**Native American Rights Fund**

**OFFICIAL MINUTES**

**BOARD OF DIRECTORS CONFERENCE CALL MEETING**

**Boulder, Colorado**

**February 1, 2017**

**Call to Order**

Chairman Moses Haia called the meeting to order at 12:06 p.m.

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

Corporate Officers attending the meeting were: John Echohawk, Executive Director; Kim Gottschalk, Litigation Management Committee; Mike Kennedy, Chief Financial Officer; Ray Ramirez, Corporate Secretary; and Don Ragona, Acting Director of Development. Staff members Karla Bowman and Katrina Mora were also in attendance.

After an opening prayer by Robert McGhee, each of the Board members recounted his 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 meeting agenda be approved.**

**SECOND: Michael Smith**

**VOTE: Unanimous for the motion**

**Approval of Minutes**

**MOTION: Peter Pino moved that the minutes of the November 10, 2016 Boulder Board of Directors meeting be accepted.**

**SECOND: Michael Smith**

**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 due to scheduling conflicts: Anita Mitchell and Julie Roberts-Hyslop.

In financial matters, John reported the organization finished fiscal year 2016 last September 30 with a surplus of $447,469 in revenues over expenses. With this surplus projection being added to our reserves, our reserve fund increases from $15,699,155 to $16,146,624. For fiscal year 2017 which began last October 1, we have a $11,980,049 budget which has been approved by the Board and supports a program of 17 attorneys, the National Indian Law Library and our fundraising, administrative and support staff. We are currently projecting a surplus of $20,102,816 in revenues over expenses. This extraordinary surplus projection is primarily due to settlements finally being approved for all ten of our tribal clients in the Sisseton tribal trust funds mismanagement case which has enabled us to receive $22,825,000 in contributions from those tribal clients. In addition, adding the projected $20,102,816 surplus to our reserves of $16,146,624 would bring our reserve fund up to $36,249,440. For fiscal year 2018 which begins October 1, 2017, we are currently projecting a deficit of $3,953,954 in expenses over revenues. The major reason for the deficit projection is that we are not expecting any more large tribal contributions from the settlement of tribal trust fund mismanagement cases like we had in FY 17. The budget is decreased by almost $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. The FY 18 budget may be affected by plans of the University of Colorado to build a conference center and hotel next to us that may prompt us to renovate or remodel our two buildings or move to a new location.

In staffing matters, Development Director Morgan O’Brien has resigned and Assistant Director of Development Don Ragona has been serving as Acting Director. We are recommending to the Board that Don Ragona be appointed as Director of Development. Since this is a Corporate Officer position under our bylaws, the Board must make the appointment so we have added this as an item of New Business on the agenda. A new Assistant Director of Development will be hired if the Board appoints Don as Director of Development. Long time staff member Ray Ramirez who has been serving as Grant Writer/Editor and Corporate Secretary is retiring at the end of February. The Board and staff thanked Ray for his many years of service in this position. To replace Ray as Corporate Secretary, we are recommending that the Board appoint current Office/Human Resources Administrator Karla Bowman to be the new Corporate Secretary. We have also added this as an item of New Business on the agenda. Ray’s other duties as Grant Writer/Editor would be covered by a new hire in the Development Department. Another long time staff member, senior staff attorney Don Wharton, is retiring the end of March. We are in the process of developing a plan to hire another attorney to fill this vacancy on the legal staff.

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 gave the keynote address at the Quakers, First Nations and Native Americans national conference in Philadelphia, Pennsylvania highlighting our boarding school healing work and the history of our people and their organization. John attended the Reservation Economic Summit-New Mexico put on by the National Center for American Indian Enterprise Development where he is a board member. As a board member, John attended a board meeting of the Natural Resources Defense Council and also attended another meeting of the Green Group, a coalition of CEOS from national environmental organizations.

With the Native American Rights Fund serving as fiscal agent for the Bears Ears Inter-Tribal Coalition, John has participated in conference calls with Coalition staff and funders on the Coalition’s budget. The five tribes that make up the Coalition – the Navajo, Hopi, Northern Ute, Ute Mountain Ute and Zuni – were recently successful in their effort to have President Obama proclaim 1.35 million acres of former tribal lands in southeastern Utah as a national monument. If the Trump administration rescinds this action, NARF will be representing some of the tribes in litigation.

**Litigation Management Committee (LMC) Report**

NARF attorney and LMC member Kim Gottschalk 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 September 29, 2016, 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. On December 14, 2016, the Tribe filed its response brief and argued that tribal sovereign immunity bars this suit based on the fact that the Tribe is the real party in interest. The petitioners have sued a tribal employee for negligent conduct that was performed within the scope of his official duties. The Project worked directly with the attorneys representing Mr. Clarke and the interests of the Mohegan Tribe to develop an effective amicus brief strategy. A total of four amicus briefs were filed in support. On January 9, 2017, the Court heard oral argument in Lewis v. Clarke.

