**Native American Rights Fund**

**OFFICIAL MINUTES**

**BOARD OF DIRECTORS MEETING**

**Boulder, Colorado**

**November 10, 2016**

**Call to Order**

Vice-Chairman Robert McGhee called the meeting to order at 9:07 a.m.

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

Corporate Officers attending the meeting were: John Echohawk, Executive Director; Natalie Landreth and Melody McCoy of the Litigation Management Committee; Mike Kennedy, Chief Financial Officer; Ray Ramirez, Corporate Secretary; and, Don Ragona Acting Director of Development. NARF attorney staff and support staff were also in attendance at various times throughout the day.

After an opening prayer by Gary Hayes, 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**: **Kurt BlueDog moved that the Discussion Forum be moved to 12 noon and move agenda accordingly; remove topic #1 from New Business.**

**SECOND: Richard Peterson**

**VOTE: Unanimous for the motion.**

**Approval of Minutes**

**MOTION: Julie Roberts-Hyslop moved that the minutes of the May 13, 2016 Board of Directors be accepted.**

**SECOND: Larry Olinger**

**VOTE: Unanimous for the motion**

**Motion: Larry Olinger moved that the minutes of the August 4, 2016 Executive Committee meeting be accepted.**

**Second: Richard Peterson**

**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 the following Board members were unable to attend the meeting: Board Chairman Moses Haia had surgery; Peter Pino had tribal obligations; and, we have been unable to contact Steven Lewis.

In financial matters, John reported that in closing fiscal year 2016 we are currently projecting a surplus in revenues over expenses of $492,759. The major reasons for this surplus projection is the receipt of over $1.1 million in attorneys’ fees and costs in the Toyukak voting rights case that we won in Alaska, $836,000 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 about $1.6 million in investment income for the fiscal year. For fiscal year 2017 which began on October 1, 2016, we are currently projecting a surplus in expenses over revenues of $17.8 million. Adding the $17.8 million surplus projection to our reserves of $16 million would bring our reserve fund up to $34 million. Without these one-time tribal contributions, we are projecting $3 million deficits in fiscal year 2018 and beyond.

At this time, the Board recognized the work of NARF attorneys Melody McCoy and Natalie Landreth for their successful work on the tribal trust funds mismanagement case and the voting rights case.

In staffing matters, Development Director Morgan O’Brien has resigned and Don Ragona will be Acting Director until the time that this position is filled. John introduced Karla Bowman, NARF’s new Office and Human Resources Director.

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 was the commencement speaker at Sinte Gleska University on the Rosebud Sioux Reservation in South Dakota and spoke at the United Tribes Technical College Tribal Leaders Summit in Bismarck, North Dakota. As a board member, he attended board meetings of the Natural Resources Defense Council, the Association on American Indian Affairs and attended another meeting of the Green Group, a coalition of CEOS from national environmental organizations, as the only Native American member.

John attended the Tenth Circuit Judicial Conference where he spoke with Supreme Court Justices Sotomayor and Kagen about visiting tribal courts. He also attended another meeting of the Ad Hoc Group on Indian Water Rights working with the Western States Water Council on favorable tribal water rights settlement policies. As a special guest, John went to the annual White House Tribal Leaders Conference; attended the National Congress of American Indians Annual Convention giving the Tribal Supreme Court Project report and continued to serve as Chairman of the Litigation and Governance Committee.

John also attended the screening of a documentary film entitled “100 Years” in New York City and Los Angeles attended by members of the Academy of Motion Picture Arts and Sciences and answered their questions at the end of the film along with Tex Hall who also attended. It is about the Cobell individual trust funds mismanagement case that we were involved in representing Elouise Cobell beginning in 1996 that resulted in a $3.4 billion settlement in 2010. The film hopes to be nominated for an Academy award. We will be giving the Board an opportunity to view the film soon.

**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, on October 3, 2016 in *Pro-Football, Inc. v. Blackhorse*, the Court denied the petition for writ of certiorari before judgment (by the Fourth Circuit) filed by Pro-Football. However, the Court did grant the petition filed by the United States in *Lee v. Tam* in which it will review an en banc decision of the U.S. Court of Appeals for the Federal Circuit which held that the disparagement clause in §2(a) of the Lanham Act is facially invalid under the free speech clause of the First Amendment. The Court granted review in one Indian law case – *Lewis v. Clarke,* which involves the question of whether the doctrine of tribal sovereign immunity extends to an employee of the tribe who is acting within the scope of his employment.

