

# Proposed Addition of New Language to the Hualapai Constitution

Presented by:

Hualapai Tribal Utility Authority

May 12, 2016

# Presentation Outline

- Introduction to the Hualapai Tribal Utility Authority
- Objectives of the Hualapai Tribal Utility Authority
- Reason to add new language to the Hualapai Constitution
- Secretarial Election Process
- Conclusion

## Public meetings held to date:

- September 29, 2015 at Tribal Gym, Peach Springs
- December 16, 2015 at Inter-Tribal Council of Arizona, Phoenix
- April 26, 2016 at Inter-Tribal Council of Arizona, Phoenix
- April 27, 2016 at Tribal Gym, Peach Springs

# Creation of the Hualapai Tribal Utility Authority

- The Hualapai Tribal Council created the Hualapai Tribal Utility Authority (HTUA) in 2014 to develop utilities important to the economic development of the Hualapai Tribe.
- The purpose of the HTUA is to provide electric power service, water service, and sewage service at certain locations within the Hualapai Reservation and on other Tribal lands under the jurisdiction of the Hualapai Tribe.
- Tribal Council has the authority, under Article V of Constitution of the Hualapai Indian Tribe, to enact legislation establishing a tribal utility authority within the Hualapai Reservation.

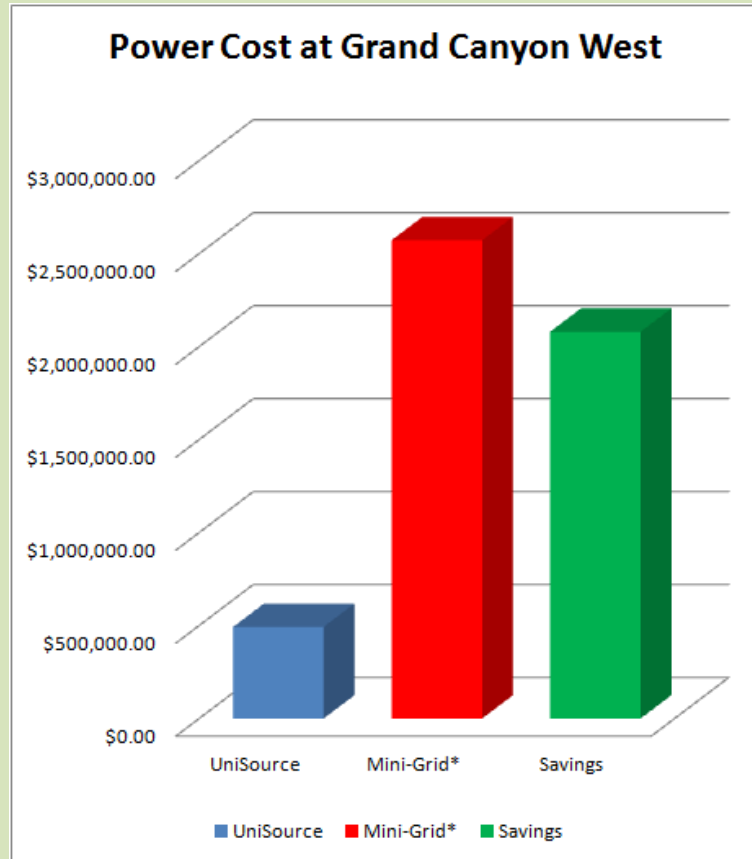
# Who are the HTUA Members?