Melody and Kim are in transit to Tucson to present at a webinar on traditional knowledge along with the U.S. Patent & Trade office and Preston Hardisson of the Tulalip Tribe.

In *Agua Caliente v. Coachella Valley Water District, et al*., briefing to the Ninth Circuit was completed, and 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.

In the Climate Change Project where we represent NCAI, the indigenous caucus had several issues which it pushed for inclusion in the Paris Agreement. The caucus worked with a broad inter-constituency group to get a provision in the operative section of the Agreement recognizing that climate change policies and procedures had to respect, protect, promote, and fulfill the rights of indigenous peoples within a broad human rights framework. The caucus must get a submission together by the March 31, 2017 deadline and must prepare for the May interim meeting. The platform raises many issues surrounding the use of indigenous peoples’ traditional knowledge including the need to protect it. In addition, much work needs to be done on structuring the platform and establishing how it interfaces with the broader United Nations process. Coincidentally, NARF has recently engaged in the work at the World Intellectual Property Organization (WIPO) on NCAI’s behalf and there will be a good deal of overlap between the two efforts.

In connection with DAPL, the federal government published a notice for an environmental impact study and within two weeks received over 40,000 comments. The site was scheduled to take comments until February 20th, but has been shut down.

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 Constitution 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.

To implement the U.N. Declaration on the Rights of Indigenous Peoples, NARF attended the 33rd Session of the Human Rights Council representing NCAI in September 2016, during which a series of informal consultations on the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) mandate took place, as well as meetings with various state delegations. Ultimately, on September 30, 2016, the Council passed by consensus a resolution expanding and improving the mandate of the EMRIP by adding members, additional meeting days, and providing for more autonomy and responsiveness for the mechanism. A series of consultations on the issue of enhanced participation of indigenous institutions at the UN is ongoing. Until now, indigenous peoples have had to appear in most UN bodies as non-governmental organizations (NGOs), which is precisely what they are not. A meeting of Indigenous Peoples’ representatives from around the world, including one from NCAI, met in November, 2016 among themselves and then with indigenous advisers appointed by the President of the General Assembly to discuss areas of consensus. Informal consultations with member states began in December 2016 and will continue into May 2017 at the Permanent Forum.

**Alaska Report**

NARF attorney and LMC member Kim Gottschalk provided the Board with an overview of Alaska Native issues and cases.

The Bering Sea Elders Group (BSEG) is an alliance of thirty-nine Yup’ik and Inupiaq villages that seeks to protect the sensitive ecosystem of the Bering Sea, the subsistence lifestyle, and the sustainable communities that depend on it. NARF has been working with BSEG in its negotiations with the bottom trawl industry over the course of the last few years. In addition to work with the bottom trawl industry, NARF has worked with BSEG on their efforts to protect the northern Bering Sea. On December 9, 2016, this work resulted in President Barack Obama signing a historic Executive Order creating the Northern Bering Sea Climate Resilience Area. The Executive Order established an important set of policies aimed at promoting resilient tribal communities and protecting the Alaska Native subsistence way of life in the face of increasing effects of climate change. It also, for the first time, creates a formal role for the region’s tribes in federal decision-making, so as to ensure that Native voices continue to be heard as they deal with the increasing pressure on their resources. The Executive Order elevates the voice of Alaska Native tribes and the role of indigenous knowledge in decision-making within the region by establishing a Federal Task Force on the Northern Bering Sea Climate Resilience Area (Bering Task Force) and mandating that the Task Force establish and engage in regular consultation with a Bering Intergovernmental Tribal Advisory Council, which will consist primarily of tribal government representatives with participation from Federal, state, and local officials for coordination purposes.

**Financial Report**

Mike Kennedy, Chief Financial Officer, reported that we have closed out NARF’s 2016 fiscal year. NARF’s reserve fund balance recognized an increase/surplus of $447,469 for a total ending balance of $16,146,624. For fiscal year 2017, the funding source report shows NARF’s projected FY 17 operating budget at $11,980,049. With projected revenue from approved and probable sources at $32,082,865, we are projecting a surplus of $20,102,816. This projected surplus is up approximately $2 million from November’s report. This increase is due to receiving all the expected contributions from our tribal trust clients. For fiscal 2018, the funding source report shows total revenues approved and probable at $6,161,014 against a projected operating budget of $10,114,968, leaving us with a projected deficit of $3,953,954. The most significant difference compared to FY 17 at this point is that we are not expecting any more trust fund client contributions.