In *Agua Caliente v. Coachella Valley Water District, et al.*, oral argument on the interlocutory review of the district court’s Phase 1 ruling on the Tribe’s reserved right to groundwater was heard by a three judge panel of the Ninth Circuit on October 18, 2016 in Pasadena, and we now await a decision from that court. On September 7, 2016 in the Kickapoo Tribe of Kansas water rights case, the Tribe and the State executed the “Global Settlement Agreement” which includes a negotiated water right for the Tribe, including sufficient water for losses from storage due to seepage and evaporation, and all of the details for the State’s administration of the Tribe’s water right as the senior water right in the Delaware River watershed. The Tribe and NARF are now developing federal legislation in consultation with the Kansas congressional delegation to approve the water right negotiated with the State. This draft legislation will also be vetted with the federal Departments of Interior, Agriculture and Justice. NARF represents the Indian Peaks Band of Paiute Indians, the San Juan Southern Paiute Tribe, and the Morningstar Institute in filing an amicus brief in *Yount v. Jewell*, a case in the federal district court of Arizona about the Northern Arizona Withdrawal. The Ninth Circuit has set oral argument in this case for December 15, 2016.

NARF filed an amicus brief on behalf of the Blackfeet Tribe in the federal district court case of *Solonex v. Jewell*. The energy company is challenging the United States government’s process and decision to limit oil and gas development in areas that would threaten the Tribe’s sacred sites. In the *Sisseton Wahpeton Oyate, el al. v. Jewell* tribal trust funds case, NARF represents ten tribes. By September 2016, all ten plaintiff tribes had reached settlement agreements in principle with the United States regarding their claims. Most of these settlement agreements have been filed with and approved by the court.

The Standing Rock Sioux Tribe requested NARF’s assistance and that of the National Congress of American Indians (NCAI) to work alongside the Tribe’s attorneys, Earthjustice, to develop and coordinate an effective amicus brief strategy in support of the Tribe in their lawsuit against the U.S. Army Corps of Engineers in relation to the Dakota Access Pipeline (DAPL). The litigation involves two broad issues surrounding the proposed construction of a major crude-oil pipeline that passes through the Tribe’s ancestral lands. First, the pipeline would pass under the Missouri River (at Lake Oahe) just a half a mile upstream of the tribe’s reservation boundary, where a spill would be culturally and economically catastrophic. Second, the pipeline would pass through areas of great cultural significance, such as sacred sites and burial grounds that the National Historic Preservation Act (NHPA) was enacted to protect. NARF, along with NCAI, is moving forward with Earthjustice on a litigation strategy that includes multiple “friend of the court” briefs to provide a fuller perspective of the wide-ranging harms caused by a failure of federal agencies to consult with tribes on these massive infrastructure projects, the benefits gained when meaningful consultation occurs with tribal governments, and the utter disregard of the law in this case by the Army Corps of Engineers. NARF is also active in monitoring the progress of the consultation sessions being hosted by the Department of the Interior, Department of Justice, Department of the Army, and other Federal agencies on “how the Federal Government can better account for, and integrate tribal views, on future infrastructure decisions throughout the country.”

In January 2016, seven Native Americans from North Dakota filed a case in federal district court in North Dakota 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 that it disproportionately burdens Native Americans and denies qualified voters the right to vote. Many Native Americans living on Indian reservations in North Dakota do not have IDs needed to qualify under the new state laws, such as driver's licenses or state ID cards containing a residential address. Thus, in both the primary and general elections in 2014, many qualified North Dakota Native American voters were disenfranchised because their IDs did not qualify. Following briefing on the motion, in August 2016, the Court granted a preliminary injunction. In September, 2016, the Court formally required the state to provide an affidavit fail-safe mechanism to ensure that all qualified voters will be permitted to vote in the 2016 general election. NARF sent four of our staff members as poll watchers for the November 2016 election to insure that tribal members would not be turned away.

