

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

January 12, 2015, 9:10 AM to 11:50 AM, Hualapai Cultural Resources Department

Board members:

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman - absent

Joe Montana, Secretary - present

Jamie Navenma - present

Steve Malin, Treasurer – present

Support personnel:

Kevin Davidson, Planning Director

David Francis, Fennemore-Craig, P.C. (via telephone)

Don Simon, Sonosky, Chambers, Sachse, Endreson & Perry, LLP (via telephone)

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

### **2) Review and Approval of Minutes**

Motion made by Mr. Vaughn to approve the December 1, 2014, meeting minutes as amended, Second by Mr. Montana. Motion carried 4-0.

### **3) 2015 Budget Discussion with Finance Director**

Mr. Davidson informed the Board that the Finance Director would be unable to attend the meeting this morning. Mr. Davidson referred the Board to the various examples of job descriptions in their packets which ranged from short two-page synopses to more comprehensive multi-page descriptions. The Board asked about hiring a part-time general manager at their December 1, 2014, meeting. Mr. Davidson noted such a position may be contracted, possibly tapping the talents of another TUA general manager working in Arizona. Mr. Vaughn asked, 1) would there be a conflict of interest if the part-time general manager was also working for another TUA and, 2) if such a person would be available to perform the work for the tribe. The Board reached a consensus to contact other TUAs regarding the general manager position for the HTUA. Mr. Davidson said he would make inquiries.

The Board also agreed that a clerical person should be hired to set up meetings and take meeting minutes. Mr. Davidson will work with the Hualapai Human Resources Department to prepare a clerical job description for the Board’s approval.

**4) Water Rights Update (Sonosky Chambers)**

Mr. Simon joined the meeting via telephone at 9:35 AM. Mr. Simon is one of the lead attorneys for the tribe’s water rights settlement case. Mr. Vaughn asked Mr. Simon about the possibility of amending the Hualapai Constitution to allow the tribe to take on larger financial liabilities than currently prescribed by Article XVI, Section 2.a. Presently, a referendum vote of the Hualapai membership is required to allow the tribe to both contract and incur debts in excess of \$250,000 if the contract includes a waiver of sovereign immunity. An amendment of this type would allow for these larger construction projects to occur and at a faster pace. Mr. Simon noted that an amendment to the Constitution is possible but also added that as part of its water rights settlement, the tribe will seek a congressional appropriation to pay for construction of the infrastructure project to deliver water to the Reservation so the tribe should not be incurring debts of over \$250,000 with regard to building the infrastructure associated with the water rights settlement. Mr. Simon began his overview of the tribe’s water rights case with the 2012 proposal to bring water up Quartermaster Canyon to Grand Canyon West. The Bureau of Reclamation (BoR) requested additional options be studied as shown in Table One.

**Table 1: Water Alternatives Screening Summary**

<b>Alternative</b>	<b>Screen Recommendation</b>
No Action	Dismiss
Haul/Truck Water	Dismiss
Ground Water – Wells	Dismiss
Ground Water – Springs	Dismiss
Colorado River – Horse Flat Canyon	Dismiss
Colorado River – Jackson Canyon	Dismiss
Colorado River – Spencer Canyon	Dismiss
Colorado River – Quartermaster Canyon	Carry Forward
Colorado River – Tanyika Canyon	Carry Forward
Colorado River – Diamond Creek	Carry Forward
Lake Mead – Pearce Ferry	Dismiss
Lake Mead – South Cove	Carry Forward



Mr. Simon noted his firm and the Council will meet with the BoR on January 22, 2015, to further discuss the project. Mr. Simon estimated the water rights negotiations should be settled in the next 12 to 18 months.

