

# 2015 Annual Report for the Hualapai Tribal Utility Authority



Prepared by: Hualapai Tribal Utility Authority Board and  
Acting General Manager

Presented to HTUA Board on November 30, 2015

Approved by HTUA Board on November 30, 2015

Approved by Hualapai Tribal Council on December 4, 2015

## **Table of Contents**

Preface	2
Synopsis	2
Mission Accomplishments in 2015 and Plans for 2016	4
FY 2015 Financial Report to date and Budget Request for FY 2016	5

## **Appendices**

Appendix A: Meeting minutes from December 1, 2014 to October 29, 2015

Appendix B: Public Outreach for Amendment to Hualapai Constitution

Appendix C: Board training presentations

Appendix D: Presentations by MEC, NAU and BoR

Appendix E: Letter from Fennemore Craig

## **Preface**

In accordance with Section 110 of the Hualapai Tribal Utility Authority Ordinance, the Board of Directors (Board) shall submit a report to the Tribal Council on an annual basis. The report shall include, but not be limited to, 1) financial conditions, 2) proposed budget for the upcoming fiscal year, 3) rates for various classes of consumers, 4) progress on HTUA's mission, and 5) other pertinent utility matters.

Any actions that the Board plans to take in the upcoming year that appear to require approval by the Tribal Council shall be highlighted in the annual report, including any request for the appropriation of tribal funds for the operation of HTUA. The Board may assign the General Manager the responsibility for preparing the report, although it shall be presented to, and must be approved by, the Board before being submitted to the Tribal Council. Failure to seek Council approval in an annual report will not necessarily preclude the HTUA from taking a planned action, but, if Council approval is required, a supplemental report to the Council (followed by Council approval) shall be required.

## **Synopsis**

Over the past 12 months, the Hualapai Tribal Utility Authority (HTUA) has held thirteen meetings and accomplished several tasks to further its mission as follows: 1) applied for and received 100 KWs of Post-2017 Boulder Canyon Project hydro power through the Arizona Power Authority, 2) launched a public outreach campaign to amend Article XVI of the Hualapai Constitution and obtained Council approval, via resolution, to begin the Secretarial Election process with the Department of Interior, 3) Solicited bids for and awarded a contract to a website developer to create a website unique to the HTUA to aid in the outreach effort for the Secretarial Election, 4) received training in the principles of operating a tribal utility authority board and negotiating Purchase Power Agreements, 5) selected two Board members to be on the tribe's right-of-way negotiation team for the APS 500 KV power line, 6) selected four HTUA officers, 7) adopted two operating budgets, and 8) received presentations from various entities including the Bureau of Indian Affairs, Bureau of Reclamation, Northern Arizona University and Mohave Electric Cooperative on power related projects and future electrical power opportunities for the tribe.

## **Mission Accomplishments in 2015 and Plans for 2016**

Section 107 of the Ordinance defines four missions for the HTUA as follows: 1) establish and maintain electric power service for GCW, 2) establish and maintain water service for GCW, 3) establish and maintain sewage service for GCW, 4) establish and maintain such services for such other locations within the Hualapai Reservation and on other Tribal lands under the jurisdiction of the Hualapai Tribe as the Tribal Council may deem appropriate pursuant to Section 108 of this Ordinance.

To accomplish these multiple missions, HTUA is authorized to carry out the following kinds of activities:

- (1) To plan for, provide, and furnish utility services to GCW. Such utility services shall include electric power service, water service, and sewage service. Such services may include other energy-related services, including energy conservation and the use of renewable energy technologies.
- (2) To promote the use of HTUA's services where available in order to improve the health and welfare of residents of the Reservation and to facilitate economic development.
- (3) To acquire, construct, operate, maintain, promote, and expand electric power service, water service, and sewage service at GCW and on such other locations within the Hualapai Reservation and on other Tribal lands under the jurisdiction of the Hualapai Tribe as the Tribal Council may deem appropriate pursuant to Section 108 of this Ordinance.
- (4) To operate utility services so as to provide revenue sufficient to service debt on particular component projects as may be required by creditors on such component projects.
- (5) To do everything necessary, proper, and advisable, or convenient for the accomplishment of the mission set forth in this section, and to do all things incidental to or connected with such mission, which are not forbidden by law, this Ordinance, or the Hualapai Constitution.

## **Recap of 2015**

The HTUA's primary focus in 2015 has been to bring hard-line electric power from the local utility company adjoining the Hualapai Reservation to Grand Canyon West via Diamond Bar Road, a project expected to cost approximately \$14 million, but is also expected to reduce power costs at Grand Canyon west by nearly \$2 million per year by switching from on-site diesel generation to utility grid power. To design and construct such a project requires that the \$250,000 debt and liability limit stated in Article XVI of the Hualapai Constitution be addressed. To do so, the HTUA has worked closely with its legal counsel to prepare new language which can be added to the Constitution to allow Tribal Council the ability to approve limited waivers of sovereign immunity which will in turn allow the tribe to enter into contracts and take on debts (loans) greater than \$250,000. This effort has led the HTUA to create a public outreach plan, including the creation of a HTUA web site to help educate the Hualapai voters.

To further reduce the tribe's electric cost, the HTUA applied for and received 100 KWs of Post-2017 Boulder Canyon Project hydro power through the Arizona Power Authority. This inexpensive hydro power may be purchased by a utility authority at wholesale from Western Area Power Administration, which approximately three cents per KWhr, and then wheeled to Grand Canyon West, once the power line is constructed, further lowering Grand Canyon West's power cost by several thousand dollars per year.

To further the HTUA's technical ability and energy market acumen, Board members and the acting general manager received training from Stinson Leonard Street, LP, on identifying and negotiating PPAs and from Kanim Associates on operating a Tribal Utility Authority (see Appendix B). The HTUA has also provided two members, Charles Vaughn, Chairman, and Steve Malin, Treasurer, to be on the tribe's right-of-way negotiation team for the APS 500 KV power line. In addition, the HTUA has received presentations from the Bureau of Indian Affairs on how to conduct a Secretarial Elections, the Bureau of Reclamation on how Hualapai may supply make-up electric power to the Central Arizona Water Conservation District as the Navajo Generating Station is retired, Northern Arizona University on solar and wind development potential in Arizona, and Mohave Electric Cooperative on their power reliability projects and future renewable energy opportunities for the tribe.

### **Look ahead for 2016**

In 2016, the HTUA will continue its public outreach effort to help ensure the Secretarial Election to amend the Hualapai Constitution is successful. If so, the HTUA seeks to lead the tribal loan application effort to USDA, Rural Utilities Service, to provide the matching amount for the \$1,881,130 USDA/RUS High Energy Coast grant that the tribe received in 2015 to build the power line to Grand Canyon West. The HTUA will also begin negotiating and finalizing contracts with applicable entities (UNSE) to procure power and wheeling services to directly serve GCW.

In anticipation of being a fully functional utility, the HTUA believes that at least two Hualapai should begin apprentice training as linemen and would like to request a scholarship program be provided by the HTUA (see budget request). Once the HTUA is successful in bringing electrical power to Grand Canyon West, it will focus on electrical service on other parts of the reservation, including Peach Springs, possibly involving the negotiations to purchase Mohave Electric Cooperative's distribution system and planning efforts to construct a solar farm large enough to meet the daytime power needs of the community.

## FY 2015 Financial Report to date and Budget Request for FY 2016

On April 7, 2015, Tribal Council approved the HTUA's operational budget at \$51,340.

HTUA Budget 2015 approved by Council on 4/6/2015					01-60-00-0000	Through October	
<b>Consultant</b>	Rate	Units/Month	Months	April-Dec 2015	Expense	Balance	
Labor per Hour*	\$100.00	40	9	\$21,000	\$9,461.04	\$11,538.96	
Lodging per night	\$125.00	1	9	\$1,125	\$0.00		
Per Diem	\$45.00	2	9	\$810	\$0.00		
Mileage per visit	\$0.575	200	9	\$1,035	\$0.00		
				<b>\$23,970</b>	<b>\$9,461.04</b>	<b>\$11,538.96</b>	
<b>Board Member Travel</b>	Rate/Mile	Miles		Total	Expense	Balance	
Automobile	\$0.575	2,000		\$1,150			
Per Diem	Rate/Quarter	Rate/Day	Days	Total			
Inside-State Per Diem	\$11.25	\$45.00	10	\$450.00			
Outside-State Per Diem	\$15.00	\$60.00	5	\$300.00			
Lodging	Room Rate	Nights		Total			
Hotel	\$125.00	10		\$1,250			
				<b>\$3,150</b>	<b>\$699.38</b>	<b>\$2,450.62</b>	
<b>Memberships</b>	Annual Dues			Total	Expense	Balance	
Arizona Tribal Energy Assoc	\$1,500			\$1,500	\$0.00		
				<b>\$1,500</b>	<b>\$0.00</b>	<b>\$1,500.00</b>	
<b>Public Outreach</b>	Rate/Cost	Units/Month	Months	Total	Expense	Balance	
Web site support**	\$75.00	5	6	\$17,250.00	\$3,925.00	\$13,325.00	
Pamphlets/Ballots	\$0.50	2000	1	\$1,000.00			
Postage	\$1.47	500	2	\$1,470.00			
Food	\$5.00	200	3	\$3,000.00	\$968.00	\$2,032.00	
				<b>\$22,720.00</b>	<b>\$4,893.00</b>	<b>\$15,357.00</b>	
<b>Total Budget</b>				<b>\$51,340.00</b>	<b>\$15,053.42</b>	<b>\$30,846.58</b>	
Notes:							
* Fennemore Craig Invoices							
** \$15,000 transferred by motion of HTUA Board on 9/24/2015							

The balance though October 31<sup>st</sup> remains at \$30,846.58. Expenses have been for public outreach (food, mailings), web site development, travel to conferences and meetings, and, recently, expenses for legal counsel as requested from the Finance Department.

For FY 2016, the Hualapai Tribal Utility Authority's budget request is \$175,665.00 from the Hualapai Tribe's General Fund as shown below. This represents an increase of \$124,325.00 over last year's nine-month budget of \$51,340.00. Much of this increase includes a projected \$91,600 expense in Professional Services for legal counsel to the HTUA Board and an extra three months of salary for a part-time General Manager, a role currently being filled by the Planning Director at no additional cost to the HTUA. The expected budget surplus from 2015 is projected to be over \$25,000.

