

Hualapai Tribal Utility Authority (HTUA) Meeting Minutes

December 29, 2016, 9:16 AM to 11:25 AM, Hualapai Cultural Center, Peach Springs.

Board members:

Charles Vaughn, Chairman – present

Joe Montana, Vice-Chairman – present

Jamie Navenma, Secretary – present

Rory Majenty – present

Support personnel:

Kevin Davidson, Planning Director

Phil Wisely, Public Services Director

Patrick Black, Fennemore Craig (via telephone)

Bob Becherer, P.E., TTG (via telephone)

1) Call to Order

2) Roll Call

Prior to review of the November meeting minutes, Mr. Wisely asked if he could present the Diamond Bar Road update (Item No. 5.a.iv). Hearing no objection from the Board members, Mr. Vaughn asked Mr. Wisely to give his presentation.

5.a.iv) Diamond Bar Road Studies Mr. Wisely reviewed the storm event of September 2014 which could be considered the 1,000 year event. The roadway was designed for the 25 to 50-year event and was able to withstand most of the impacts. The owner of the Grand Canyon West Ranch, however, believes the roadway was not designed properly and has damaged his land interests. Mohave County and the Hualapai Tribe have responded by hiring engineers to study the traffic safety and drainage design, respectively. The findings show that the roadway was built per the BIA design which could support some 450 average vehicular trips per day, an amount which is far below the most recent count of 1,600 vehicular trips per day that was performed since the roadway paving was completed in 2014.

Mr. Vaughn asked if the traffic sample could be in error due to the time of year it was taken. Mr. Majenty said that GCRC is currently performing a vehicle traffic study and will share the results when complete. He expects the daily traffic counts to be higher still given the larger number of free and independent travelers (FITs) coming to Grand Canyon West.

Mr. Wisely noted that one of the recommendations from the safety study is to widen the clear zones along the roadway shoulders and add some 4,000 linear feet of guardrail. The drainage study noted sediment build-up in some of the culverts with three culverts recommended for cleaning. The tribe is working on clearing culverts which require hand digging because they are too short for a backhoe to enter. The drainage study also showed that prior to the road construction the flood waters at the Grand Canyon West Ranch main house were a foot higher than they are now. However, floodwaters are now higher on the BLM property adjoining the ranch. Gabions are proposed along areas of excessive erosion. Mr. Vaughn noted that the sediment control should start higher up in the drainage system. Mr. Wisely said that Mohave County will be working with the BLM on this issue. One issue of contention is the height of the right-of-way barbed-wire fence which has been constructed to an Arizona Game and Fish standard of 42" high with a smooth top and bottom wire. Changing the fence would require a change to the Diamond Bar Road EIS. Mr. Sturgil, the rancher, has requested that the county not take the roadway for maintenance until the fence improvements he desires are completed. The BLM is seeking to place a V-Notch in the fence to allow people to easily cross.

Mr. Majenty noted that the GCRC does not have the authority to close Diamond Bar Road in the event of a weather-related problem. Mr. Wisely replied that the portion of the right-of-way controlled by the BIA could be closed. Mohave County should be consulted before the roadway is closed. Mr. Vaughn added that the Hualapai Police Department should be better trained to control traffic on snowy and icy roads.

To wrap up, Mr. Wisely said the guardrails RFP is 50% complete. Mr. Montana noted the designation of Indian Route 1 is being applied to both Buck and Doe Road and to Diamond Bar Road. This is leading to confusion. Mr. Wisely said he would look into it. Mr. Vaughn asked about the status of Mr. Turner's estate and claim against Hualapai. Mr. Wisely noted the bankruptcy hearing will be in January. Mr. Majenty added that whoever purchases the estate will also purchase the debts as well. Mr. Vaughn

asked how the estate could use Grand Canyon West Ranch for their operation since it seems to be copied directly from the tribe's use of Grand Canyon West.

3) Review and Approval of Minutes from November 23, 2016, meeting

Mr. Vaughn noted that "of" should be changed to "or" in the draft standard contract clause shown on page five of six. Mr. Vaughn made a motion to approve the November 23, 2016, meeting minutes, with above mentioned edits. Motion seconded by Mr. Majenty. Motion carried 4-0.

4) Status FY 2017 Budget Request

- a. **Council action on December 14, 2016** Mr. Davidson reported that the tribal council approved the HTUA budget for approximately \$189,805, \$386,000 less than requested.