The auditors encourage NARF management to consider adding more individuals as Board members who have financial and investment expertise. We will be drafting a form to meet our needs and this form could be utilized by the Board Nomination Committee when selecting Board members.

As of November 30, 2016, our investments have taken a loss of $49,339 since September 30, 2016. Since this is for a two month period, there are no concerns with any of our individual account performances at this point.

At this time, NARF and the Board Audit Committee are recommending that the Board approve the audited financial statements.

 **MOTION: Robert McGhee moved that the Board approve the audited financial statements for FY 2016.**

 **SECOND: Michael Smith**

 **VOTE: Unanimous for the motion**

**Development Director's Report**

Tribes and Native Organizations, tribal contributions have generated $763,000 for the period October 1, 2016 through December 31, 2016. This funding area has been and will continue to be a major priority funding area for NARF. John and Don will continue, along with the help of NARF Board members and attorney staff, to focus on our tribal fundraising efforts.

Developing a Tribal Philanthropic Movement, in 2014, Don met with the President of First Nations Development Institute and the Executive Director of the Yoche Dehe Community Fund to discuss and explore the reasons why mainstream funders seem to ignore the needs of Indian country. Lack of understanding of Native issues, Native peoples and myths about Indian gaming were at the forefront. A gathering of tribal philanthropic leadership was held in April 2016 to start a dialogue, with hope that these gatherings will enable tribal philanthropists to develop a common philosophy and strategy. The next scheduled gathering of tribal grant makers is set for June 5-7, 2017.

Through December 2016, individual giving has generated $542,147. Direct mail, planned giving, on-line giving, work place giving and individual gifts make up the categories of individual contributions. Our fastest growing funding source is internet contributions, which has brought in $203,509 since the beginning of fiscal year 2017. We are optimistic that revenues from this funding source will continue to grow throughout this fiscal year. Although internet fundraising is a team effort, Don gave credit to annual giving director Mireille Martinez, website manager Mauda Moran and Alaska attorney Erin Dougherty Lynch for their efforts. To date, foundations have contributed $1,885,062. A good portion of the foundation grants can be attributed to the hard work and perseverance of the Alaska office.

A new position called Strategic Communications Specialist has been developed. This individual will be responsible for specific on-line fundraising efforts and will be taking over a number of the current Grant Writer/Editor’s duties. Once Don is confirmed for the Director of Development, the Assistant Director of Development position will be vacant.

The National Support Committee assists NARF with its fundraising and public relations efforts. Michael Sawaya, a prominent Denver lawyer, has committed to support NARF’s work both personally and by hosting a fundraising event in Denver later this year. Don is recommending approval of nomination of Michael Sawaya to NARF’s National Support Committee.

**MOTION: Moses Haia moved to approve the nomination of Michael Sawaya to the National Support Committee.**

 **SECOND: Larry Olinger**

 **VOTE: Unanimous for the motion**

**New Business/Board Actions**

The staff is recommending that the Board of Directors appoint Don Ragona as Director of Development and Corporate Officer.

**MOTION: Stephen Lewis moved to approve the appointment of Don Ragona as the Director of Development and as a Corporate Officer.**

 **SECOND: Tex Hall**

 **VOTE: Unanimous for the motion**

The staff is recommending that the Board of Directors appoint Karla Bowman as Corporate Secretary.

**MOTION: Moses Haia moved to approve the appointment of Karla Bowman as a Corporate Secretary.**

**SECOND: Michael Smith**

 **VOTE: Unanimous for the motion**

**Discussion Forum Topic**

There was discussion on the Trump Administration and the nomination of Neal Gorsuch to the Supreme Court. The Tribal Supreme Court Project is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund. NARF is conducting full background research on the nominee, including his record on Indian law cases.

**Discussion Forum Topic Suggestion for the May 2017 Spring Meeting**

The following discussion forum topics were suggested for the May 2017 Spring Board of Directors meeting:

1. Update on President Trump’s Administration.
2. Discussion on the U.S. Supreme Court ruling in *Lewis v. Clarke* and its potential impacts for Indian country.

The Spring Board of Directors meeting will be held in Boulder on May 5, 2017.

**MOTION: Peter Pino moved to adjourn the meeting.**

 **SECOND: Kurt BlueDog**

 **VOTE: Unanimous for the motion**

The business for the Winter Board of Directors conference call meeting was concluded and adjourned at 2:10 p.m.

**CERTIFICATION**

The minutes of the NARF Board of Directors meeting of February 1, 2017, were duly approved on May 5, 2017.

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

 Robert McGhee, Vice-Chairman

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

 Karla Bowman, Secretary