- The HTUA consists of five board members appointed by Tribal Council:
  - Charles Vaughn, Chairman
  - Rory Majenty, Vice-Chairman
  - Joe Montana, Secretary
  - Steve Malin, Treasurer
  - Jamie Navenma
- The HTUA typically meets once per month at the Hualapai Cultural Department between 9:00 AM and noon.
- Acting General Manager of HTUA – Kevin Davidson

# **Objective 1: Lower electric costs at Grand Canyon West**

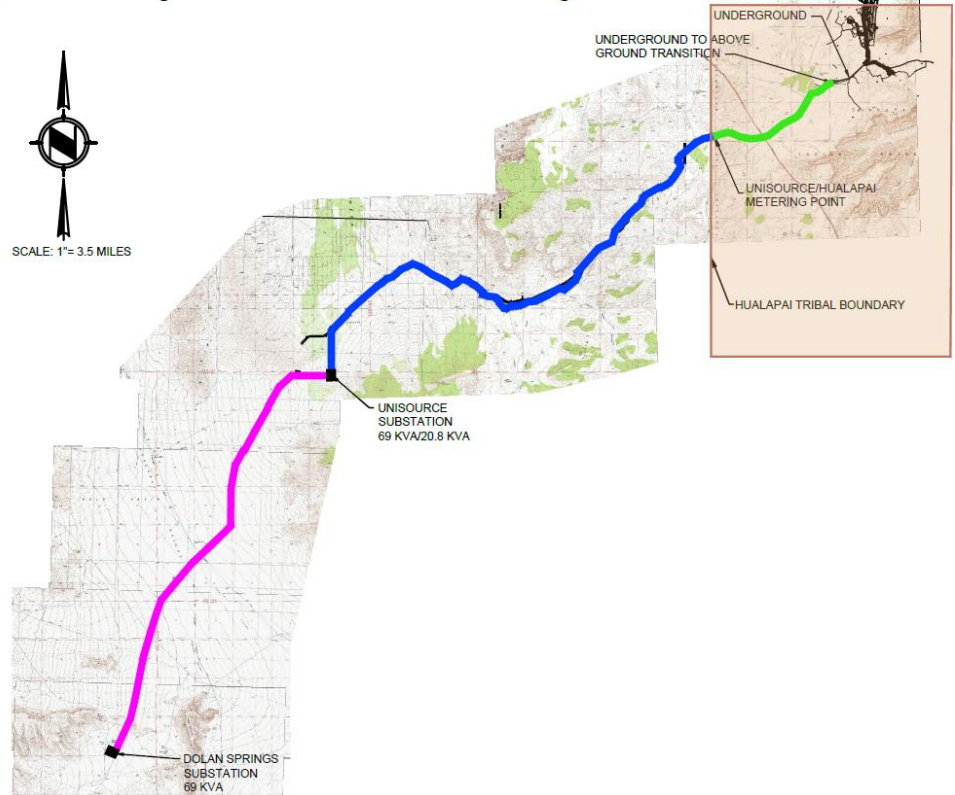
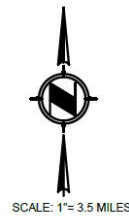
- Grand Canyon West, one of the economic engines of the tribe, would grow in profitability if connected to the regional electrical grid by a power line built along Diamond Bar Road.
- This would provide cheaper power to the tribe by line service rather than from diesel generation saving as much as \$2,000,000 in energy costs per year at present.
- As Grand Canyon West grows, so will energy savings.
- The expected cost of the power line to Grand Canyon West is approximately \$18 million.

# New Power Line to Serve Grand Canyon West



\* Estimated cost based upon \$3.00 per gallon for diesel fuel

Construction of the new power line will save the Tribe nearly \$2 million dollars per year by allowing Grand Canyon West operate on inexpensive grid power as compared to purchasing diesel fuel to run the generators.



## DISTANCES

1. FROM PIERCE FERRY ROAD TO THE HUALAPAI TRIBAL BOUNDARY. (UNISOURCE)
2. FROM TRIBAL BOUNDARY TO UNDERGROUND CONNECTION POINT. (HUALAPAI)
3. PIERCE FERRY SUBSTATION UPGRADES. (UNISOURCE)
4. DOLAN SPRINGS TO NEW DIAMOND BAR SUBSTATION. (UNISOURCE)