Proposed HTUA Budget for 2016				Account No.	01-60-00-0000
<b>General Manager Consulting*</b>	Rate	Units/Month	Months	Total	
Labor per Hour	\$100.00	40	12	\$48,000	
Lodging per night	\$125.00	1	12	\$1,500	
Per Diem	\$45.00	2	12	\$1,080	
Mileage per visit	\$0.575	200	12	\$1,380	
				<b>\$51,960</b>	
<b>Legal Counsel to HTUA Board</b>	Rate	Units/Month	Months	Total	
Labor per Hour*	\$375.000	20	12	\$90,000	
Lodging per night	\$100.000	2	3	\$600	
Per Diem	\$45.000	2	3	\$270	
Mileage per visit	\$0.575	400	3	<b>\$690</b>	
				<b>\$91,560</b>	
<b>Lineman Apprenticeship Training</b>	Tuition/Rate	Units/Students		Total	
Class	\$10,000.000	2		<b>\$20,000</b>	
<b>Board Member Travel</b>	Rate/Mile	Miles		Total	
Automobile	\$0.575	2,000		<b>\$1,150</b>	
Per Diem	Rate/Quarter	Rate/Day	Days	Total	
Inside-State Per Diem	\$11.25	\$45.00	10	\$450.00	
Outside-State Per Diem	\$15.00	\$60.00	5	\$300.00	
Lodging	Room Rate	Nights		Total	
Hotel	\$125.00	15		<b>\$1,875</b>	
				<b>\$3,775</b>	
<b>Memberships</b>	Annual Dues			Total	
Arizona Tribal Energy Assoc	\$1,500			<b>\$1,500</b>	
				<b>\$1,500</b>	
<b>Public Outreach</b>	Rate/Cost	Units/Month	Months	Total	
<b>Domain hosting</b>	\$300	0.083333	12	\$300.00	
Web site support	\$100.00	2	12	\$2,400.00	
Pamphlets/Ballots	\$0.50	2000	1	\$1,000.00	
Postage	\$1.47	500	2	\$1,470.00	
Food	\$5.00	200	2	\$2,000.00	
				<b>\$6,870.00</b>	
<b>Total Budget</b>					<b>\$175,665.00</b>

The HTUA must continue performing public outreach to amend the Hualapai Constitution to allow the tribe to incur a loan debt greater than \$250,000. The USDA loan is estimated to be \$12 million and is the expected companion funding for the recently awarded \$1,881,130 grant from USDA. To achieve these goals, as well as negotiating Boulder Canyon Project hydropower contracts with Western and the Arizona Power Authority, legal counsel must be retained to advise the HTUA. I have attached a letter from Fennemore Craig detailing these costs (Appendix E). The legal fees may be passed through to the Grand Canyon Resort Corporation at the discretion of Tribal Council. The Corporation has been paying for these legal services. In addition, the HTUA would like to allocate \$20,000 to begin capacity building by training future Hualapai linemen to work on the new electric system.

## **Appendices**

Appendix A: Meeting minutes from December 1, 2014 to October 29, 2015

Appendix B: Public Outreach for Amendment to Hualapai Constitution

Appendix C: Board training presentations

Appendix D: Presentations by MEC, NAU and BoR

Appendix E: Letter from Fennemore Craig

**Appendix A: Meeting minutes from December 1, 2014 to October 29, 2015**

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

December 1, 2014, 9:00 AM to 12:30 PM, Hualapai Cultural Resources Department

### **Attendees:**

Charles Vaughn, Rory Majenty, Joe Montana, Jamie Navenma, Steve Malin, Kevin Davidson, Lou Schmitt (via telephone), Patrick Black, Fennemore-Craig, P.C. and David Francis, Fennemore-Craig, P.C.

**1) Welcome and Introductions** (Planning Department) Mr. Davidson provided each Board member with a customized binder containing the meeting agenda, flow charts for funding and construction of a power line to Grand Canyon West (GCW), a draft of the standard contract clause prepared by Fennemore-Craig and the Hualapai Tribal Utility Authority (HTUA) ordinance.

**2) Overview of the HTUA's Mission** (Planning and Fennemore-Craig, P.C.) Mr. Davidson reviewed the history of the formation of the HTUA from presentation to Council in June of 2014 at which time Council directed staff and consultants to begin work on a draft ordinance which was adopted on September 24<sup>th</sup>. Following the adoption of the ordinance, the Board positions were advertised with selection of members by Council occurring on November 24<sup>th</sup>. Mr. Francis of Fennemore-Craig provided additional background as follows: The initial goal of the HTUA is to construct a power line along Diamond Bar Road to connect GCW to the electric grid, in order to, 1) Reduce electricity costs over the long term, 2) Reduce reliance on diesel generation, 3) Improve reliability of electricity service, and 4) Self-determination for the Tribe. To achieve these goals, the creation of a HTUA is required so the Tribe can purchase wholesale electricity in order to secure USDA Rural Utility Service financing for the power line's construction. An HTUA must also be established if the Tribe would like to purchase wholesale electricity from UniSource Electric or other electrical providers (Arizona Public Service, Western Area Power Authority). The advantages of the HTUA include: 1) Lower-interest financing for line construction from RUS, 2) HTUA serves as a platform for later expansion to Peach Springs or other utility services (e.g. water, wastewater), 3) Facilitates Tribal access to Boulder Canyon Project (Hoover Dam) and Colorado River Storage Project (CRSP) allocations, and 4) Set retail electric rates without regulatory oversight. As noted in No. 3, the HTUA is set up to establish and maintain electric power service for GCW and eventually provide electric power elsewhere within reservation at the direction of the Tribal Council. In addition, the HTUA may eventually provide comprehensive utilities services to the entire Hualapai Nation.

In 2011, the Tribe began considering connecting GCW to the electric grid. Unisource Electric (“UNSE”) operates a substation near the reservation boundary and GCW. One hundred thousand dollars has already been deposited with UNSE for the study and preliminary engineering. Based on the study, the electrical interconnection will require construction of a 20.8kV distribution line connecting the substation to the GCW on-site distribution system. Estimated cost: \$12 million (+ tax gross-up of \$2-5 million if line is owned by UNSE). The Tribe is currently upgrading the on-site distribution system. The mini-grid will be powered by diesel generators until the interconnection is complete.

Mr. Vaughn asked if the \$12 million power line cost also took into account the cost of purchasing a right-of-way to cross a private landowner’s property. It may be advantageous for the Tribe to purchase this land outright rather than have to pay for a protracted negotiation for the new right-of-way.

Mr. Vaughn also asked if Article V, Section N of the Hualapai Constitution regarding the \$50,000 ceiling on leases for natural resources could be interpreted to apply to such a contract that the HTUA may be entering into. Leases greater than \$50,000 in value requires the approval of the Hualapai people via a referendum vote. Mr. Black of Fennemore-Craig suggested that the existing language in Article V, Section N be narrowed to specifically apply to land leases of natural resources, for example cattle ranching, timber harvesting, as well as wind farms and solar farms.

Mr. Francis continued the presentation on the HTUA by quoting Section 107 of the Ordinance as follows:

“Plan for, provide, and furnish utility services to GCW. Such utility services shall include electric power service, water service, and sewage service. Such services may include other energy-related services, including energy conservation and the use of renewable energy technologies.”

“Promote the use of HTUA’s services where available in order to improve the health and welfare of residents of the Reservation and to facilitate economic development.”

“To acquire, construct, operate, maintain, promote, and expand electric power service, water service, and sewage service at GCW and on such other locations within the Hualapai Reservation and on other Tribal lands under the jurisdiction of the Hualapai Tribe as the Tribal Council may deem appropriate . . .”

"To operate utility services so as to provide revenue sufficient to service debt on particular component projects as may be required by creditors on such component projects."

"To do everything necessary, proper, and advisable, or convenient for the accomplishment of the mission set forth in this section, and to do all things incidental to or connected with such mission, which are not forbidden by law, this Ordinance, or the Hualapai Constitution."

In conclusion, Section 108 of the Ordinance states, "the Tribal Council may enlarge or otherwise modify the mission(s) of HTUA as it deems appropriate in the future. This authority includes, but is not limited to, the authority to provide for additional utility services (e.g., garbage, telecommunications, etc.) and the authority to provide service to locations other than GCW, all as the Tribal Council may deem appropriate in the future."

**3) Selection of Officers (Planning)** Mr. Davidson asked for nominations for Chairman of the HTUA. Mr. Vaughn was nominated from the floor and confirmed in a 4-0 vote. Mr. Davidson turned the meeting over to the new chairman. Mr. Vaughn asked for nominations for the Vice-Chairman. Mr. Majenty was nominated from the floor and confirmed in a 4-0 vote. Mr. Vaughn asked for nominations for the Secretary. Mr. Montana was nominated from the floor and confirmed in a 4-0 vote. Mr. Vaughn asked for nominations for the Treasurer. Mr. Malin was nominated from the floor and confirmed in a 4-0 vote.

**4) Discussion of bylaws** – The chairman asked that the creation of bylaws be tabled to a future meeting. Mr. Black said they may be developed with the Operational Manual noted in Section 301 of the Ordinance.

**5) Update on the recently submitted USDA/RUS grant and future USDA loan application for the Diamond Bar Road power line to GCW (Planning and TTG, Inc.)** Mr. Davidson said the \$1.88 million grant application was submitted in August and USDA is beginning the process of evaluating the grant application. The USDA should announce its decision in the spring of 2015. The grant is designed to serve only the residential portion of the overall electrical usage at GCW or some 16% of the total electric load. The balance of the funding will be derived from a loan (USDA) which will fund the balance of the power line's costs which total over \$12 million. The USDA will need tangible assets to back up the loan.

Mr. Black said the new mini-grid and diesel generator system, with a value of some \$8 million should be transferred to the HTUA to secure the loan, since the HTUA will be the loan applicant. Mr. Malin noted that GCRC paid for the mini-grid and associated generators. Mr. Black said the transfer could be done with a sale-lease back where the Grand Canyon Resort Corporation (GCRC) sells the mini-grid system to the Tribe/HTUA and then GCRC leases it back so as not to show a loss to the corporation. Mr. Malin said the Tribe could transfer ownership of the Skywalk building to GCRC in exchange for the mini-grid and diesel generators which the Tribe would turn over to the HTUA.

**6) Update on UniSource negotiations** (Fennemore-Craig, P.C.) Mr. Black reviewed the Tribe's November 3, 2014, meeting with UniSource. The parties met to discuss the construction, operation and maintenance of a 20.8kv electric line designed to connect the GCW facility with Unisource Electric's transmission facilities in northern Arizona. The parties began discussions in 2011 under the assumption that GCW would purchase retail electricity from UNSE once the interconnection was finalized. Mr. Vaughn asked if this was an adequately sized power line. Mr. Schmitt said it was adequate. The Tribe provided a deposit of \$100,000 to UNSE so that the company could do the preliminary engineering and design work that would result in enough capacity on the line to service GCW at full build-out (approximately 5-7MW load). The final cost estimate for the electric line was approximately \$14 million dollars. This line matches the existing UniSource line along Pierce Ferry Road.

Mr. Black recounted that in order to fund the project, the Tribe looked at several financing options and finally settled on securing a low-interest loan from the Rural Utilities Service (RUS), which is a division of the USDA. However, in order to move forward with an application for the funds, RUS required the Tribe to form a tribal utility authority ("TUA"). The Tribe formed the Hualapai TUA (HTUA) in September 2014, and is now working towards securing the agreements necessary to: (i) finalize and submit its loan application with RUS, (ii) secure longer term wholesale generation resources for the HTUA at prices lower than the current costs of providing power to GCW, and (iii) acquire and utilize its allotment of federal power generated along the Colorado River.

