

Hualapai Tribal Utility Authority (HTUA) Meeting Minutes

January 30, 2017, 9:36 AM to 11:15 AM, Hualapai Health Department, Peach Springs.

Board members:

Charles Vaughn, Chairman – present

Joe Montana, Vice-Chairman – present

Jamie Navenma, Secretary – present

Rory Majenty – absent

Support personnel:

Kevin Davidson, Planning Director

Patrick Black, Fennemore Craig (via telephone)

Lauren Ferrigni, Fennemore Craig (via telephone)

1) Call to Order

2) Roll Call

3) Review and Approval of Minutes from December 29, 2016, meeting

Mr. Vaughn made a motion to approve the December 29, 2016, meeting minutes, as presented. Motion seconded by Mr. Montana. Motion carried 3-0-1.

4) FY 2017 Budget Request and status of appeal to Finance Committee and pending Council

action Mr. Davidson said he has a tentative meeting with the Budget Committee on February 1, 2017, after the tribal council meeting and invited interested HTUA board members to attend.

5) Review and possible action on revised Standard Limited Waiver of Sovereign Immunity

Clauses Mr. Davidson said that Tribal Council approved the standard clause for the limited waiver of sovereign immunity at its January 7, 2017, Regular Meeting provided that the language in the standard clause also is reviewed by the tribe's attorney, Gallagher and Kennedy. On January 18, 2017, Tribal Council reviewed the memo by Gallagher and Kennedy with members of the HTUA Board and the tribe's

attorney to discuss the standard clause. The standard clause adopted by Resolution No. 09-2017 was found to be too broad in that the “one-size fits all” approach is not appropriate for all contracts and the limitation on monetary damages should also be addressed. To that end, the tribe’s attorney has recommended four categories of standard contract clauses beginning with no limited waiver of sovereign immunity up to limited waivers for loan agreements, bonds and notes, and other financial contracts. In addition, a provision for consultation prior to litigation of non-financial contracts should also be considered by the tribe. Mr. Vaughn asked if Mr. Black had also reviewed the Gallagher and Kennedy memo. Mr. Black said the legal memo provides options on the limited waiver based on the type of vendor or contract. For example, the categories begin with no limited waiver for small contracts through limited waivers of various degrees including, declaratory and injunctive relief, with or without consideration for monetary damages, and lastly HTUA assets. These standard clauses may also provide a starting point for negotiations with counter-parties. The third standard clause provides declaratory and injunctive relief, with consideration for monetary damages not to exceed the value of the contract. Any modification of the standard wording must be approved by tribal council.

Mr. Vaughn asked if the HTUA could select the appropriate clause based upon the type of contract. Mr. Davidson replied yes. The second standard clause, which provides declaratory and injunctive relief, without consideration for monetary damages, is being presented to UniSource as part of the environmental funding agreement for the Grand Canyon West power line Environmental Assessment. The revised agreement also replaces State Court with Hualapai Tribal Court. The reason for this action is that tribal council rejected the environmental funding agreement at the January 7, 2017, Regular Meeting.

Mr. Vaughn asked how a breach of contract would be remedied by using the first standard contract clause since there is no mention of a hearing process. Mr. Davidson replied that the effect of the language should be similar to the tribe’s standard professional services contract which allows for a hearing in tribal court but does not mention sovereign immunity, so no waiver can be inferred. Mr. Black noted the broader scope of Gallagher and Kennedy’s memo and the need to protect tribal sovereignty. However, the tribe through the HTUA, must now deal with utility companies and federal contractors who will require some type of waiver of the tribe’s sovereign immunity.

Mr. Vaughn asked how each clause will be implemented. Mr. Davidson said clauses one through three would be for service contracts and the fourth clause would be used for a loan application. Mr. Black said the standard clauses in the proposed resolution should not be seen to tie the HTUA Board's hands. It should not take too much additional effort to modify one of the standard clauses for a particular counter-party and then have the revised language presented to tribal council for consideration. Mr. Vaughn noted the resolution should include Hualapai Tribal Court. Mr. Black said the issues are separate and may require two resolutions. The resolution can note Hualapai Tribal Court and Hualapai Tribal Law as the preferred jurisdiction and law. Mr. Navenma added that choice of jurisdiction and law will be based on the contracts such as it has been so far with previous state and federal contracts (Hoover power allocations). Mr. Black noted that placing the contract in the jurisdiction of tribal court would effectively negate the need for the limited waiver of sovereign immunity amendment recently added to the Hualapai Constitution. Mr. Black said he will add an opening "Whereas" to the resolution mentioning tribal court. Mr. Vaughn requested tribal court be the first forum for hearing. By consensus, the HTUA Board approved the language of the resolution and subsequent presentation to tribal council.