- b. **Appeal to Finance Committee and pending Council action** Mr. Davidson said he discussed the budget shortfall with Chairman Clarke and Finance Director Wanda Easter and he will be appealing the decision to the Finance Committee. Mr. Vaughn said the construction of the power line is critical to the success of Grand Canyon West and the Colorado River water rights negotiations. Bringing power to Grand Canyon West along Buck and Doe Road, as part of the water pipeline project being considered in the water rights negotiations is likely to be too expensive and may fail for that reason. Also, the power supply would be from Mohave Electric Cooperative and taken from the same substation where Peach Springs receives its electricity and be subject to the same reliability issues. The board members would like to attend the forthcoming appeal meeting with the Budget Committee.

Mr. Davidson said one reason the budget was reduced is that the tribe may use its own capital reserves rather than applying for a USDA loan to construct the power line. This would remove the cost of the two new consultants to prepare the loan application (and reduce the work load of the HTUA's attorney and consulting engineer). However, the EA will have to be written regardless of the funding source. Mr. Vaughn noted that the tribe received some money from Freeport McMoRan as part of the Big Sandy water rights settlement to purchase additional water rights and further their development. Mr. Majenty asked if these Freeport funds could be

used to help construct the power line that will also be used to operate the water pumps at Grand Canyon West.

Mr. Majenty also reminded those present that the HTUA has invested a tremendous amount effort to get this far along on the power line project, including amending the Hualapai Constitution which will allow the tribe to take on a loan and not rely upon its own cash reserves. Mr. Navenma added that the Council should be consistent in its support for the power line. Mr. Davidson said that during his brief discussion with Chairman Clarke and Ms. Easter, the suggestion of using PL93-638 contract funds to pay for the Environmental Assessment was discussed. This is based upon the tribe's use of "638" fund to pay for the Diamond Bar Road Environmental Impact Statement some 15 years ago. Mr. Davidson said he has investigated this potential funding mechanism with BIA Superintendent Jim Williams and was told that Federal Highway Administration monies were used for the Diamond Bar Road EIS and would not be applicable to creating an EA for a power line. An inquiry to BIA's Division of Energy and Mineral Development revealed that DEMD will only fund EAs for investigations into minerals and geothermal type projects. Mr. Davidson said he has sent a request to Mr. Doug MacCourt of the DOE's Office of Indian Energy to see if this agency can support the cost of preparing the EA for the power line. Mr. Davidson will follow-up with Mr. MacCourt in the first week of January.

5) Project Updates

a. Proposed Power Line to Grand Canyon West

- i. Review and possible action on Environmental Review Funding Agreement with UniSource** Mr. Black began his review of the agreement's term noted in Section 2. The language allows the HTUA to take over management of the EA and pay the consultant directly if the routes carried forward in the EA do not include a route under UniSource's jurisdiction. Mr. Vaughn asked under what conditions UniSource would cease to be involved in the EA. Mr. Black said some routes could be eliminated early in the EA. For example, if the routes along Diamond Bar Road are eliminated then UniSource would most likely not be involved. Mr. Davidson added that in an EA all alternatives are discussed in the introductory chapters, with those alternatives having merit

carried forward for further evaluation. If Alternate Route B, which ascends along Tenney Ranch Road, is the only option to be considered in the EA, UniSource would not be involved.

Additional modifications to the agreement allow the HTUA General Manager and TTG's engineer to be included in the weekly progress meetings. In addition, UniSource has provided the hourly rates for their staff involved in the project and provided an estimate of some \$24,667 over the life of the agreement. Section 8.9 - the limited waiver of sovereign immunity clause - has been modified to include other matters pertaining to the agreement but are not substantive in nature. A new "survival" clause was added (Section 8.10) which allow Sections 4, 6, 7 and 8 to continue after contract termination, this includes payment of outstanding contract balances to UniSource, contract default, remedies and miscellaneous provisions, respectively. Mr. Majenty asked about litigation on survival claims. In the event of non-payment (Section 4), Mr. Black said this is a fairly straightforward claim. Failure to perform (Section 6.2) could be a possible issue; however, Mr. Black does see that as likely for either party. Mr. Majenty referenced a prior study done by the utility company over ten years ago where they did honor the entire agreement. Mr. Davidson asked for a vote by the Board to accept the agreement so it can be presented to tribal council for further action on January 7, 2016. Mr. Majenty made a motion to accept the Environmental Review Funding Agreement with UniSource. Mr. Montana seconded the motion. Motion was approved 4-0.