In order to achieve the goals highlighted above, the HTUA will need to enter into at least 3 separate agreements with UNSE; interconnection agreement, wholesale power agreement and wheeling agreement.

The interconnection agreement between HTUA and UNSE will allow the interconnection of the electric line to UNSE's system via a new switchyard located at the beginning of Diamond Bar Road. These are fairly standard agreements, and govern the way power will flow from the UNSE system to the electric line, and finally to GCW. This basic agreement will also address any system upgrades needed for the interconnection, and the cost allocation of these improvements. Finally, the interconnection agreement is required in order to facilitate both the wholesale power purchase agreement and wheeling agreement the HTUA will seek to procure once RUS funding is authorized.

UNSE brought up an issue concerning the nature of the line. At 20.8kV, the line is more like a distribution line in terms of size and load carried. However, because it involves a utility to utility interconnection for the delivery of wholesale power, one might argue it is a transmission line subject to the Federal Energy Regulatory Commission's (FERC) jurisdiction, and rules concerning open access. This distinction is important because if the line is merely a customer-owned distribution line, no other party has any right to interconnect. However, if the line is deemed to be transmission, then any party – including third party generators (such as solar) – has a legal right to require interconnection.

UNSE indicated it was premature to enter into a wholesale power agreement, which the Tribe agrees is the case. However, the Tribe indicated to UNSE that in order to finalize the RUS application, the Tribe needs to calculate what power costs would be – and demonstrate that the HTUA has a willing provider. UNSE indicated that it would provide a copy of a sample wholesale agreement. Furthermore, the parties agreed that a memorandum of understanding or letter of intent would suffice for the RUS application at this time.

UNSE was very open to entering into a wheeling agreement to move the Tribe's allotment of federal power from the Colorado River. UNSE does not anticipate that line capacity (on its system) will be a factor, and suggested that once the allotment(s) are finalized, that the Tribe and HTUA work with the Western Area Power Administration ("WAPA") to identify a beneficial delivery point to the UNSE system, so that it can be then passed onto the HTUA at GCW. This might also eventually involve the Tribe's current federal allotment which is being sold to the Navajo TUA. Mr. Davidson added that the Tribe is set to receive 381 KW of Post-2017 Boulder Canyon Project Schedule D hydro power at the end of 2014 that may be delivered to UniSource at their McConnico or Griffith Substations and then wheeled

to GCW. Mr. Davidson also noted that he has submitted a preliminary application to Arizona Power Authority for additional Post-2017 Boulder Canyon Project Schedule B hydro power.

There was also some discussion with UNSE about how a wheeling arrangement might assist the Tribe in securing the right-of-way needed across certain private property so that UNSE could provide the land owner electricity directly. As indicated earlier, the line might be considered a transmission facility subject to FERC's open access rules. This property is located within UNSE's service territory, so the HTUA cannot provide service unless it enters into a borderline agreement with UNSE, which must subsequently be approved by the Arizona Corporation Commission. Another alternative would be to allow UNSE to use the HTUA's line up to the private property – via a wheeling agreement – so that it may service the private property directly. Mr. Vaughn asked what the cost would be to go around the private land. Mr. Schmitt estimated the construction cost to be \$250,000. This does not include the creation of the Environmental Assessment or the legal costs.

**7) 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). Mr. Francis introduced the draft standard contracting clause as follows:

*Whereas the Hualapai Tribal Utility Authority and \_\_\_\_\_ entered into that agreement dated \_\_\_\_\_ (hereinafter the "Contract"), said parties hereby agree that the Contract shall in no way be considered as a waiver, expressed or implied, of the sovereign immunity of the Hualapai Tribe, its officers, agencies, enterprises and corporations, except to the limited extent described as follows for the Hualapai Tribal Utility Authority:*

*Claims or disputes arising out of or relating to the Contract, or the breach thereof, shall be brought in and may be enforced by the courts of the Hualapai Tribe or by the federal courts of the United States. This limited waiver shall not be construed as a consent to the jurisdiction of any other court.*

*This limited waiver of immunity shall not be construed to waive any immunity of the Hualapai Tribe, its officers, agencies, enterprises and corporations, nor to extend any liability to any assets, revenues, or incomes other than those of the Hualapai Tribal Utility Authority.*

*This limited waiver of immunity shall be strictly limited to claims or disputes arising out of the Contract. The sole manner of relief awarded on such claims or in such disputes litigated pursuant to this limited waiver shall be the award of monetary damages as would ordinarily be recoverable in such claim or dispute; however, neither injunctive relief nor punitive or consequential damages shall be awarded.*

*This limited waiver of immunity shall extend to or be used for or to the benefit of only that party signatory to this Agreement with the Hualapai Tribal Utility Authority. This limited waiver of immunity shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any assignee, contractor, employee, or other affiliate of that party signatory to this Agreement with the Hualapai Tribal Utility Authority.*

*To the extent that the above terms of this limited waiver conflict with terms and/or provisions of the Contract, the terms and provisions of this limited waiver shall control in lieu of the conflicting Contract terms and provisions.*

The purpose of the clause is to waive the sovereign immunity otherwise enjoyed by the HTUA so that vendors with whom the HTUA contracts will be comfortable that they can enforce their contracts with the HTUA.

Since this will be the default waiver for the HTUA's day-to-day contracts with vendors, it is packaged as an addendum to be separately executed as a counterpart to the particular contract at issue. The goal is to have a waiver that is unobjectionable to both the HTUA and the parties with which it is contracting. Therefore, in preparing the clause we have sought to strike a balance between retaining some immunity for the HTUA while ceding enough immunity so that vendors are comfortable enough to deal with the HTUA.

To that end, please note that this waiver does not use certain language that the Board could choose to insert. For example, the waiver as written does not prohibit the prevailing party from obtaining an award of its attorney's fees in the event of a lawsuit. Typically, parties who are successful in certain types of lawsuits are entitled to petition the court to require the losing party to pay the attorneys' fees incurred by the winning party.

Also, the waiver does not include a choice-of-law provision. Often times a contract between HTUA and a vendor may indicate that the parties have decided that any dispute as to the contract will be decided under the law of a particular state. This waiver as written does not include such a provision of its own, meaning that a choice-of-law provision contained in any contract with a vendor will control. Still, though, this waiver will limit the venue for hearing such a lawsuit to the Hualapai and/or federal courts.

The waiver does not place a limit on the amount of money that may be awarded in a judgment. That is, although the waiver says that no consequential or punitive damages may be awarded, it does not place a limit on the total amount of money that can be awarded.

Finally, the contract does not contain a time limitation for lawsuits to be brought, e.g., it does not say, e.g., "this limited waiver shall be enforceable only for \_\_\_\_\_ [duration] following the termination of this Agreement." There are separate statutes of limitation on claims, and those will control, but this waiver itself does not add any additional or more restrictive time limitations.

For larger contracts with more at stake (and where the contracting party may want more concessions from the HTUA), Fennemore-Craig may draft a more restrictive waiver clause that HTUA could use as an initial position when negotiating, and then allow the other party to negotiate the HTUA down as HTUA sees fit. However, the draft language presented above is what Fennemore-Craig advises the HTUA adopt as far as the standard clause to be passed by tribal referendum.

Mr. Majenty recommended that the language in the standard clause explicitly confine itself to electricity. Any inference to water management, which is part of the HTUA's mission, would likely be defeated given the community concern of the current rights negotiation. This clarity of language will aid the referendum's success at the voting pole.

Mr. Vaughn said a list of pros and cons should be developed and placed into a fact sheet to educate the voters. The fact sheet should be placed on the web site and provide for public comments. Mr. Navenma said a history of this effort to bring electrical grid power to GCW should be part of the public outreach effort. Lowering the cost that GCRC pays for electricity should help the Tribe as a whole. This lowering of GCRC operating expenses needs to be explained to show the direct benefit to Tribal members and help break the disconnect between Tribal members and GCRC. Mr. Montana noted he did not see a direct benefit to Tribal members as GCRC's revenue grows and GCW increases its number of attractions and volume of tourists. Many of the jobs at GCW are filled by non-Tribal members, most living off the reservation.

Mr. Majenty made a motion to "limit the language in the standard clause for the development of electricity only." Mr. Navenma seconded the motion. Motion passed 5-0.

Mr. Vaughn asked if the BIA must approve the language of the referendum. This question will be researched. The Hualapai Election board will be contacted on how to proceed and time lines to meet for launching the referendum. Mr. Vaughn also noted the need to diagram the electric grid to show power flows through the Reservation and how UniSource will provide power to GCW (map).

**8) 2015 Tentative Budget** (Planning) Mr. Davidson said he had requested on behalf of the yet appointed HTUA a \$100,000 budget for 2015. This amount should cover basic operations, including compensation to Board members for travel, training and attending meetings. The budget also anticipates hiring a general manager some time in 2015. This position may be part time at first. The Council will hear this request at the December budget meeting. Mr. Davidson encouraged the Chairman and other officers to lobby for this amount.

**9) Create job description for General Manager** - full or part-time, duties, salary (Chairman). Mr. Vaughn directed staff to do research on other Tribal Utility Authority general manager positions and develop a resume to justify the general manager's salary.

**10) Upcoming BIA grant-funded training** (Planning) Mr. Davidson mentioned that several RFPs from the BIA's Indian Energy and Economic Development (IEED), Tribal Energy Development Capacity (TEDC)

grant award to Hualapai in 2014, one of which includes training for the new HTUA board in daily operations of a Tribal Utility Authority, will be released for publication in the next week to 10 days.

**11) Other Matters** (Chairman) Mr. Schmitt gave an update on the mini-grid and diesel generators at GCW. The new fuel supply system should be completed shortly. The final design for the power line between the Western Town and the Reservation boundary and the final design of the power line between the reservation boundary and the UniSource substation, as well as contract negotiations and environmental assessment work requires a contract amendment. The Board voted to recommend approval to Tribal Council for the \$198,000 contract amendment requested by Mr. Schmitt of TTG to continue on with the engineering design. The amendment also covers the electrical requirements forecast and comprehensive construction work program by SGS Engineering. These documents will then be synthesized by Cobb Consulting to create the project loan package and long-range financial forecast (electric rate setting). The rate must be set at a sufficient level to ensure adequate revenue to the HTUA and ensure that the loan needed to construct the power line is able to be repaid.

**12) Set time and location of first quarterly meeting in 2015** (Chairman). The next meeting of the HTUA Board will be held at 9:00 AM on January 12<sup>th</sup> at the Cultural Center. Mr. Vaughn asked for the referendum process to be discussed at the next board meeting as well as project updates.