For the benefit of the HTUA Board members not familiar with the water rights negotiations, Mr. Simon summarized the past four years of effort beginning in 2010 with initial discussions with the tribe, then bringing together the principal non-tribal stakeholders namely the Central Arizona Project (CAP) and Salt River Project (SRP) in 2011. The first part of the negotiations included the quantification of the tribe's requested water rights from both the Colorado River and in the Big Sandy Basin (Mohave County). In 2012, the discussions were divided into two phases. Phase 1 involved completion of the Big Sandy issues, principally involving the Hualapai Tribe, Freeport and the Federal Government. These discussions were successfully concluded in the fall of 2014, and the final agreement was ratified by Congress in December 2014. This agreement resolves the tribe's water rights in the Big Sandy Basin. The Phase 2 discussions involve the main Reservation water rights, including the tribe's reserved rights to water from the Colorado River. The tribe retained DOWL HKM to conduct an engineering study of the feasibility and cost of alternative infrastructure projects to bring water from the Colorado River to Grand Canyon West, and DOWL has recently completed that study. As noted above, the study will be presented to the Bureau of Reclamation for its review, and to the Federal negotiating team. Now that the study is complete, the tribe intends to return to the negotiations regarding its Colorado River water rights, and hopes to complete a comprehensive settlement of its main Reservation water rights by the end of 2016.

Mr. Malin asked for additional detail on the Big Sandy water rights settlement. Mr. Simon said that the Cofer Hot Springs, a traditional Hualapai cultural site, will be protected from over-pumping which has caused the Hot Springs to run dry in the past. In addition to helping the tribe pay DOWL-HKM to perform the infrastructure study, Freeport will put funds aside to help the tribe secure additional water rights to the Colorado River. The agreement allows Freeport to continue to pump water for its Bagdad mining operations from the Wikieup well field. Additional water rights from the Burro Creek and Francis Creek have to be resolved with the Federal Government.

Mr. Vaughn asked if the electric power available from Mohave Electric Cooperative (MEC) is reliable enough to operate the several pumps required to lift the water from the delta of Diamond Creek up to Peach Springs and then up along Buck and Doe Road to Grand Canyon West, a distance of some 70

miles, as shown in the Diamond Creek pipeline option. Also, have the extra operations and maintenance (O&M) costs been taken into account for this longer pipeline? Mr. Simon referred to the infrastructure report which indicates power being taken from the existing MEC 69 kV substation at Nelson and some additional O&M costs over the other three options ( see comparison table below). Mr. Vaughn said given the cost of the Diamond Bar pipeline, the Tanyika pipeline, less than 11 miles long, may be the better option.

<b>Comparison of Water Infrastructure Project Costs</b>				
	<b>South Cove</b>	<b>Greggs Hideout</b>	<b>Tanyika</b>	<b>Diamond Creek</b>
Water System Infrastructure Cost	\$96,800,000	\$92,900,000	\$117,600,000	\$125,000,000
Electrical Supply System Infrastructure costs	\$39,312,000	\$35,685,000	\$33,165,000	\$38,679,000
Operations & Maintenance Costs	\$52,900,000	\$54,600,000	\$52,500,000	\$56,100,000
<b>Total Costs</b>	<b>\$189,012,000</b>	<b>\$183,185,000</b>	<b>\$203,265,000</b>	<b>\$219,779,000</b>

Mr. Simon noted some of the negatives associated with the Tanyika option, namely the construction obstacles, the unknown geology that could be encountered in the directional boring through the Canyon wall and the surface diversion which may be affected by changes in Lake Mead’s water levels. The two Lake Mead options, one starting at South Cove (34 miles) and the other starting at Gregg’s Hideout ( 41 miles), have lower construction costs and good access for construction crews and machinery. The weakness of the two options is that the pipelines occur largely outside of the Reservation’s boundary. This requires the acquisition of right-of-way and permits from third parties such as the National Park Service (NPS), Bureau of Land Management (BLM) and Mohave County. The Diamond Creek option is higher in construction and slightly higher in O&M costs and may be impacted by flooding, but it is wholly within the Reservation’s boundary and it delivers water resources to the greater Peach Springs community. The goal is to have the pipeline project supported by the Bureau of Reclamation and the US Congress. By serving a larger population, support for the Diamond Creek option may be easier to obtain and justify the higher project costs.