- ii. **Review and possible action on bids for Long Range Financial Forecast for USDA loan** Mr. Davidson reviewed his rankings for Baker Tilly and Cobb Consulting with the latter scoring five points higher than Baker Tilly, largely due to the 10 point advantage on the cost of services. Mr. Vaughn asked how Cobb Consulting could out-score Baker Tilly who presented the superior proposal. Mr. Davidson noted that Cobb Consulting has a good working relationship with the USDA's field representative who will be overseeing the HTUA's loan application and also offered a price that was within the HTUA's budget. Mr. Becherer reviewed his score which both bids ranked the same and said that Cobb Consulting is a one-person company but does have good working relations with the USDA and is located in Albuquerque, the same location as the USDA field office. Baker Tilly is a large firm and well capable of performing the task, and any additional work for that matter, but the \$20,000 price differential is too large to ignore. Mr. Vaughn asked if Baker Tilly would help the HTUA if the contract with Cobb were to be interrupted or defaulted

upon. Mr. Becherer opined that Baker Tilly is looking to cultivate new clients and would not hold a grudge against the HTUA for selecting another bidder. Mr. Navenma made a motion to accept the offer from Cobb Consulting to perform the Long Range Financial Forecast for the USDA loan application. Mr. Majenty seconded the motion. Motion carried 4-0.

iii. Review and possible action on bids for Construction Work Plan for USDA loan Mr. Davidson reviewed his rankings for SGS Engineers and T&D Services + Q-Spec with the latter scoring 10 points higher, largely due to the 10 point advantage on the cost of services and five points for joint venturing with a Native American owned enterprise (Q-Spec). Also, T&D Services + Q-Spec's bid seemed to be more complete with the relevant USDA bulletins and CFRs cited. Mr. Majenty noted that T&D Services + Q-Spec also had good experience working with Native American Utilities, namely the Navajo Tribal Utility Authority. Mr. Majenty made a motion to accept the offer from T&D Services + Q-Spec to perform the Construction Work Plan for the USDA loan application. Mr. Navenma seconded the motion. Motion carried 4-0.

b. Follow up on Post-2017 Hoover power allocation and contracting

Mr. Davidson next reviewed the draft benefit arrangement contract from the Pechanga Band of Luiseno Indians from Temecula, California courtesy of Western. The Pechanga would like to add the "Power Recipient" so they can be covered under the Sovereign Immunity Clause stated in Section 16 of the arrangement. Mr. Davidson said this new language has been accepted by Western. No changes of substance have been made to the agreement.

As an aside, and given that the Pechanga are also working to establish their own utility authority, Mr. Majenty said it would be appropriate for the HTUA to visit the Pechanga to view their operations. Mr. Davidson said he would contact the Pechanga.

6) Other Matters (Planning)

a. Review and possible action on Standard Limited Waiver of Sovereign Immunity Clause Mr. Black reviewed the revised the draft standard clause as follows:

Standard Limited Waiver of Sovereign Immunity. *As an institution of the Hualapai Tribal Government, the Hualapai Tribal Utility Authority agrees to a limited waiver of its sovereign immunity solely as to arbitration of, or litigation in state or federal court, as may be applicable, for enforcement of this Agreement. Aside from this limited waiver, nothing in this Agreement, or in any current or future attachments, exhibits, or amendments, is intended to be or shall be construed as a waiver of the HTUA's sovereign immunity, and the Parties understand and agree that neither this Agreement nor any underlying law or procedure abrogates or waives the HTUA's sovereign immunity from suit in any state or federal court, or confers jurisdiction on any such court.*

Mr. Black said with the addition of the new wording "As an institution of the Hualapai Tribal Government" the clause now explicitly extends the tribe's sovereign immunity to the HTUA. The proposed language is based upon the Arizona Power Authority's contract and the Western Area Power Administration's Electric Service Contract for Schedule D power. Mr. Majenty asked if the standard clause could be modified once adopted. Mr. Black said the language can be modified, but would have to be approved by tribal council. Once the standard clause is adopted, then the HTUA is free to enter into its own contracts. The HTUA would not include this clause for smaller contracts. Mr. Majenty asked if the tribal council's attorney would have to review the language as well. Mr. Davidson said tribal council may refer the standard clause to their general counsel if they are uncomfortable with the language.

Mr. Vaughn noted the need for a comma between "of" and "or" in the first sentence and to replace "of" with "or" in the second sentence. With that said, Mr. Vaughn made a motion to accept the Standard Limited Waiver of Sovereign Immunity Clause, as amended. Mr. Montana seconded the motion. Motion was approved 4-0.

b. Announcements No announcements aside from happy New Year to all and thanks for getting us this far along!

7) Set time and location for next meeting

The next meeting will be held on Wednesday, January 25, 2017, at 9:00 AM at the Hualapai Health Department, Peach Springs.

8) Adjourned at 11:25 AM