NARF recently has agreed to represent NCAI in the ongoing negotiations for an International Treaty to protect various intellectual property, including Traditional Knowledge (TK). The United Sates has been participating in these Treaty negotiations at the World Intellectual Property Organization (WIPO) since 2000, and this year (2016) there is now draft text of the Treaty on TK protection. The United States Department of State has delegated authority to the U.S. Patent and Trademark Office (PTO) for these negotiations, but neither the PTO, the State Department, nor any federal agency has ever consulted with American Indian and Alaska Native Tribes regarding the negotiations. At its 2016 Annual Convention, NCAI passed a resolution calling for such consultation in advance of the next WIPO negotiations session which is to be held November 28 – December 2, 2016 in Geneva, Switzerland. NARF attorney Melody McCoy will be attending these negotiation sessions.

NARF’s National Indian Law Library has partnered with the University of Colorado Indian Law Clinic on a project to add a Tribal Court Opinion Bulletin to the 8 Indian law bulletins updated weekly by the Library. NARF’s website and social media are seeing continued growth. In the past year, the NARF site has seen a monthly average of about 28,000 sessions with approximately 85% being return visitors and 15% being new visitors. The NILL website has seen similar traffic with about 25,000 sessions viewing 45,000 pages each month.

**Discussion Forum Topic**

At the last Board meeting, the Board decided that the Discussion Forum Topic for this meeting would be the 2016 election and how the results might impact tribes. The date of the November Board meeting was moved from November 4 to November 10 so that we would know the results of the election and therefore have a more realistic discussion. John informed the Board that NCAI was having a webinar on the election and its impacts on tribes at noon today. John recommended that we take part in this webinar as the Discussion Forum. The Board agreed and the webinar was shown to the Board and NARF staff.

**Alaska Report**

Alaska office attorneys Natalie Landreth and Matt Newman provided the Board with an overview of Alaska Native issues and cases. Tribes and Native villages residing in the Bering Sea area depend on subsistence fishing for 90% of their food. Because of climate change, shipping routes are now going through the Bering Sea disrupting Native subsistence fishing. NARF is working with the Obama Administration to issue an Executive Order designating the Bering Sea as a “Climate Resilience Area” that would be set aside strictly for subsistence use by Alaska Natives. In the case of *State of Alaska v. Central Council of Tlingit and Haida Indian Tribes of Alaska*, the Tribes sued the State of Alaska in state court for its refusal to recognize and enforce Central Council’s child support orders. Alaska is the only state in the nation that categorically refuses to recognize child support orders from tribes. On March 25, 2016, 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 the case and 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 of Appeals published its decision in favor of the Tribal Appellees. On August 15, Alaska’s Attorney General announced she would not seek further appeals in the case. Instead, she announced the Administration’s intent to work closely with tribal interests and the Department of the Interior in handling future trust land applications in Alaska. The Craig Tribal Association has submitted a petition to place 1.08 acres into trust. The Alaska Municipal League is opposing Craig’s petition.

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. A good opinion was issued in the Alexandria P. case out of California and the Washington Supreme Court upheld the application of ICWA.

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 has now developed a strategic plan that sets out short and long term goals and priorities for the 2016 election, as well as the 2018 and 2020 election cycles. It met in-person at NCAI in June 2016 and again in July 2016 in Washington, D.C. to plan how it will address the many election problems throughout by Indian Country.

 **Financial Report**

Mike Kennedy, Chief Financial Officer, reported that we are in the process in closing out NARF’s 2016 fiscal year. The funding source report shows a projected operating budget of $11,964,060. Adding the write-off of Kickapoo fees of $64,389, we have a total budget of $12,028,449. With projected revenue from approved and probable sources at $12,521,208, we are projecting a surplus of $492,759 and a projected reserve fund of $19,191,914 at the end of fiscal year 2016. For fiscal year 2017, we project an operating budget of $10,966,469. With projected revenue from approved and probable sources at $28,834,799, we are projecting a surplus of $17,868,330. This major change from the last report is mostly due to the great progress relating to the Tribal Trust Fund cases which is projected to bring approximately $21 million as probable contributions from those tribes.

