

## **Hualapai Tribal Utility Authority (HTUA) Meeting Minutes**

May 12, 2016, 12:20 PM to 1:45 PM, Tribal Gymnasium, Peach Springs, Arizona.

Board members:

Charles Vaughn, Chairman – present

Rory Majenty, Vice-Chairman – absent

Joe Montana, Secretary – present

Steve Malin, Treasurer – present

Jamie Navenma – absent

Support personnel:

Kevin Davidson, Planning Director and acting General Manager for the HTUA

### **1) Call to Order**

**2) Presentation of proposed amendment to the Hualapai Constitution.** Mr. Davidson introduced himself as the acting General Manager for the HTUA and began the formal presentation by giving some history on the HTUA as follows:

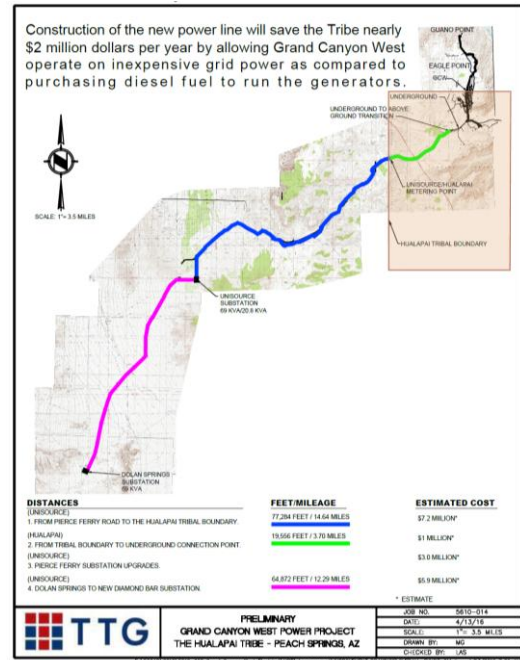
- The Hualapai Tribal Council created the Hualapai Tribal Utility Authority in 2014 to develop utilities important to the economic development of the Hualapai Tribe.
- The purpose of the HTUA is to provide electric power service, water service, and sewage service at certain locations within the Hualapai 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.

Mr. Davidson next HTUA Board members: Charles Vaughn, Chairman, Rory Majenty, Vice-Chairman, Joe Montana, Secretary, Steve Malin, Treasurer and Jamie Navenma. The HTUA typically meets once per month at the Hualapai Cultural Resources Department in Peach Springs between 9:00 AM and noon.

#### **a. Objectives of the Hualapai Tribal Utility Authority**

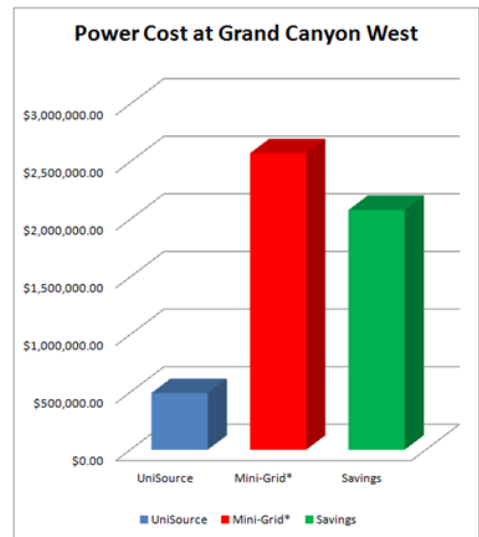
**Objective 1: Lower electric costs at Grand Canyon West**

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 along Diamond Bar Road and the re-build along Pierce Ferry Road is estimated at \$18 million. Mr. Davidson referred to a chart on Slide No. 6 which showed the dollar savings per year and then a map of the proposed power line which would be built along Diamond Bar Road.