Mr. Vaughn asked if the surface diversion at Diamond Creek and its location in the Colorado River will be contested by the NPS which sees the Reservation’s boundary line at the high water mark vs. the middle of the Colorado River. Mr. Vaughn said that pursuing a surface water diversion at the Diamond Creek

delta may make the pipeline project problematic. In the past, some Council's have not made an issue of the Reservation boundary. Mr. Malin opined that the NPS argument is without merit based on the original survey of the Reservation. Mr. Montana added that NPS has attempted to over reach their jurisdictional authority in the past, such as including parts of the Hualapai Reservation in a study which required access to the tribe's lands. This access was denied to NPS to keep Tribal sovereignty intact. Mr. Simon said it was too early to predict NPS' reaction to the surface water diversion.

Mr. Vaughn asked if the US Congress would be more likely to fund one of the other three alternatives. Mr. Simon said that all parties must work together to fund the selected alternative. In December, the entire Arizona Congressional delegation supported the first phase of water rights legislation. Mr. Simon recommended that the HTUA and DOWL-HKM work together on the infrastructure project.

Mr. Malin asked about other potential water uses along Buck and Doe Road such as farmland irrigation. Mr. Vaughn noted that Plain Tank Mesa, several miles northwest of Route 66, is a potential agricultural area for the tribe. Mr. Vaughn also noted that population projections show that 30,000 persons may be living on the Reservation by the year 2100. Mr. Malin said the tribe may be looking at a water reservoir along Diamond Creek, possibly in lieu of a pipeline, to meet the tribe's future water needs

## **5) Project Updates**

**a. Post-2017 Boulder Canyon Project Schedule D1 allocation from Western Area Power Association (Planning)** Mr. Davidson re-capped the Hualapai Tribe's successful application to acquire 381 KW of Schedule D contingent capacity from the Boulder Canyon Project. The goal is to work with UniSource Electric to wheel this power to Grand Canyon West. Another option is to approach Arizona Public Service (APS) or Mohave Electric Cooperative (MEC) and have the power wheeled to Peach Springs via the Nelson substation. Mr. Vaughn asked about the potential to create a looped power system on the Reservation. Mr. Davidson recounted Mr. Majenty's similar question on the topic made at the December 1, 2014, Board meeting where a power line would be constructed along Buck and Doe Road to connect the Peach Springs and Grand Canyon West power grids. This would allow both communities to retain power if either UniSource or MEC had a failure in their system. Mr. Davidson said choosing the Diamond Creek pipeline option for the tribe's water rights settlement could help build such a power line along Buck and Doe Road because the water pumping stations placed along the roadway

will require electric power to operate with the furthest being some 20 miles south of Grand Canyon West. To complete the loop between the existing MEC service and the potential new Unisource service, approximately 20 miles of new power line would have to be constructed by the tribe.

**b. Post 2017 Boulder Canyon Project Schedule D2 allocation from Arizona Power Authority (APA) (Fennemore-Craig, P.C.)** Mr. Francis reviewed the Hualapai Tribe's eligibility in applying to the APA's Schedule B and D2 power. The initial legal review indicates that the Hualapai Tribe, being a federally recognized tribe, is not eligible for Schedule D2 power per Arizona Revised Statutes.<sup>1</sup> Although previous research of relevant statutes left open the possibility of securing Schedule B power, the APA's December, 2014 Revised Draft Plan interprets those statutes in a manner which restricts Schedule B power to certain non-tribal entities to the apparent exclusion of tribal entities. However, the APA has placed the tribe in the D2 allocation pool as shown on their five different power allocation options. These amounts range from 100 KW to 232 KW. Given the small amount of power and the potential controversy over its allocation to the tribe, it may not be worth the legal expenses to obtain it. Mr. Davidson announced he would be attending the January 16<sup>th</sup> APA meeting to ascertain how fierce the competition will be for the D2 power and seek the opinion of the APA staff and also observe the reaction of existing APA customers on the proposed allocation process.