**13)** Adjourned at 12:30 PM

Prepared: Kevin Davidson, 12/12/2014, amended 1/12/2015

## **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.

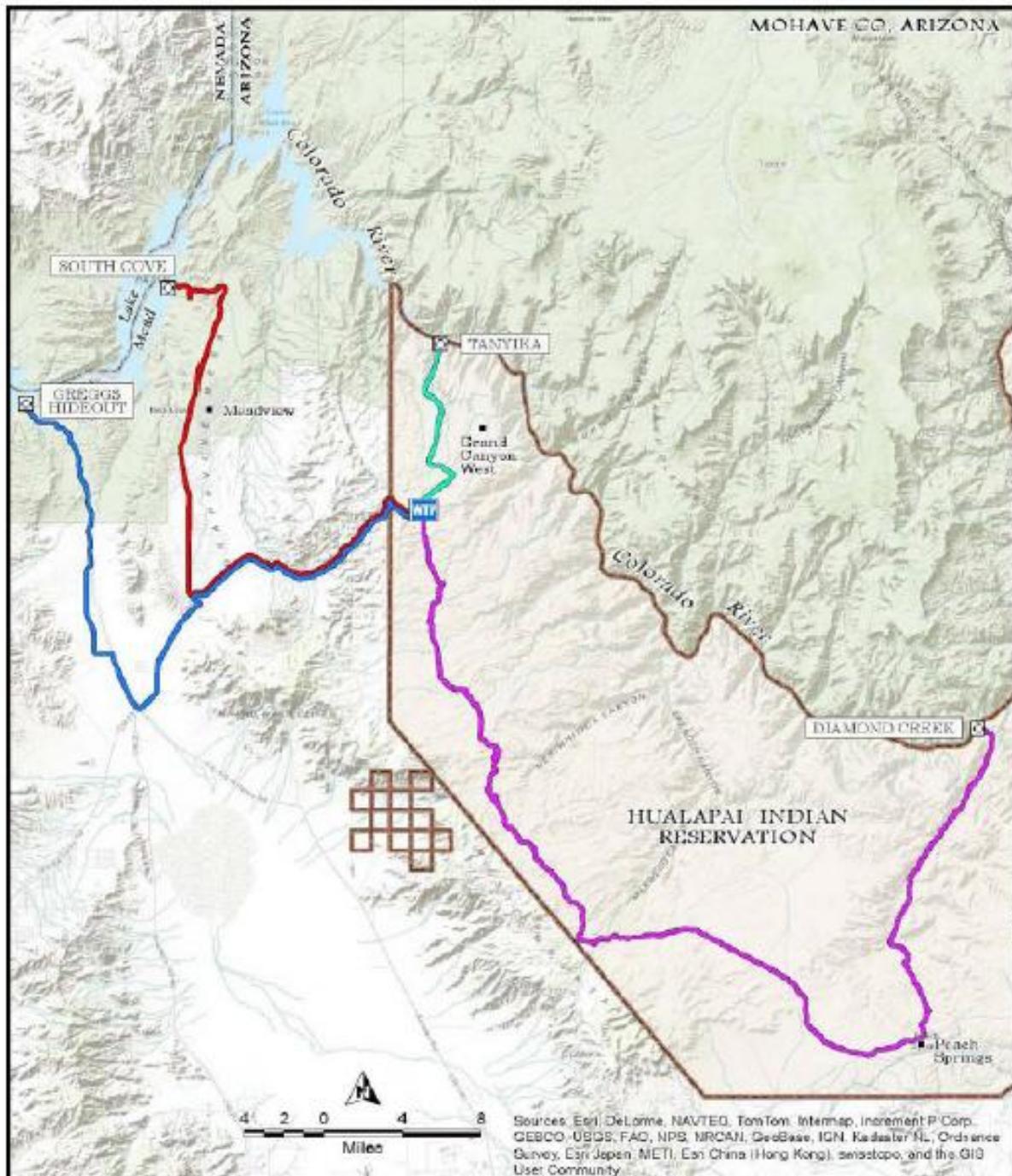
#### **4) Water Rights Update (Sonosky Chambers)**

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

Alternative	Screen Recommendation
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

The Council chose the Diamond Creek Option (see “purple” route shown in figure below).



## Water Transmission Alternatives

- Greggs Hidecut
  - South Cove
  - Tanyika
  - Diamond Creek

Proposed Water Treatment Plant

Hualapai Indian Reservation / Tribal Ownership

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 to 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

---

<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**

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

February 2, 2015, 9:10 AM to 11:45 AM, Hualapai Cultural Resources Department

### **Board members:**

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – present via telephone

Joe Montana, Secretary – present for Item 5c and thereafter

Jamie Navenma - absent

Steve Malin, Treasurer – present

### **Support personnel:**

Kevin Davidson, Planning Director

Patrick Black, Fennemore-Craig, P.C. (via telephone)

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

### **2) Roll Call**

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

Motion made by Mr. Vaughn to table the January 12, 2015, meeting minutes to next HTUA Board meeting. Motion seconded by Steve Malin. Motion carried 3-0.

### **4) 2015 Budget Discussion**

**a. Review job description for General Manager - full or part-time, duties, salary.** Mr. Davidson reviewed several General Manager job descriptions which were for full-service utility companies with several thousand customers and scores of employees. The typical general manager must be adept with the technical and financial aspects of running the TUA and be politically savvy with Tribal leadership. Salaries are typically \$60.00 per hour or more. Salaries for general managers serving fewer than 10,000 customers range from \$125,000 to \$140,000 per year. Mr. Vaughn advised that a part-time general manager would be appropriate for the HTUA at this time. Office space should be identified and a budget created. Mr. Malin noted that office space is available at the Music Mountain School for the

monthly rate of \$1.00 per square foot. Mr. Majenty recommended that the HTUA continue its search for a general manager, office space and create a budget. Mr. Davidson will follow-up on his contacts with the Fort Mojave Indian Tribal Utility Authority on searching for a general manager.

**b. Review job description for Clerk/Secretary - part-time, duties, salary** Mr. Davidson briefly reviewed the job description of the Administrative Assistant employed by the Tribal Council. This job description can serve as a template for the administrative assistant to the HTUA Board. A motion was made by Mr. Majenty to continue the staffing discussion to the next meeting, so moved 3-0. On a related topic, Mr. Vaughn asked if individual Board members should be bonded to protect them from lawsuits. Mr. Black said he would look into this matter.

## **5) Project Updates**

**a. USDA/RUS grant and future USDA loan application for the Diamond Bar Road power line to Grand Canyon West and timing of referendum vote (TTG, Inc. and Planning)** Mr. Davidson noted that the Tribe's consulting engineer, Mr. Schmitt of TTG, was recently contacted by Larry McGraw of the USDA about the progress of the Tribe's referendum vote to allow for a limited waiver of sovereign immunity so the Tribe can enter into contracts greater than \$250,000. Mr. McGraw is evaluating the \$1.9 million USDA/RUS grant application submitted by the Tribe to build a portion of the Diamond Bar Road power line. Given Mr. McGraw's interest in the Hualapai's progress on the referendum, it appears the USDA is giving some consideration to the grant application.

**b. 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). Plus a discussion on the Tribe's Referendum process.** Mr. Black reviewed the language in the standard clause, which will require an addendum to the HTUA Ordinance, regarding waiver of tribal sovereign immunity, as follows:

*Whereas the Hualapai Tribal Utility Authority ("HTUA") and \_\_\_\_\_ entered into that agreement dated \_\_\_\_\_ (hereinafter the "Contract") in furtherance of the HTUA's charge to provide electric service, said parties hereby agree that the Contract shall in no way be considered as a waiver, expressed or implied, of the sovereign immunity*

*of the Hualapai Tribe, its officers, agencies, enterprises and corporations, except to the limited extent described as follows for the Hualapai Tribal Utility Authority:*

- 1. Claims or disputes arising out of or relating to the Contract, or the breach thereof, shall be brought in and may be enforced by the courts of the Hualapai Tribe or by the federal courts of the United States. This limited waiver shall not be construed as consent to the jurisdiction of any other court.*
- 2. This limited waiver of immunity shall not be construed to waive any immunity of the Hualapai Tribe, its officers, agencies, enterprises and corporations, nor to extend any liability to any assets, revenues, or incomes other than those of the Hualapai Tribal Utility Authority.*
- 3. This limited waiver of immunity shall be strictly limited to claims or disputes arising out of the Contract. The sole manner of relief awarded on such claims or in such disputes litigated pursuant to this limited waiver shall be the award of monetary damages as would ordinarily be recoverable in such claim or dispute; however, neither injunctive relief nor punitive or consequential damages shall be awarded.*
- 4. Except with the express written consent of the HTUA referencing this paragraph, this limited waiver of immunity shall extend to or be used for or to the benefit of only that party signatory to this Agreement with the Hualapai Tribal Utility Authority. Except with the express written consent of the HTUA referencing this paragraph, this limited waiver of immunity shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any assignee, contractor, employee, or other affiliate of that party signatory to this Agreement with the Hualapai Tribal Utility Authority.*
- 5. To the extent that the terms of this limited waiver conflict with terms and/or provisions of the Contract, the terms and provisions of this limited waiver shall control in lieu of the conflicting Contract terms and provisions.*

Mr. Black recommended the standard clause be sent to Tribal Council for their approval. Also, if contractors are to be given relief in the Federal Courts, then Section 208 and 209 of the HTUA Ordinance

must be amended. Mr. Vaughn made a motion to table the discussion to later in the meeting, so moved, motion carried 3-0.

Mr. Black reviewed the one-page fact sheet which will be used as part of the public education and awareness campaign for the upcoming referendum vote. Mr. Majenty noted the need to emphasize the benefit of such a vote to individual tribal members who do not interact with Grand Canyon West or the Grand Canyon Resort Corporation (GCRC) on a daily basis. We should obtain a more precise estimate from TTG on the cost of the power line so it can be part of the outreach effort. Mr. Vaughn asked Mr. Black to condense the bullet points in the fact sheet into one sentence each. Mr. Black opined that all votes are no votes until convinced otherwise by the public outreach effort. Mr. Malin said the fact sheet should clearly explain how the new power will benefit the tribal members/voters as well as what the consequences would be for not voting for the referendum. Mr. Vaughn suggested the language of the outreach clearly state the benefit to the Tribe (we) rather than just the individual tribal member (me). This will make the position more inclusive. Freeing up money from GCRC's cost of operations may be used to provide better housing and increase medical benefits to tribal members. The fact sheet should be considered an advocacy sheet as well. Mr. Black suggested the HTUA set up a public meeting to introduce the issue, the facts and the benefits to the tribal members. Mr. Vaughn advised the public meeting should be referred to Council prior to the setting the meeting date.