**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.



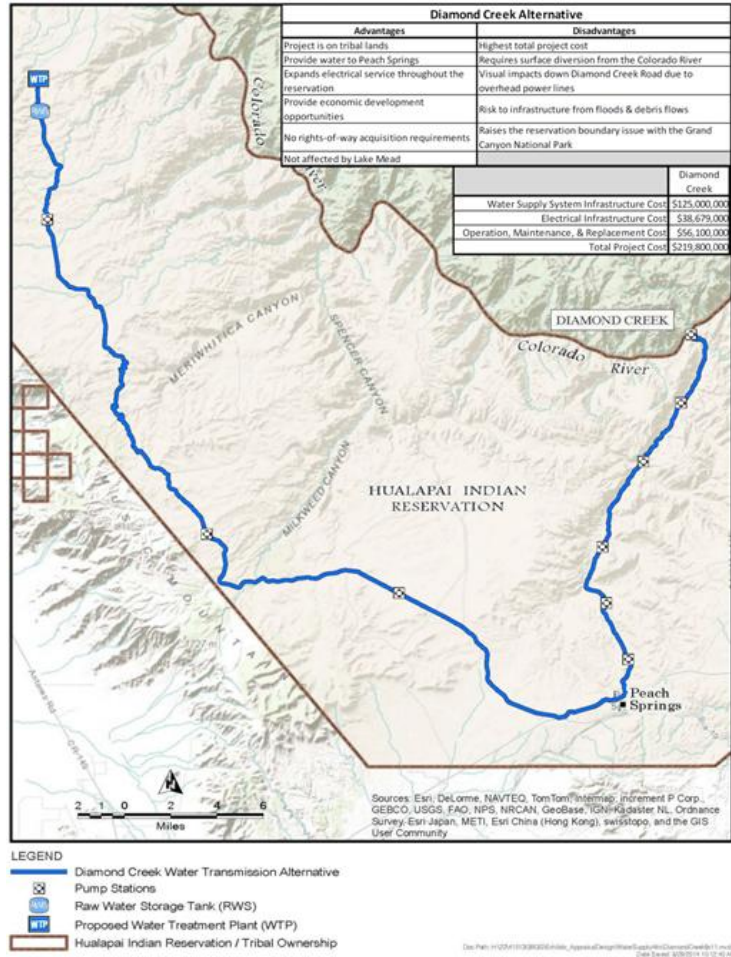
**Objective 3: Self-determination and Support for Peach Springs Electric Customers**

These include additional activities that the HTUA can undertake to help electric customers in Peach Springs such as: 1) construct a set of back-up diesel generators to provide electricity during power outages in Peach Springs, 2) provide training for Hualapai linemen who would be employed to work

on the reservation's power lines, and 3) 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. The Diamond Creek pipeline is completely within the Hualapai Reservation and will provide water to Peach Springs and Grand Canyon West (see map). Moving the water requires the building of pumping stations and power lines along Diamond Creek Road and Buck and Doe Road.



**b. Reasons to amend the Hualapai Constitution**

Mr. Davidson said that in order to deliver utilities, the HTUA must enter into contractual agreements with contractors and other financial institutions to build the delivery systems. This requires written agreements to include a limited waiver of sovereign immunity. The tribal constitution requires approval by 30% of eligible voters to waive immunity of the tribe for liabilities exceeding \$250,000. This requirement hinders the tribe from developing economically. To attract future economic

development to the Hualapai Reservation that provides for the wellbeing of the tribe, it is necessary to amend the Constitution to provide the Hualapai 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 to enter into contracts that would fund these developments.

Mr. Davidson used the proposed Diamond Bar Road power line as example: The Hualapai Tribe needs to build a power line to Grand Canyon West to meet the future electrical demand. To build the multi-million dollar power line, the HTUA 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.

The power line is designed to meet the future electrical demand for future development at Grand Canyon West. These electricity demands through 2018 include a new 250-room Resort Hotel & Full Service Restaurant (1,600 Kilowatts), a new Airport Terminal (540 KWs), a new Full Service Kitchen (193 KWs), new and existing housing (149 KWs), and a new Welcome Center (313 KWs). These demands exceed the current generator's capacity (2,175 KWs) by 620 KWs and do not include the existing load of 600 KWs to operate Grand Canyon West.