## FEET/MILEAGE

77,284 FEET / 14.64 MILES  
 19,556 FEET / 3.70 MILES  
 64,872 FEET / 12.29 MILES



**PRELIMINARY**  
**GRAND CANYON WEST POWER PROJECT**  
**THE HUALAPAI TRIBE - PEACH SPRINGS, AZ**

JOB NO.	5610-014
DATE:	4/13/16
SCALE:	1"= 3.5 MILES
DRAWN BY:	MG
CHECKED BY:	LAS

## **Objective 2: Acquire Mohave Electric Cooperative's power lines on the Reservation**

- Like many other tribes with a utility authority, future events may enable the HTUA to purchase the present undependable electrical service and deliver more reliable service to the tribe.
- The existing electric service infrastructure could be purchased at the depreciated cost.
- In 2007, the depreciated cost was estimated to range from \$156,000 to \$220,000. This does not include the Nelson substation located outside of the reservation.

## **Objective 3: Self-determination and Support for Peach Springs Electric Customers**

- Construct a set of back-up diesel generators to provide electricity during power outages in Peach Springs.
- Provide training for Hualapai linemen who would be employed to work on the reservation's power lines.
- Create a program to install roof-top-solar arrays on homes and buildings in Peach Springs.

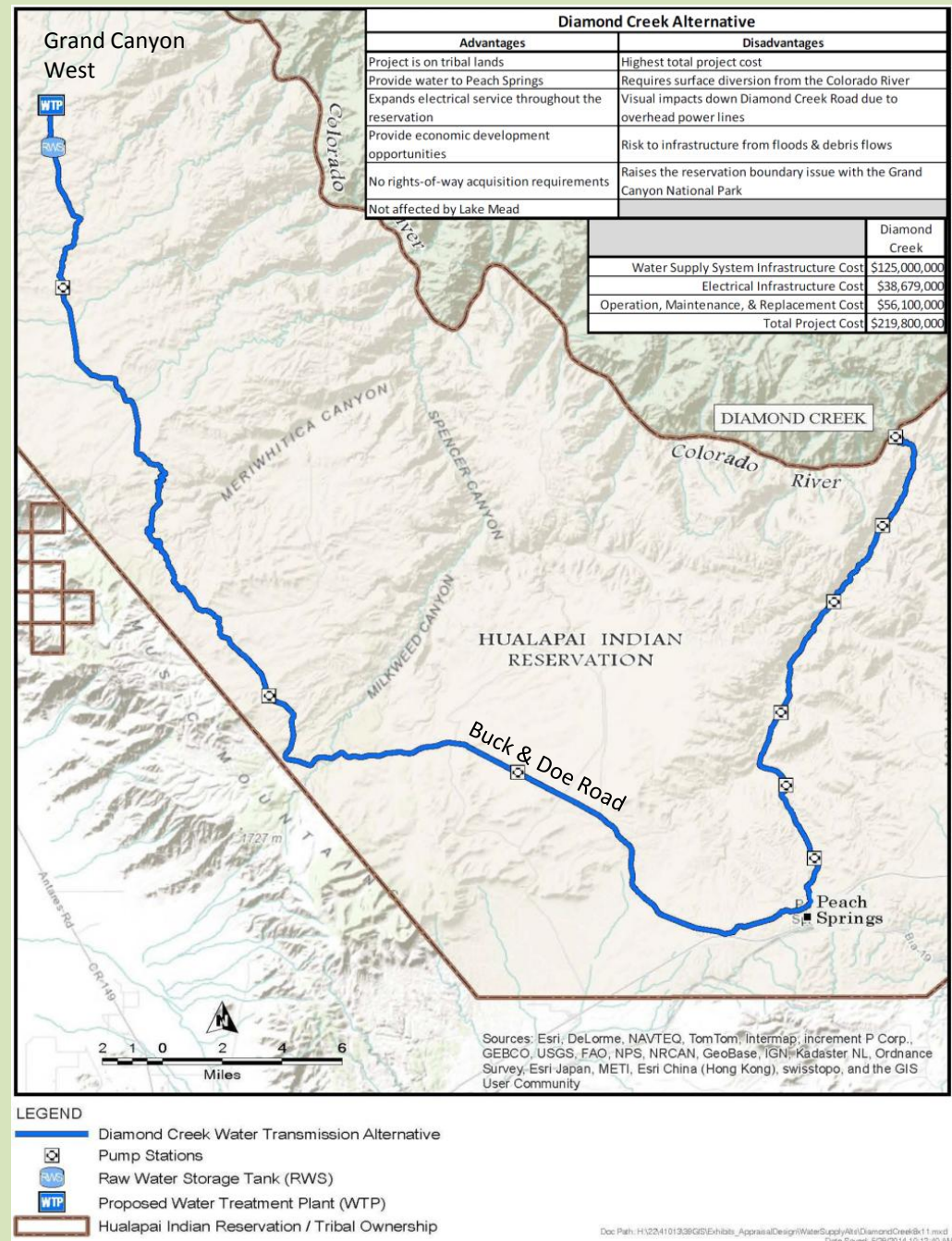


## **Objective 4: Bring water from the Colorado River to the Reservation**

- The delivery of water requires electricity to operate pumps; the HTUA could be the source that delivers electricity at a reduced cost to the tribe.
- Approximately 4,000 KWs are needed to bring this water to Peach Springs and Grand Canyon West. This amount of power is equal to the current usage of Peach Springs, Valentine and Grand Canyon West combined.

# Proposed Water Pipeline to Peach Springs and Grand Canyon West

The Diamond Creek pipeline is completely within the Hualapai Reservation and will provide water to Peach Springs and Grand Canyon West. Moving the water requires the building of pumping stations and power lines along Diamond Creek Road and Buck and Doe Road.