In regard to facts behind the USDA grant and loan, Mr. Davidson said the overall project, for which the requested High Energy Cost grant would fund a key portion, will construct a new 21.4-mile, 20.8 KVA above-ground electric power tie-line, upgrade 12.5 miles of existing, public electric utility-owned above-ground power line and expand the utility's existing substation. The objective is to connect the Hualapai Tribe's Grand Canyon West community to the regional electrical grid operated by UniSource Energy Services. Doing so will reduce the current electrical costs from an estimated 46 cents per kilowatt hour (kWHR) from diesel generation to eight cents per kWHR from Unisource. The total cost for the construction of this project is estimated at \$11,545,055. Approximately 16.3% of the current electric load at Grand Canyon West is dedicated to residential purposes. The High Energy Cost grant request of \$1,881,130 would fund the prorated residential share (16.3 %) of the overall construction amount estimated at \$11,545,055. The Tribe has already invested \$5.7 million of its own capital to construct a mini-grid/diesel generator set at Grand Canyon West, representing Phase 1 of the electrification project. The Tribe intends to apply soon for \$9,663,925 to fund the balance of Phase 2 construction funds in the

form of a USDA-RUS electric program loan or loan guarantee, as appropriate, in accordance with the Rural Electrification Act. This project will enable the Hualapai Tribe to generate more revenue, reduce operating costs, and provide a higher quality of life for those employed at Grand Canyon West by creating additional housing options nearby. Overcoming the high energy costs associated with development in this region of the Reservation will enable the Tribe to fulfill its future growth plans for Grand Canyon West.<sup>1</sup>

**c. Review of potential Mohave County franchise agreement to place a power line in public right-of-way (BIA transfer to Mohave County) for a portion of Diamond Bar Road (Planning and Fennemore-Craig, P.C.).** Mr. Davidson briefly reviewed the Mohave County franchise agreement with the Fort Mojave Indian Tribal Utility Authority (FMTUA). The agreement does not charge FMTUA the typical county franchise fee nor infringe on the Tribe's sovereignty concerning indemnification. In regard to the BIA's transfer of the one-mile segment of Diamond Bar Road right-of-way that crosses private property to Mohave County, the "punch list" must be approved by BIA. Mr. Black noted that any BLM-based Visual Resource Management (VRM) restraints placed on new development along the right-of-way, e.g. a new above-ground power line, must be understood addressed by the Tribe's attorneys. The physical dimensions of the right-of-way to be transferred to Mohave County should be known so the Tribe's consulting engineer can determine if the right-of-way has sufficient area to place the power line next to the paved roadway surface. Mr. Montana, joined the meeting and asked for clarification if the transfer included the entire length of Diamond Bar Road from Pierce Ferry Road to the Hualapai Reservation boundary or just the one-mile segment. The transfer is just for the one-mile section that crosses private property. Mr. Majenty asked when the roadway right-of-way transfer is scheduled to take place. Ideally, the transfer will occur prior to the referendum vote discussed above. Mr. Davidson will follow-up with Public Services Director on the "punch list" and right-of-way transfer to the county.

**d. Advice on current Colorado River Storage Project (CRSP) contract with Navajo Tribal Utility Authority (NYUA) (Fennemore-Craig, P.C.).** Mr. Black reviewed the value of the electrical power in the CRSP agreement with NTUA. The CRSP agreement brings power from the Salt Lake City Integrated Projects and compared this to the pending Boulder Canyon Project power for the Post-2017 Resource Pool (see table below). The total value of the CRSP contract is \$50,948.86 per year to Hualapai. Mr.

---

<sup>1</sup> Previous two paragraphs are based on the August 1, 2014, High Energy Cost loan application to Rural Utility Service, USDA.

Black suggested that the HTUA perform an assessment to determine if terminating (or not renewing) the NTUA contract would be economical in light of the costs to wheel the power versus the savings gained from displacement of wholesale generation purchased from Unisource..

	Salt Lake City Area/Integrated Projects Power		Boulder Canyon Power	
Source	11 hydroelectric power plants consolidated into 1 single power rate, located in Utah, Texas and Arizona (Glen Canyon Dam)		3 hydroelectric power plants at Hoover, Parker and Davis dams and Navajo Generating Station (coal)	
	Winter	Summer	Winter	Summer
Amounts	.609 kw / 1,163,130 (kWh) capacity	.625kw / 1,118,127 (kWh) capacity	381 kw / 249,939 (kWh) capacity	381 kw / 581,866 (kWh) capacity
Rate	Demand Charge: \$5.18 kw/month  Energy Charge: 0.01219 kwh (paid by NTUA to Tribe)  Transmission: None (Depends on Delivery Point and Wheeling Agreement with WAPA and UNSE)		Demand Charge: \$1.61 kw/month (2015)  Energy Charge: 0.00814 kwh (2015)  Transmission: TBD (Depends on Delivery Point and Wheeling Agreement with WAPA and UNSE)	
Term	Contract with NTUA – Power Pooling and Scheduling Agreement expires September 30, 2024		Subject to future contract with WAPA	

Mr. Black said the Tribe would need to enter into an agreement with UniSource to manage the transmission of the Boulder Canyon and CRSP allocations, similar to the 2004 agreement with NTUA. Mr. Malin asked if there would be a financial loss to the Tribe by entering into such an arrangement with UniSource. This question should be posed to Mr. Schmitt of TTG to determine how much power is being used at Grand Canyon West and what the savings would be by switching to BCP/CRSP at approximately one cent per KWhr and away from diesel power generation at roughly 50 cents per KWhr. Mr. Majenty asked for an assessment of the energy needs at Grand Canyon West and requested that the Tribe obtain as much hydro power as possible to reduce the electricity costs at Grand Canyon West and in the Peach Springs community.

Mr. Vaughn asked if Mohave Electric Cooperative (MEC) was approached in 2004 to wheel power to the reservation. Mr. Davidson said he would investigate. Mr. Black noted that MEC is required to wheel power pursuant to its OATT if, 1) the Cooperative has sufficient line capacity, and 2) if there is a wholesale customer to receive the power. The HTUA can serve as the wholesale customer and provide low cost power to both Grand Canyon West and Peach Springs. Mr. Davidson added that this benefit could be stated as a bullet point in the one-page fact sheet advocating for the referendum to construct the power line along Diamond Creek Road.

Mr. Montana inquired as to where the current CRSP benefits, paid to the Tribe by NTUA, are deposited. These funds - \$50,948.86 per year - are given to the Tribe's General Fund. Mr. Vaughn stated that in order to terminate the Hualapai contract with NTUA, the HTUA must approach UniSource on the language the utility would require in a contract with Hualapai, including the cost of wheeling the power, for both the existing CRSP allocation from Salt Lake City Integrated Projects and Post-2017 Boulder Canyon Project power. The HTUA Board agreed to have Mr. Black contact UnSource.

**e. Post 2017 Boulder Canyon Project Schedule D1 allocation from WAPA (Planning)** Mr. Davidson recapped the Hualapai's success in obtaining 381 KWs of Schedule D1 power from the post 2017 Boulder Canyon Project power pool. Western Area Power Authority (WAPA) will be holding an orientation meeting on February 24, 2015, for new allottees. Mr. Malin asked about the length of the contract's term. Mr. Davidson said he believed it to be 50 years, subject to verification. If the HTUA cannot physically receive the power, it may look to a third-party to manage the power, similar to the Tribe's current arrangement with NTUA in regard to the CRSP allocation.

**f. Post 2017 Boulder Canyon Project Schedule D2 allocation from Arizona Power Authority (APA) and summary of APA workshop (Planning)** Mr. Davidson reviewed the current Arizona Power Authority re-allocation process of Post 2017 Boulder Canyon Project power to both new and existing Schedule A (190.9 MWs), B (189.9 MWs) and D2 (11.4 MWs) applicants in the State of Arizona. The Hualapai submitted a pre-application to the APA in November of 2014 and have been preliminarily designated with between 93 KW and 170 KW of Schedule D2 power. The APA will consider a way to fairly and equitably allocate this power to some 50 applicants beginning with their March 3, 2015, Board meeting. Given the fact that the APA's allocation process appears to be as much a matter of following state law as it is of the exercise of the APA board's broad policy discretion in determining the eligibility and the amount awarded, the Hualapai application may have a chance of receiving a power allocation. Mr. Davidson, in association with Fennemore-Craig, would like to prepare an advocacy paper for additional power to be awarded to the HTUA and to present it to the APA at their March 3, 2015, meeting. The HTUA Board agreed to have Mr. Davidson and Chairman Vaughn draft a letter to the APA.

**g. Upcoming BIA grant-funded training (Planning)** Mr. Davidson noted that the bids for the four BIA, Indian Energy and Economic Development (IEED) RFPs for energy capacity development are out for bid and should be ready for presentation at the next HTUA Board meeting.

**6) Other Matters** Mr. Davidson reviewed the Arizona Tribal Energy Association (ATEA) application sent to the HTUA. Annual dues for full membership are \$5,000 which include voting privileges and entitles the members to be represented in all position papers authored by the ATEA to agencies such as WAPA. The associate membership fee is \$1,500 per year and includes information updates from the ATEA and an invitation to attend all its meetings and events. Mr. Montana asked how valuable these benefits would be to the HTUA.

Mr. Black added that the Arizona Competitive Alliance meeting will be held on March 4<sup>th</sup> in Phoenix and that he would be happy to reserve seats for the HTUA. This meeting will feature speakers on topics including wholesale and retail markets in the west, the integration of renewable energy onto the grid and integrated resource planning. It is also an opportunity to network with energy industry members.

**5b. 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). Plus a discussion on the Tribe's Referendum process.** A motion was made by Mr. Vaughn to un-table Item no. 5b, seconded by Mr. Malin, vote 4-0 to un-table item No. 5b. Mr. Majenty asked if arbitration could be an option in the standard clause and the HTUA Ordinance in addition to resolving cases in Tribal or Federal Courts. Mr. Black said the Tribe could enter into binding arbitration. This would require an amendment to the HTUA Ordinance. Mr. Black asked how GCRC resolves its legal disputes. Mr. Majenty said GCRC has an arbitration option. Mr. Malin said he would prefer not to arbitrate because doing so proves to be more costly than standard legal proceedings. Mr. Black offered mediation as a legal option; it is less costly and not binding. Mr. Vaughn voiced his favorable opinion of mediation over that of arbitration. The arbitration process may not yield the best results for the Tribe because a third-party arbiter may be biased against the Tribe. Mr. Vaughn also noted the decision of the Tribal Court or the Federal Appellate Court is final. This is so, Mr. Black added, because the plaintiff must choose the judicial venue up-front. Mr. Black said the language of the standard clause can be expanded to include the Federal Courts. Federal Court could be used as a negotiating tool when a large vendor or contractor insists upon availability to this venue. It should be made clear that sovereign immunity will only be waived for any contract that contains this specific clause and that all other tribal immunities remain in place nonetheless. Mr. Black concluded by saying that if a vendor's contract contained an arbitration clause, the HTUA would not be precluded from entering into the contract based

upon the current language in the standard clause and HTUA Ordinance. The standard clause is designed for all HTUA contracts, not just those in excess of \$250,000. Mr. Majenty made a motion to amend the standard clause as described above, second by Mr. Malin. Vote 4-0 to approve.

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

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

**8) Adjourned at 11:45 AM**

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

March 10, 2015, 9:12 AM to 12:10 PM, Hualapai Cultural Resources Department

### **Board members:**

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – absent

Joe Montana, Secretary – present

Steve Malin, Treasurer – present

Jamie Navenma - present

### **Support personnel:**

Kevin Davidson, Planning Director

Patrick Black, Fennemore-Craig, P.C. (via telephone)

Lou Schmitt, TTG Consulting (via telephone)

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

### **2) Roll Call**

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

Motion made by Mr. Vaughn to approve the January 12, 2015, meeting minutes with minor edits and approve February 2, 2015, meeting minutes as written. Motion seconded by Steve Malin. Motion carried 4-0.