The expected increase to our operating reserve has generated discussions in past meetings about creating a quasi-endowment whereby funds are set aside, controlled by the Board and can only be spent with the Board’s appoval. We are recommending that the Board not designate any part of the reserve at this time for the following reasons: Under our current policy, the reserve can only be spent with the Board’s approval anyway; any funds set aside would probably be invested and treated the same as our current reserve; and, it would be required that the funds still be reported as unrestricted in our financial statements and IRS Form 990, thereby not being beneficial when it comes to donors or watchdog agencies identifying the accumulating funds. The Board agreed with this recommendation.

At this time, Mike requested formal Board approval of NARF’s projected fiscal year 2017 budget for seventeen attorneys and the National Indian Law Library.

 **MOTION: Richard Peterson moved that the Board formally approve NARF’s projected fiscal year 2017 budget for seventeen attorneys and the National Indian Law Library.**

 **SECOND: Michael Smith**

 **VOTE: Unanimous for the motion**

For fiscal year 2016, our investments have earned a total of $1,603,692 in income and gains on our investments since September 30, 2015, which is approximately a 10% return. Mike informed the Board that he is in the process of scheduling a meeting in Boston with our investment advisor Bill Robinson of Ameriprise. The Board Investment Committee (Moses Haia, Stephen Lewis, and Michael Smith) and Board Treasurer Tex Hall will be invited.

**Development Director's Report**

Don Ragona, Acting Development Director, presented a draft letter that would present the Board of Directors’ position on the election of Donald Trump as President and the uncertainty that it brings to Indian country. This letter will be posted on our website and facebook pages. It states that NARF is firmly committed to continue our fight to protect Native rights and to expand tribal sovereignty. The Board approved the letter with final edits to be made by John Echohawk.

John and Don are working with several foundations to plan a trip to Standing Rock to expose the foundations to Indian country issues and the social justice issues happening there with the militarization of the police and security forces for the oil company and the violence they are inflicting on the water protectors. The trip will be scheduled for early December.

NARF’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 23% over fiscal year 2015. Thus far we have raised $2,391,527 from foundations and $35,965 from corporations. Many of these grants are restricted to work on specific projects. The NARF Alaska office has played a key role in raising restricted grant for Alaska work that accounts for over half of the grand total.

As discussed in previous reports, giving through the Combined Federal Campaign (CFC) has been in significant decline for several years and is likely to drop again materially when new federal rules are implemented in 2017. There are significant fees to participate in the program and the application process has become more difficult. As a result, we have decided to make the 2016 campaign this fall our last, and not participate in CFC in future years.

**Discussion Forum Topic Suggestion for the February 2017 Winter Meeting**

The following discussion forum topics were suggested for the February 2017 Winter Board of Directors meeting:

1. Follow up discussion on the transition of Administrations as the result of the 2016 election.
2. Discussion on the consultation process used in the National Environmental Protection Act and the National Historic Preservation Act.
3. Discussion on NARF’s reserve funds and the future of NARF’s fund raising efforts.

**New Business/Board Actions**

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 two current Board members whose terms are expiring but are eligible for re-election to the Board. The Board Nominations Committee made the following recommendations: Current Board members Kurt BlueDog and Richard Peterson are recommended for re-election to their second terms on the Board.

 **MOTION: Tex Hall moved that the Board of Directors re-elect Board members Kurt BlueDog and Richard Peterson to their second terms on the Board.**

 **SECOND: Gary Hayes**

 **VOTE: Unanimous for the motion**

Committee Appointments

Kurt BlueDog was re-appointed to the Nominations Committee and the Board Fundraising Committee. Richard Peterson was appointed to the Board Fundraising Committee.

Site selection for the February 2017 Board of Directors meeting

Due to a conflict in Robert McGhee’s schedule, the Winter Board of Directors meeting will be held at the Poarch Band of Creek Indians Reservation in Atmore, Alabama on January 26-27, 2017.

 **MOTION: Board member Gary Hayes moved to adjourn the meeting.**

 **SECOND: Tex Hall**

 **VOTE: Unanimous for the motion**

The business for the Fall Board of Directors meeting was concluded and adjourned at 3:50 p.m.

**CERTIFICATION**

The minutes of the NARF Board of Directors meeting of November 10, 2016, were duly approved on January 27, 2017.

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

 Moses Haia, Chairman

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

 Ray Ramirez, Secretary