# Why add new language to the Constitution?

- In order to deliver utilities, the HTUA must enter into agreements with contractors and financial institutions to build the delivery systems. This requires written agreements to include a limited waiver of sovereign immunity.
- Section 2 of Article XVI requires approval by at least 30% of the total number of eligible voters to waive immunity for liabilities exceeding \$250,000 or expose more than 100 acres of land to possible foreclosure.
- This requirement hinders the tribe from developing economically.

# Why add new language to the Constitution?

- To attract future economic development to the tribe that provides for the wellbeing of the tribe, it is necessary to amend the Article XVI of Constitution by adding Section 3 which provides the tribal council the ability to ensure economic development.
- Allowing the tribal council to enter into agreements that include a limited waiver of sovereign immunity will enable the HTUA and other entities created by tribal council to enter into contracts that would fund these developments.

# Why add new language to the Constitution?

## Here is an Example

- The Hualapai Tribe needs to build a power line to Grand Canyon West to meet the future electrical demand.
- These electricity demands through 2018 include:
  - New 250-room Resort Hotel & Full Service Restaurant (1,600 KWs)
  - New Airport Terminal (540 KWs)
  - New Full Service Kitchen (193 KWs)
  - New & Existing Housing (149 KWs)
  - New Welcome Center (313 KWs)
  - These demands exceed the current generator's capacity (2,175 KWs) by 620 KWs and does not include the existing load of 800 KWs.

# **Why add new language to the Constitution?**

## **Here is an Example**

- To build the multi-million dollar power line, the Hualapai Tribal Utility Authority needs to borrow money.
- To take on debt more than \$250,000, the HTUA is requesting the Hualapai Constitution be amended to allow for a limited waiver of sovereign immunity.
- The waiver will allow the bank to issue the loan since it will now have collateral (the power line) to secure the loan.