### **4) Project Updates**

a. **USDA/RUS grant and future USDA loan application for the Diamond Bar Road power line to Grand Canyon West plus an estimation of power demand at Grand Canyon West (TTG, Inc. and Planning)** Mr. Schmitt of TTG, reviewed the current annual operational cost of running 16 independently sited generators at Grand Canyon West. The corporation will spend some \$2,786,299 in 2015 to fuel the 16 generators, assuming diesel fuel is purchased at \$3.50 per gallon and the 5,236,290 KWhrs are produced to meet Grand Canyon West's annual electrical demand. This means each kilowatt

hour costs 53.2 cents (7 to 8 times more than grid power). By switching to the new Caterpillar diesel generators located at the airport terminal, the annual cost of electrical power production should be reduced to \$2,428,591 (46.4 cents per KWhr) with an annual savings of \$357,639. Connecting Grand Canyon West to the regional electrical grid operated by UniSource, via the construction of a new power line along Diamond Bar Road, will reduce annual power costs to \$350,831 (6.7 cents per KWhr) and yield a \$2,077,760 annual savings to Grand Canyon Resort Corporation (GCRC). If the tribe can construct the power line on Diamond Bar Road by 2017, it can realize an additional annual savings of \$44,205 because it will be able to utilize its newly acquired hydro-power allocation of 831,085 KWhrs per year from Boulder Canyon Dam. This hydro power only costs 1.38 cents per KWhr. Mr. Malin added that if the tribe could take over the current Colorado River Storage Project (CRSP) hydro allocation of 2,281,257 KWhrs, which the Navajo Tribal Utility Authority (NTUA) currently manages for the Hualapai Tribe under a benefit credit contract, it then could realize an additional \$100,000 in annual energy savings. This savings is all contingent upon constructing the power line to Grand Canyon West since using the CRSP allocation would reduce the amount of higher cost utility grid power that GCRC would be required to purchase from UniSource Energy Services. Mr. Black said that the NTUA agreement should only be dissolved if the power can be wheeled to Grand Canyon West. Peach Springs is not yet ready to receive power. This power would have to be wheeled through Mohave Electric Cooperative to Peach Springs.

Mr. Vaughn asked why the new Caterpillar generators were not yet on-line? Is there more to the generators' operations than just monitoring the panels? Mr. Davidson noted that Public Works is seeking a qualified operator and deferred to the Department's judgment. Mr. Schmitt added that for every day the new Caterpillar generators sit idle, GCRC loses approximately \$1,000.

Mr. Vaughn asked about the status of the design and engineering for the power line to Grand Canyon West. Mr. Schmitt said the design team is waiting for the results of the special election on an express waiver of sovereign immunity under Article XVI of the Hualapai Constitution which would allow the HTUA to enter into construction contracts over \$250,000. The cost of the proposed new power line and required upgrades to the existing power line and substation along Pierce Ferry Road are estimated at \$13,436,646.

**b. Referendum Process**

i. **Update from February 9, 2015, Council meeting** Mr. Black stated the Council prefers the HTUA to take the lead and advocate for the referendum and/or special election on the waiver of sovereign immunity to allow the Hualapai Tribe to enter into contracts exceeding \$250,000. The HTUA should conduct the public meetings to get input from tribal members on how the ballot measure will be received. Mr. Montana asked if the location of the power line along Diamond Bar Road was approved by Council and why it was approved. Mr. Davidson said the power line has been proposed for several years. Mr. Vaughn noted the importance of educating the voters on why the power is needed.

Mr. Vaughn reviewed the history of the \$250,000 limit in the Hualapai Constitution. The dollar limit was decided in 1991 when the Constitution was first adopted and has not been amended since that time. In 1991 the Council and voting members did not foresee the tribe entering into large contracts or operating a \$100 million corporation. Mr. Vaughn further stated that for a petition to be accepted and the issue scheduled for a special election, 25% of the eligible voters must sign (Article XIII). For the initiative or referendum election to be valid, at least 25% of the eligible voters must cast a vote, with a simple majority needed to approve the measure (Article XIII). To amend the Constitution, 30% of the eligible voters must cast a vote, with a simple majority needed to approve the measure (Article XV).

Mr. Malin reviewed the waiver of sovereign immunity requirements of Article XVI. These are more restrictive in that at least 30% of the eligible voters must cast a vote in favor of the ballot measure to waive sovereign immunity, not just a simple majority of the 30% of the eligible voters casting a ballot (Article XVI, Section 2.b). Mr. Vaughn noted that this clause has been interpreted as only requiring a simple majority of the 30% of the eligible voters casting a ballot. Mr. Navenma asked if the Hualapai Constitution should be amended to allow the tribe to enter into all contracts, not just those for the HTUA. This amendment will resolve the issue for all contracts and remove the need for a special election for each instance the tribe wants to enter into a large contract. Mr. Vaughn agreed and added that the public education effort should include the tribe's website to spread the word. Such an amendment is needed to allow the tribe to conduct business. Mr. Black said the tribe has two options, 1) amend Article XVI, Section 2.b.1 of the Constitution, or 2) proceed with a special election to seek an express waiver of sovereign immunity for all HTUA contracts. Mr. Malin opined that the second option may be easier to promote. Mr. Navenma asked if the turnout would

be sufficient to validate the special election. Mr. Montana voiced his preference for the second option. Mr. Vaughn said the interpretation of the Constitution is proving to be problematic given the various opinions on who is an eligible voter and what constitutes the correct number of required voters to approve a ballot measure. Mr. Black stated that it appears the intent in drafting the Constitution was to make it difficult to waive immunity, so that interpreting the clause the “30% of the total number of eligible voters of the Hualapai Tribe voting in special election...” in a way that Mr. Malin was make sense – that you need 30% of ALL eligible voters to pass a special election, not just 30% of those who actually voted. Given that, Mr. Vaughn asked Mr. Black to review the Constitutional Articles in question and provide a clear explanation for the next meeting. Mr. Black will do so and further noted that a special election appears to be more expeditious than a referendum or petition. Mr. Davidson reported that, after meeting with them earlier in the week, the Election Board considers this vote to be a special election. Mr. Black requested Mr. Davidson to ask the Election Board how they interpret the required votes for a special election under Article XVI, Section 2(b). Mr. Vaughn added that the Election Board’s attorney also drafted the Constitution so this answer may be influenced by that experience. Mr. Black advised the HTUA Board members to focus on their mission of building a power line and other energy related projects and not try to solve the broader issues within the Hualapai Constitution. Mr. Vaughn concurred. Mr. Black added that the HTUA Board members can approach the Council to amend the Constitution if needed when it takes on the financing and construction of other projects such and water and sewer systems, that require a waiver of immunity in limited instances.

**ii. Review of Standard Clause** Given the ability of the HTUA to also finance and construct water and sewer systems in the future, should the language in the standard clause be expanded to include all utilities? Currently, the clause only allows for electrical projects. The original language to limit the standard clause to include only electricity was proposed by Mr. Majenty to limit the HTUA’s focus; however, given the process of calling a special election to vote on the language of the standard clause, Mr. Navenma made a motion to replace “electric” with “utility” in the first sentence of the standard clause to read as follows: *“in furtherance of the HTUA’s charge to provide electric utility service;”* motion seconded by Mr. Malin and approved 4-0.

**iii. Discussion of advocacy and fact sheet for public outreach and education** Will be reviewed at the next meeting.

**iv. Strategy, schedule and agenda for public meetings** Will be reviewed at the next meeting.

**c. Update on BIA transfer of a portion of Diamond Bar Road to Mohave County (Planning).** Mr. Davidson briefly reviewed the BIA's transfer of the one-mile segment of Diamond Bar Road right-of-way that crosses private property to Mohave County, the "punch list" must be approved by BIA. Mr. Black asked if there were any prohibitions in placing an above-ground electric line within the roadway? Mr. Vaughn asked if the power line can be placed along the entire 14.5 mile length of Diamond Bar Road outside of the Hualapai Reservation boundary? Mr. Vaughn asked Mr. Davidson to investigate utility options with the right-of-way. Former Public Works Director, Erin Forrest should have this information.

**d. Post 2017 Boulder Canyon Project Schedule D1 allocation from WAPA (Planning)** Mr. Davidson recapped the Hualapai's success in obtaining 381 KWs of Schedule D1 power from the post 2017 Boulder Canyon Project power pool. Western Area Power Authority (WAPA) held an orientation meeting on February 24, 2015 for new customers. To answer Mr. Malin's question from last month's HTUA Board meeting, the power contract will be for 50 years. Draft contract should be available shortly from WAPA for allottees to review. If the HTUA cannot physically receive the power, it may look to a third-party to manage the power, similar to the tribe's current arrangement with NTUA in regard to the CRSP allocation.

**e. Post 2017 Boulder Canyon Project Schedule D2 allocation from Arizona Power Association (APA) and review of March 3, 2015, APA board meeting (Planning)** Mr. Davidson reviewed the current Arizona Power Authority re-allocation process of Post 2017 Boulder Canyon Project power to both new and existing Schedule A (190.9 MWs), B (189.9 MWs) and D2 (11.4 MWs) applicants in the State of Arizona. The Hualapai Tribe submitted a pre-application to the APA in November of 2014 and have been preliminarily designated with between 93 KW and 170 KW of Schedule D2 power. The APA will consider a way to fairly and equitably allocate this power to some 50 applicants beginning with their March 3, 2015, Board meeting. Mr. Davidson attended the March 3, 2015, meeting and presented the Hualapai advocacy paper to the APA Commissioners. As noted at last's month's HTUA Board meeting, the APA's allocation process appears to be as much a matter of following state law as it is of the exercise of the APA commission's broad policy discretion in determining the eligibility of the applicants and the amount of electricity awarded. The APA's attorney will be writing a special memo for the Commission to

consider the Hualapai application. The APA will be holding additional meetings to discuss the eligibility of applicants in the coming month.

**f. Review of BIA/IEED grant-funded proposal for seeking Purchase Power Agreements.** Mr. Davidson said that of the four BIA, Indian Energy and Economic Development (IEED) RFPs for energy capacity development, only one response from Mr. Randall Bollig of Energy Management Advisors, Inc, for the Purchase Power Agreement RFP was received. This RFP is seeking a consultant to provide information on the availability of, methods to identify, and techniques to negotiate Power Purchase Agreements (PPA) from a utility company or third-party, for a utility-scale solar power plant on the reservation or adjoining trust lands with connection to one of the high-voltage power lines indentified in previous renewable energy feasibility studies. The scope of the other three RFPs are as follows: 1) provide training, retention and recruiting of the Hualapai Tribal Utility Authority Board members and associated staff, setting up an operational plan for the board, developing a budget, and providing techniques to ensure that customers pay their monthly utility bills in a timely fashion to maintain a balanced budget, 2) provide a Senior Staff Level Training Seminar for Council Members and senior Hualapai staff in various aspects of electrical energy management such as determining performance metrics and best management practices for a commercial-scale solar power plant located on the Hualapai Reservation, managing existing and future federal power allocations held by the tribe, and negotiating leases for utility rights-of-way, and 3) provide training to operate the mini-grid at Grand Canyon West and create an apprenticeship program to design and install renewable energy systems on homes and public buildings.

