of-living adjustment based on the consumer price index even for support staff members who are frozen.
* In accordance with our usual attorney and staff salary policy and procedure, salary surveys will be conducted again in two years in 2018 to make sure that we are still paying comparable salaries and make recommendations to the Executive Committee for any necessary adjustments.

 **MOTION: Larry Olinger moved that the Executive Committee approve the above recommendations for attorney, administrative staff and law clerk salaries, and support staff salaries.**

 **SECOND: Moses Haia**

 **VOTE: Unanimous for the motion**

Fall 2016 Discussion Forum Topic

At the end of the May Board meeting, suggestions were taken from Board members about a topic for the Discussion Forum agenda item at the fall Board meeting in Boulder. We have reviewed those suggestions along with our own suggestions and recommend that the topic for the Discussion Forum at the fall Board meeting be the 2016 election and how the results might impact tribes. In conjunction with that, we recommend that the fall Board meeting be moved from the first Friday in November (November 4) to Thursday, November 10, two days after the 2016 election. The Committee approved the recommendations.

Discussion on funding for a Native Hawaiian constitutional convention and government

Board Chairman Moses Haia recused himself from all discussions regarding this topic.

John Echohawk led a discussion on Native Hawaiian efforts for federal recognition to establish a government-to-government relationship with the federal government. It is estimated that Native Hawaiians will need $2 million to ratify a constitution and elect officers in order to establish a Native Hawaiian government required by the United States under a new recognition procedure. Thus far, they have not been very successful raising these funds. Due to NARF’s long history with Native Hawaiians, John believes that since NARF may be in a financial position to assist them in their efforts, then we should seriously consider contributing to their efforts. As the final federal rule for their federal recognition has not yet been issued, the Committee felt that the Native Hawaiians should submit a detailed formal proposal to NARF requesting financial assistance. Once this proposal is reviewed by NARF staff, then a recommendation would be forwarded to the Board for action.

This concluded all the business approved on the agenda.

Meeting adjourned at 5:26 p.m.

 **CERTIFICATION**

The minutes of this August 4, 2016 Executive Committee meeting were duly approved on November 10, 2016.

Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Moses Haia, Chairman

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Ray Ramirez, Secretary