**c. Current Colorado River Storage Project (CRSP) contract with Navajo Tribal Utility Authority (NTUA) (Fennemore-Craig, P.C.)** Mr. Francis reviewed the current agreement between the Hualapai Tribe and NTUA which is set to expire in 2024. The NTUA requires a one year advance notice from the tribe prior to termination; however, the tribe is also obligated to complete the "power season" which may extend the termination date beyond 365 days. The goal is too bring this low cost hydropower to Grand Canyon West via UniSource to lower the power costs and help fund the HTUA's operations. The Board asked how this power compares to the new Post-2017 Boulder Canyon Project Schedule D power. Mr. Francis said he would create a comparison table for the Board to review.

**d. USDA/RUS grant and future USDA loan application for the Diamond Bar Road power line to Grand Canyon West (TTG, Inc.)** Mr. Davidson reviewed a mid-December e-mail sent by the tribe's

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<sup>1</sup> See ARS Title 30-121 et. seq. Title 30 did not envision Schedule D power, so the APA may have some discretion in allocating this new resource pool. Schedule D2 power is that portion of Schedule D, some 11 MWs, given to the state of Arizona. Schedule D1 power, approximately 69 MWs, is the allocation provided by Western Area Power Administration.

consulting engineer, Mr. Schmitt of TTG, to Larry McGraw of the USDA updating him on the tribe's substantial progress to date. Mr. McGraw will be evaluating the \$1.9 million USDA/RUS grant application to build a portion of the Diamond Bar power line. The response from Mr. McGraw was congratulatory.

**e. UniSource negotiations (Fennemore-Craig, P.C.)** Mr. Francis said there has not been a recent meeting with UniSource to report.

**f. Review of potential County franchise agreement to place power line in public right-of-way (BIA transfer to Mohave County) for a portion of Diamond Bar Road (Fennemore-Craig, P.C.)** Mr. Francis reviewed the current franchise agreement between Mohave County and the Fort Mojave Tribal Utility Authority. This agreement could be used as a starting point for the HTUA to establish a utility franchise with Mohave County for the one mile of BIA right-of-way along Diamond Bar Road which will be turned over to Mohave County this spring.

**g. Review of Standard Clause for contracts and ideas on how to approach and advocate for the referendum vote to activate Sections 208 and 209 of the Ordinance (Fennemore-Craig, P.C. and Planning)** Mr. Francis gave a brief review of the one and two-page fact sheets one of which would be published as part of the referendum voter education process. Mr. Davidson apologized for not including these documents in the Board's packet. The fact sheets will be discussed at the next Board meeting. Mr. Francis did not see any need for the Bureau of Indian Affairs (BIA) to be involved in the referendum process because the Hualapai Constitution is not being amended. Mr. Vaughn noted that any amendments to the Constitution should be limited to the size and value of land leases so as not to be confused with the current efforts of the HTUA to enter into contracts over \$250,000.

**h. Upcoming BIA grant-funded training (Planning)** Mr. Davidson announced that the bids for the four BIA, Indian Energy and Economic Development RFPs for energy training and capacity building are due today. These will be given to the HTUA Board members to review.

**i. Discussion of bylaws** Mr. Davidson noted the HTUA ordinance contains language on terms of office, election of officers, etc. so the HTUA's bylaws have been substantially addressed.

**6) Other Matters**

Mr. Davidson reviewed conference brochures for energy-related training coming up in Pala, California and Albuquerque, New Mexico. In addition, the Arizona Tribal Energy Association will be holding its annual meeting in Tucson on January 30, 2015.

**7) Set time and location for next meeting**

The next meeting will be held on February 2, 2015, starting at 9:00 AM at the Hualapai Cultural Resources Department.

**8) Adjourned at 11:50 AM**