## Proposed Addition of Section 3 to Article XVI

- *Notwithstanding Section 2 of this Article, a limited waiver of sovereign immunity otherwise within the scope of that Section shall require only the approval of the Tribal Council if the Tribal Council determines that such waiver would facilitate the advancement of the economic or commercial interests of the Tribe and its members. Only those tribal entities formed and governed pursuant to ordinances of the Tribal Council may, with Tribal Council approval, grant limited waivers of sovereign immunity as prescribed in this Section 3.*

# **What are the impacts to the Hualapai Tribe?**

- The proposed amendment will not take away any wording from the Constitution.
- The amendment will add new wording that provides the Tribal Council the authority to vote on this issue.
- The limited waiver shall not be interpreted to waive any immunity of the Hualapai Tribe, or to extend any liability to any assets, revenues, or incomes of the Hualapai Tribe, other than those of the HTUA such as power lines, substations, generators and other facilities it may own and operate.



# Scope of Limited Waiver of Sovereign Immunity

- The limited waiver of sovereign immunity allows disputes to be settled in federal court after hearing in Hualapai Tribal Court.
- Outside parties looking to sign multi-million dollar contracts with the tribe and the HTUA prefer an impartial judge in the event a dispute rises to the level of litigation.
- Without the federal court option, these parties will simply refuse to bargain and not enter into contracts where their only legal recourse is tribal court.

# **Cases where other tribes have granted limited waivers of sovereign immunity for development or borrowed money to finance development.**

- Ak-Chin Electric Community Utility Authority has the authority to add limited waivers of sovereign immunity to its contracts.
- Gila River Indian Community Utility Authority has borrowed money from the Cooperative Finance Corporation to build a 69 KV sub-station.
- The Navajo Tribal Utility Authority has been granted by the Navajo Nation the power to add a limited waiver of sovereign immunity into their contracts. The NTUA tells the Navajo Nation prior to exercising this power.



## **Cases where other tribes have granted limited waivers of sovereign immunity for Housing Development.**

- In addition to funding infrastructure improvements such as power lines, other Tribal Departments, such as Housing, could benefit from having a limited waiver of sovereign immunity in the Hualapai Constitution.
- The limited waiver would allow Housing to take full advantage of HUD's Section 184 and Title VI loan programs to build and remodel dozens of homes on the Reservation at one time rather than doing it piecemeal.
- The Yavapai-Apache Nation, San Carlos Apache, Pueblo of Zuni, Pueblo of Acoma, Pascua-Yaqui are some of the housing programs that use these loan programs and have to include the limited waiver of sovereign immunity language in their contract documents.

## ***Developing a Council policy based on Voter input from the April 27, 2016, public meeting***

- *“Council should adopt a way to notify tribal members of the Council’s desire to use proposed Section 3 of Article XVI – allowing for the limited waiver of sovereign immunity in contracts.”*
- *At their Regular Meeting on May 9<sup>th</sup> the Planning Department presented to Council a proposal showing how to create such an outreach effort.*
- *Council approved by unanimous vote to allow the Planning Department hold a set of public meetings to gather ideas on writing a Public Participation Plan for use when Section 3 is being considered by Council.*

# Secretarial Election Process

- Council approved Resolution on 10/1 to begin Secretarial Election process and transmitted Resolution to Department of Interior for review.
- Department of Interior authorized Secretarial Election on March 14th.
- Department of Interior will hold Secretarial Election on May 23<sup>rd</sup> with ballots due by noon.
  - Department of Interior completed voter registration on April 29th
  - Ballots mailed out on May 6<sup>th</sup>. Voting shall be by absentee ballot.
  - At least 30% of those registered by the Department of Interior must cast a vote.
  - Simple majority vote needed to approve Amendment.

# Conclusion

- Questions and Comments
- For more information about the HTUA and the constitutional amendment process, please visit our website: <http://www.hualapaiutility.org/>

For more information on the HTUA and upcoming activities please contact Chairman Vaughn at (928) 769-2419, e-mail: [charles.vaughn@grandcanyonresort.com](mailto:charles.vaughn@grandcanyonresort.com) or Kevin Davidson at (928) 769-1310, e-mail: [kdavidson@hualapai-nsn.gov](mailto:kdavidson@hualapai-nsn.gov)

Thank you for your time.