Once this training has been completed, a fifth RFP would be issued to assess the tribe's technical and administrative capacity for managing the above mentioned energy-related projects and determine if the tribe should create a separate energy department to centralize these operations. Mr. Vaughn asked if a site for the solar field had been selected. Mr. Davidson said the BIA solar feasibility study from 2012 shows it located east of Peach Springs along Route 66 near mile post 109. This would give access to the 69 KV substation at Nelson. Mr. Vaughn asked if the 69KV line could be tasked to send power south to the APS substation in Round Valley. Mr. Davidson believed it could since a 69 KV line should be able to handle up to 100 MWs of capacity. The peak load in Peach Springs in 2013 was 3 MWs. Mr. Vaughn strongly advised that the cattle districts be consulted before a site is chosen since this is prime pasture land. In regard to the apprenticeship program, Mr. Vaughn asked if there is any money for solar

modules and inverters for the team to work with in the field. Mr. Davidson said his department is looking for funding from the Department of Energy for equipment. Mr. Montana noted that funding is also available from the USDA under Rural Energy for America Program. Mr. Navenma asked how the homes would be selected for solar installations. Mr. Davidson said he would focus the apprenticeship program on installations for the elderly. Mr. Navenma said that some of the homes have insufficient electrical service connections and are subject to overloading.<sup>1</sup>

**5) HTUA Staffing and 2015 Budget Discussion**

**a. Telephone interview with prospective applicants for general manager.** The first telephone interview was with Richard Darnall of Utility Strategies Consulting Group. His firm provides management services to utility companies in Arizona and other western states. Mr. Darnell has over 35 years of experience in the utility industry and helped organize the Navajo Tribal Utility Authority and the Laguna Pueblo Tribal Utility Authority in New Mexico. Presently, he is managing several small water utility companies and is helping the Augustine Tribe in California on the transmission of their D1 power allocation from Western as part of the Boulder Canyon Project post-2107 allocation. Mr. Darnall also gave a detailed review of the APA's proposed allocation of D2 power and noted transmission responsibilities may be taken over by some prospective new the allotees. Mr. Montana asked Mr. Darnall if his current work load would allow him to take on the responsibility of being a part-time general manager for the HTUA. Mr. Darnall said he would consult with Leonard Gold, President of Utility Strategies Consulting Group, but said the position should not take more than 40 hours per month, which includes setting up meetings and taking minutes. His consulting rate is \$175.00 per hour.

The second telephone interview was postponed due to a scheduling conflict with the interviewee.

**b. Budget Recommendation to Council.** Mr. Davidson will prepare a budget based upon the rates charged by consultants to perform work as the HTUA's part-time General Manager. The budget should also include a travel allowance for HTUA Board members to attend various energy related conferences.

**6) Other Matters** Mr. Davidson reported there were no other matters.

---

<sup>1</sup> TTG, Inc. recommends upgrading to a minimum 200 amp service for homes receiving solar PV installations.

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

The next meeting will be held on April 1, 2015, starting at 9:00 AM at the Hualapai Cultural Resources Department.

**8) Adjourned at 12:10 PM**

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

April 1, 2015, 9:10 AM to 12:00 PM, Hualapai Cultural Resources Department

### **Board members:**

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – absent

Joe Montana, Secretary – present

Steve Malin, Treasurer – present

Jamie Navenma – arrived for Item 4.b

### **Support personnel:**

Kevin Davidson, Planning Director

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

Lou Schmitt, TTG Consulting (via telephone)

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

### **2) Roll Call**

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

Motion made by Mr. Vaughn to approve the March 10, 2015, meeting minutes as written. Motion seconded by Steve Malin. Motion carried 3-0.

### **4) Project Updates**

#### **a. Post 2017 Boulder Canyon Project Schedule D1 allocation from Western Area Power**

**Association (WAPA) and cost comparison with UniSource power (TTG, Inc.)** Mr. Davidson recapped the Hualapai's success in obtaining 381 KWs of Schedule D1 power from the post 2017 Boulder Canyon Project power pool. Even though the Schedule D2 power is less expensive than conventional power from fossil fuel plants, there are additional costs in the first five years for infrastructure replacement at Hoover Dam which reduces the value of the power to the tribe to \$13,298.20 per year. After the infrastructure costs are paid for, the yearly value of the power increases to \$18,948.73 for the next 45

years. These dollar amounts do not include the cost of paying for a portion of the implementation of the Bureau of Reclamation's Multi-Species Conservation Plan (MSCP). The cost of the power is approximately 4.4 cents per KWhr. Mr. Vaughn asked why should the MSCP fees apply to tribes. The Boulder Canyon Dam has been in existence for over 50 years and its impacts have been well established.

**b. Special Election Process**

Mr. Davidson reviewed the interpretation of Article XVI, Section 2.b. by the Election Board and reported that 30% of the eligible members of the electorate must vote in favor of an express waiver of sovereign immunity to allow the Tribe to enter into contracts and take on financial liabilities greater than \$250,000. Mr. Vaughn disagreed with the Election Board's interpretation. Mr. Davidson said he had a call into Mr. Robert Lyttle, Esq. the attorney for the Election Board, and the primary author of the 1992 Hualapai Constitution.

Mr. Vaughn voiced the need for more education on the matter and an interpretation of Article XV of the Hualapai Constitution which allows for simple majority vote to amend the Constitution to remove the \$250,000 limit listed under Article XVI.2. Such an amendment must be called for by Tribal Council resolution and the election conducted by the Secretary of the Interior. The apparent conflict in the number of votes required between Article XV and Article XVI.2 must be resolved – Article XVI.2 requires twice the number of “yea” votes as does Article XV. Mr. Francis opined that the Election Board will continue to advocate the more stringent interpretation to Article XVI.2. Would it be more expeditious to propose a constitutional amendment? Mr. Vaughn preferred that the HTUA focus on the express waiver of sovereign immunity with extensive public outreach, especially to voters living beyond the Reservation. This outreach would include a website to convey the proposal's Fact Sheet.

Mr. Navenma suggested the possibility of amending the Constitution to add a new section to allow for an easier threshold to waive sovereign immunity. Mr. Vaughn said such an addition would likely conflict with the intent spelled out in other provisions of the Constitution. Mr. Vaughn recommended a general position paper listing the HTUA's efforts be made public. Mr. Davidson asked if the outreach effort should begin now and then ask the public weigh in on these Constitutional proposals. Mr. Vaughn would like a simple explanation of the power line proposal with graphics showing the route and cost

savings to the tribe. The explanation will describe the process to make this goal a reality. Mr. Montana said the focus of the HTUA efforts should be on Article XVI.2.

Mr. Malin reviewed the “yea” vote thresholds for Articles XIII, XV and XVI.2 and suggested the HTUA select the path with greatest likelihood of success. Mr. Vaughn said that a simple majority of “yea” votes should be required provided that at least 30 percent of the eligible voters participate in the election. Presently, 482 voters make up 30 percent of the eligible electorate, so 242 “yea” votes represents a simple majority. Mr. Vaughn noted the need to obtain the DOI’s process for this type of vote. Mr. Navenma asked if the HTUA is asking the Tribal Council to request the amendment process with DOI. Mr. Malin asked if the HTUA can offer an incentive for voters to show up to the voting polls? Mr. Francis replied that DOI an amendment election would be run by DOI and advised the tribe to contact DOI for more details on how DOI would manage such an election.

Mr. Vaughn observed that the conversation has come full circle on the HTUA efforts to enter into contracts larger than \$250,000. Mr. Montana recognized the need for the constitutional amendments to reconcile the inconsistencies but advised the HTUA pursue the express waiver of sovereign immunity under Article XVI.2. Mr. Malin asked if it is possible to get 482 “yea” votes under Article XVI.2. Mr. Vaughn said that voter turnout is typically higher when financial matters are on the ballot. Mr. Malin asked if this election can be combined with other ballot measures to get a higher turnout. Mr. Montana recommended the constitution be amended to allow the tribe to perform economic development activities. Mr. Vaughn said he is in favor of a vote for an express waiver of sovereign immunity under Article XVI.2, but given the higher threshold of “yea” votes to be successful; a vote to amend the Constitution under Article XV seems more feasible. Mr. Vaughn also noted that absentee voting is permitted under Article VIII.6 of the Constitution and the Election Ordinance (p.8). Multiple polling places are also allowed. Mr. Vaughn requested that the DOI determine the number of eligible voters in this case. Mr. Malin advised that absentee ballots provide pre-paid postage on the return envelopes. Ideally, the HTUA will have six months to prepare for the election and provide public education as mentioned above.

Mr. Vaughn inquired if the express waiver of sovereign immunity can be an official action of Tribal Council under Article XIII. Mr. Francis replied no because such an action would be in conflict with Article XVI.2. Mr. Vaughn requested that Mr. Francis draft new language for Article V.n, Article XI.4, Article XIII,

Article XV, and Article XVI.2 to resolve the internal conflicts. Mr. Francis stated that Article V.n (Natural Resources) is not relevant to the discussion, and will focus his efforts on new language for Article XVI. Mr. Vaughn requested that reference to the Department of the Interior (DOI) in Articles XV and XVI be replaced with Tribal Council. Mr. Francis replied that replacing “Department of the Interior” with “Tribal Council” will require support from the DOI. Mr. Montana added that DOI involvement in tribal elections is to ensure that the process is followed. Mr. Navenma noted the recent HEARTH Act legislation which allows tribes to develop their own leasing programs, independent of the DOI. The tribe’s 2014 summer “secretarial” election attempted to remove the DOI from the process and failed 70-22. With the Hualapai Tribal Council being more educated, the DOI involvement seems redundant. Do the voters see the Council as more capable and not needing the oversight from DOI?

Mr. Francis asked, given all the requested fixes to the Constitution, if the HTUA was digressing from its original mission – to build utility infrastructure. Mr. Vaughn responded by saying that the Constitutional amendment approach, via Article XV, is strategic because it requires half the number of votes as compared to express waiver of sovereign immunity and will allow the \$250,000 limit under Article XVI.2 to be modified. Mr. Francis reminded the HTUA Board that the HTUA Ordinance is subordinate to the Constitution and must abide by it. Most small contracts not exposing the tribe to liability greater than \$250,000 are not affected by Article XVI.2. The Standard Clause, whose language was adopted at the last HTUA Board meeting, would allow the HTUA to enter into all contracts, and not require that each contract exceeding \$250,000 which the HTUA would like to enter in to be presented to the voters at a special election for an express waiver of sovereign immunity as currently required under Article XVI.2. Mr. Vaughn asked if the tribe’s insurance could cover the risks in excess of \$250,000. What assets of the tribe’s can be attached by the contractor? Mr. Vaughn asked Mr. Francis to review the HTUA Ordinance and see how the use of insurance could alleviate some of the liability issues. Mr. Francis noted that sophisticated contractors will seek redress in courts for amounts above \$250,000 and will be hesitant to rely on the fact of insurance to circumvent tribal immunity, because any recovery above the \$250,000 threshold would be contingent on the insurance. Mr. Malin asked if the HTUA is subject to lawsuit. Can the HTUA be set up as an independent corporation? Mr. Francis confirmed that HTUA could be structured as a tribal corporation but that such structure would not necessarily affect sovereign immunity status. However, if the HTUA was set up as a separate corporation, there is a strong argument that such structure could avoid exposing the tribe to the liability noted in Article XVI.2.