**c. Limited waiver of sovereign immunity**

Mr. Davidson recited the language of the proposed amendment to the Constitution adding Section 3 to Article XVI as follows:

*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, waive sovereign immunity as prescribed in this Section 3.*

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 construed 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.

Mr. Davidson next reviewed instances where other tribes have granted limited waivers of sovereign immunity for development or borrowed money to finance development. For example, 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 (photo). The Navajo Tribal Utility Authority (NTUA) 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.



In addition to funding infrastructure improvements such as power lines, Mr. Davidson noted that 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 the Housing Department 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.

At the last public meeting in Peach Springs, a tribal member requested that 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. To that end, the Planning Department presented to Council a proposal on May 9<sup>th</sup> 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.

**d. Special election process**

To conclude, Mr. Davidson summarized the special election process to be conducted by the BIA/Department of Interior as follows:

1. Council approved Resolution No. 79-2015 on October 1, 2015, to begin the special election process and the tribe sent the Resolution to the Department of Interior for review.
2. The Department of Interior authorized the Secretarial Election on March 14, 2016.
3. Department of Interior will hold the Secretarial Election on May 23rd.
  - a. Department of Interior will register Hualapai voters by April 29th
  - b. Ballot mail out on May 6th. Voting shall be by absentee ballot.
  - c. At least 30% of those registered by the Department of Interior must cast a vote.
  - d. Simple majority vote needed to approve Amendment.

Mr. Davidson concluded the presentation by asking members of the audience to give their candid comments and advice to the HTUA Board. Mr. Vaughn said the new language proposed in Section 3 will help bring Council actions into compliance with the Hualapai Constitution. In addition, some lending agencies have in the past red-lined reservations as being high-risk because of the limiting language in their constitutions.

Ms. Margaret Vaughn noted the specific language on the limited waiver of sovereign immunity shows that only the assets, revenues, or income of the HTUA such as power lines, substations, generators and other facilities it may own and operate are subject to the terms of a future contract. However, the mention of a waiver of sovereign immunity has a negative connotation among tribal members. If the amendment is not approved, then it appears the tribe will have to save up enough money to pay for their infrastructure projects in cash.

Ms. Marilyn Vaughn asked which tribal entity will have the responsibility to pay off the loan. Mr. Davidson said the HTUA will be responsible and will request the funds from Council to be added to the HTUA's annual budget to make the loan payments. Mr. Malin added that a portion of the disbursements from the Grand Canyon Resort Corporation to the tribe will be the source of these funds.

Mr. Vaughn reminded the audience that the Hualapai Reservation is actually the property of the United States government and that it is held trust for the use and benefit of the Hualapai people. The proposed new language in Section 3 will allow the tribe to grow and prosper by allowing the tribe to design and construct projects faster.

Ms. Marilyn Vaughn asked if the new language in Section 3 will give the tribal entity, such as the HTUA, a blank check for all its future projects, or will each project request have to be considered by Council. Mr. Vaughn said each project that requires a limited waiver of sovereign immunity will be presented to Council. Mr. Montana said at this point the HTUA is purely a policy advisory or theoretical group and will remain so if the new language in Section 3 is not added to the Constitution.

Ms. Margaret Vaughn conveyed the message that some people think the language needs additional refinement while others believe it would give too much power to just nine people. Mr. Vaughn replied that the HTUA's attorney has reviewed and revised the new language in Section 3 over the past several months. In regard to Council's powers, Mr. Vaughn said elected members should be secure enough in their elected positions to vote on these topics. Mr. Montana expounded on the opportunity at hand and stressed the need for the tribe to advance and not be held back by the limits imposed by Article XVI of the existing Constitution.

### **3) Time and location for next public meeting**

The next meeting will be held on May 24, 2016, at 9:00 AM at the Hualapai Cultural Resources Center, Peach Springs.

### **4) Meeting Conclusion at 1:45 PM**