6) Project Updates

a. Proposed Power Line to Grand Canyon West

- i. Review and possible action on Environmental Review Funding Agreement with UniSource** Mr. Black said, based on tribal council denial of the first funding agreement on January 7, 2017, he presented UniSource with a revised contract with new language based upon the recent Gallagher and Kennedy memo. As noted above, the UniSource contract now contains a standard clause for declaratory and injunctive relief, without monetary damages, and replaces state court and law with tribal court and law. Even though state law applies in this case, tribal law and federal law were added to Section 8.3 on the advice of Gallagher and Kennedy. The tribe's obligation under the contract is to pay its bills to UniSource and provide staff support. UniSource has the contract under review and will most likely reject it. The Tenney Ranch Road option, also known as the Alternative B route, would not require significant UniSource involvement. The contract's status will most assuredly be discussed at the next HTUA Board meeting with possible input from Gallagher and Kennedy.

ii. **Consultants for USDA loan** Mr. Davidson reported that both Cobb Consulting and T&D Services + Q-Spec have been notified of the HTUA's budgetary constraints and are waiting for the notice to proceed once the constraints have been resolved.

iii. **Diamond Bar Road Studies** Mr. Davidson said there have been no additional updates from Hualapai Public Works since the last HTUA Board meeting on December 29, 2016.

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

Mr. Davidson said that Western is still preparing the final benefit arrangement contract between the tribe and the Pechanga Band of Luiseno Indians from Temecula, California.

7) Other Matters (Planning)

a. **Follow-up on 2017 Arizona Tribal Energy Association meeting** Mr. Davidson reviewed three of the noteworthy presentation made at the annual ATEA meeting beginning with the status of 2025 Colorado River Storage Project (CRSP) hydropower allocation managed by the Salt Lake City Area/Integrated Projects (SLCA/IP) marketed by Western. There are no proposed changes to the marketing area or allocation of power to existing customers nor will there be a new power pool created to serve new customers given the output at Glenn Canyon Dam. The new contracts will commence on October 1, 2024, and expire on September 30, 2057. The contracts will be distributed for review shortly, with the hope of having them executed by September of 2017.

The second presentation was from Mr. Chris Deschene. Director of DOE's Office of Indian Energy. His office focuses on bringing strategic energy solutions to tribes and Alaskan native villages. This comes in the form of educational, technical and financial assistance, including \$7.0 million in technical assistance and \$7.7 million in deployment over the past few years. The office has developed a strategic roadmap to 2025, developed several working groups, and conducted several conference. Mr. Deschene is concerned that his office's good work will be dismissed by the new administration. Mr. Davidson said he would like to write a support letter for transmittal to the Energy and Natural Resources Committee and the Presidential Transition Team to retain the Office of Indian Energy and Mr. Deschene as its director.

Another presentation of interest was made by E3, a California company focusing on energy and environmental economics. The presentation focuses on battery storage where innovation has been driven by the desire for lower cost storage and the increased use of renewable energy whose output is intermittent by nature. The extensive presentation provides a good background on the technologies, trends in battery development and costs, and a case study. Mr. Vaughn noted the need for the HTUA to make a renewable energy public presentation and explain how the utility grid helps levelize the power flow from these intermittent resources and the need for type of back-up power source. Mr. Navenma said that the load and time of use should also be addressed in the presentation.

b. Trip to Temecula, California, to meet with Pechanga Band of Luiseno Indians Mr. Davidson referred to the e-mail from Breann Nu'uhiwa, Associate Advocate General of the Pechanga Indian Reservation, inviting the HTUA to Temecula on March 14, 2017. The Board will check calendars and confirm.

c. Announcements Mr. Davidson said he received an application for the HTUA Board from Dr. Garth Daniels of Salt Lake City, Utah. The application will be forwarded to the Tribal Council Chairman for review.

8) Set time and location for next meeting

The next meeting will be held on Wednesday, February 22, 2017, at 9:00 AM at the Hualapai Health Department, Peach Springs.

9) Adjourned at 11:15 AM