To address the HTUA's needs, Mr. Francis suggested a new Section 3 be added to Article XVI to read something like the following, "Express waivers of sovereign immunity may be approved by Tribal Council for economic development activities." Mr. Vaughn asked how this would be implemented. Mr. Francis said this could be presented to the Tribal Council in conjunction with approval of the Standard Clause by Tribal Council. Mr. Francis asked, 1) how sure is the HTUA that the Council will approve the language of the Standard Clause, and 2) how sure is the HTUA that the DOI will support the special election and the new language for Article XVI? Mr. Montana said promoting economic development will benefit the community and entrepreneurs. These individuals should help rally support for the amendment because in the end a tribe with additional revenue should translate into an increase in the annual shareholder dividend (per capita payment). Mr. Vaughn noted the need to advocate to Council this approach to provide power to Grand Canyon West. An amendment to Article XVI, as noted above, seems to offer the best approach and gives the Council more control over the process. The support of the DOI is also required to help the HTUA achieve its mission.

Mr. Malin asked if the proposed new Section 3 of Article XVI could be attacked. Mr. Francis said that adding a new section to amend that Article would seem to be the most feasible method of ultimately waiving immunity, and that such a new Section 3 would allow the Tribal Council to waive sovereign immunity based on the qualification of each applicant (whether it fits the "economic development" or other related qualifications for the waiver), the HTUA most likely being the first applicant for treatment under such Section 3. Mr. Vaughn called for a motion. Mr. Malin moved to "amend the Constitution to allow tribal economic development entities to exercise a limited waiver sovereign immunity upon review and approval by Tribal Council, notwithstanding provisions of Article XVI.2," second by Mr. Vaughn, motion carried 4-0.

Mr. Montana asked if individuals could expose the tribe to liability in carrying out their own entrepreneurial activities. Mr. Francis said individuals acting as such would generally not expose the tribe to liabilities under Article XVI.2.

**c. Update on BIA transfer of a portion of Diamond Bar Road to Mohave County (Planning).** Mr. Davidson briefly reviewed the BIA's transfer of the one-mile segment of Diamond Bar Road right-of-way that crosses private property to Mohave County and said the "punch list" must be approved by BIA. This action has been requested by the tribe for several months now.

## **5) HTUA Staffing and 2015 Budget Discussion**

Mr. Davidson reviewed the draft budget for the HTUA. Option B, having the lower hourly rate for the consultant (\$100.00) was preferred by consensus. Mr. Vaughn said the budget should include monies to cover brochure creation, mailing costs and website development for the public outreach campaign (see Proposed HTUA Budget 2015).

<b>Proposed HTUA Budget 2015</b>				
<b>Consultant</b>	<b>Rate</b>	<b>Units/Month</b>	<b>Months</b>	<b>April-Dec 2015</b>
Labor per Hour	\$100.00	40	9	\$36,000
Lodging per night	\$125.00	1	9	\$1,125
Per Diem	\$45.00	2	9	\$810
Mileage per visit	\$0.575	200	9	\$1,035
				<b>\$38,970</b>
<b>Board Member Travel</b>	<b>Rate/Mile</b>	<b>Miles</b>		<b>Total</b>
Automobile	\$0.575	2,000		\$1,150
Per Diem	Rate/Quarter	Rate/Day	Days	Total
Inside-State Per Diem	\$11.25	\$45.00	10	\$450.00
Outside-State Per Diem	\$15.00	\$60.00	5	\$300.00
Lodging	Room Rate	Nights		Total
Hotel	\$125.00	10		\$1,250
				<b>\$3,150</b>
<b>Memberships</b>	<b>Annual Dues</b>			<b>Total</b>
Arizona Tribal Energy Assoc	\$1,500			\$1,500
				<b>\$1,500</b>
<b>Public Outreach</b>	<b>Rate/Cost</b>	<b>Units/Month</b>	<b>Months</b>	<b>Total</b>
Web site support	\$75.00	5	6	\$2,250.00
Pamphlets/Ballots	\$0.50	2000	1	\$1,000.00
Postage	\$1.47	500	2	\$1,470.00
Food	\$5.00	200	3	\$3,000.00
				<b>\$7,720.00</b>
<b>Total Budget</b>				<b>\$51,340.00</b>

## **8) Adjourned at 12:00 PM**

## **6) Other Matters**

Mr. Montana presented two examples for the HTUA seal and for the letterhead. Mr. Vaughn asked Mr. Montana to present additional design options at the next meeting.

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

The next meeting will be held on May 5, 2015, starting at 9:00 AM at the Hualapai Cultural Resources Department.

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

May 5, 2015, 9:15 AM to 12:00 PM, Hualapai Cultural Resources Department

### **Board members:**

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – absent

Joe Montana, Secretary – present

Steve Malin, Treasurer – present

Jamie Navenma – arrived for Item 4.d

### **Support personnel:**

Kevin Davidson, Planning Director

Phil Wisely, P.E., Public Works Director

James Williams, Superintendent, Truxton Canon Agency, BIA

Patrick Black, Fennemore-Craig, P.C. (via telephone)

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

Lou Schmitt, TTG Consulting (via telephone)

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

### **2) Roll Call**

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

Mr. Black noted Mr. Francis was the Fennemore Craig, PLC representative at the April 1, 2015, meeting.

Mr. Vaughn asked that Mr. Navenma be credited with first mentioning the idea of modifying the Hualapai Constitution to add a new section that would make a waiver of sovereign immunity less onerous to attain. Motion made by Mr. Montana to approve the April 1, 2015, meeting minutes with corrections. Motion seconded by Mr. Vaughn. Motion carried 3-0.

### **4) Project Updates**

**a. Update on BIA transfer of a portion of Diamond Bar Road to Mohave County (Public Works)**

Mr. Wisely, Director of Public Works, being present for a limited time, requested that Item 4.e be moved to the forefront. Mr. Wisely began his presentation by saying that damage resulting from the storm event on September 26 and 27, 2014, has been repaired with the exception of a culvert and some shoulder work which includes a gabion. The rain storm exceeded the 100-year storm event. The roadway was designed for the 25-year storm event and held up fairly well. Prior to acceptance for maintenance, Mohave County would like additional paint striping and increased speed limit signage from 25 mph to 45 mph at some locations. These improvements and repairs should be completed by the end of May. Mr. Vaughn asked if the bank and shoulder repairs will be done with gunite and who will pay for the repair work? Also, when will the transfer occur? Mr. Wisely said the transfer will occur after the repairs are made. Mr. Wisely also noted that the roadway transfer will not include any plans to run utilities along the corridor. Utilities were purposely omitted from the original scope of work so as not to slow down the environmental clearance for the roadway improvements. Mr. Black opined that the transfer from the BIA to Mohave County should not preclude establishing utilities along the corridor. Mr. Vaughn requested that the Council draft a letter to Mohave County telling of its intent to establish a utility line and requesting a utility easement along Diamond Bar Road. Mr. Davidson and Mr. Wisely will work together on drafting the letter for presentation to the Council in June.

To continue with the storm damage assessment to Diamond Bar Road and adjoining private property, Mr. Wisely added that he has hired a hydrologist to examine the pre-development (natural) and post-development storm water flows along and across the Diamond Bar Wash. The results of the hydrological investigation should show that the new roadway and associated improvements are not adversely impacting the adjoining private property and those buildings and improvements built on the adjoining private property were constructed in a naturally occurring flood area. Mr. Vaughn asked if the BIA will review the roadway to their set design standards. Mr. Wisely said that would be the case and added that the new hydrological investigation will defend any claim against the Tribe by the private property owner asserting that the roadway's construction exacerbated the flooding on private property. Mr. Malin asked what damage claims the private land owner was requesting. Mr. Wisely said the claims are for erosion damage. Mr. Vaughn recalled that when Mohave County abandoned that portion of Diamond Bar Road through the private land, it became the responsibility of the landowner to maintain the abandoned portion of the roadway. Will the damage claims by the landowner put the roadway transfer from BIA to Mohave County in jeopardy? Mr. Wisely said it will not.

**b. Post 2017 Boulder Canyon Project Schedule D1 allocation from Western Area Power Authority (WAPA) and preliminary contract discussions on May 6<sup>th</sup> (Planning and Fennemore Craig, PLC.)**

Mr. Black and Mr. Davidson will attend the WAPA conference on May 6<sup>th</sup> along with other new tribal allocatees for the post-2017 Boulder Canyon Project Schedule D1 power pool. The Tribe has an allocation of 381 KWs and will soon be entering into a contract with WAPA to receive the power directly or in a benefit agreement with a third-party utility akin the tribe's current arrangement with the Navajo Tribal Utility Authority (NTUA) for the current Colorado River Storage Project allocation. Mr. Black will be reviewing the contract language but noted that the language in these contracts is generally set. Mr. Vaughn advised the HTUA expand its discussions with UniSource to include the Schedule D1 power. This should reduce wheeling costs as compared to having the power sent through the NTUA or Mohave Electric Cooperative (MEC) grid and then back to the Hualapai Reservation.

**c. Upcoming meeting with UniSource to discuss Diamond Bar power line (Fennemore Craig)**

To expand the discussion with UniSource, in light of a follow-up meeting request, Mr. Black said that UniSource is open to the idea of a benefit agreement with the Tribe/HTUA to manage the post-2017 Boulder Canyon Project Schedule D1 power. Mr. Malin asked which utility company – UniSource or NTUA - offers the best benefit arrangement for the tribe. Mr. Black said an arrangement with UniSource may be the most advantageous since the utility can offer both a benefit agreement and then establish a "bridge" for direct use of the electricity at Grand Canyon West via the construction of the proposed 20.8 KV power line along Diamond Bar Road. However, if the power line cannot be built along Diamond Bar Road, where it would connect directly to the UniSource grid at Pierce Ferry Road, then a benefit agreement with NTUA may be the best alternative.

The last meeting between UniSource and the Hualapai Tribe was on January 13, 2014. Mr. Black asked if it would be appropriate for the HTUA to meet with UniSource to discuss the special election or meet afterward. Mr. Vaughn said the tribal leadership should first express an interest in establishing a utility easement along Diamond Bar Road (see item 4.e above). Mr. Black advised we provide UniSource with a summary of the Hualapai tribe's efforts over the past 16 months to keep the utility up to date. Mr. Vaughn requested that the tribe send the letter of intent to establish utilities along Diamond Bar Road and then discuss the special election process. Mr. Black will produce a time line for the special election

process, the right-of-way transfer from BIA to Mohave County, and a comparison between UniSource and NTUA on a future benefit agreement, or direct use, of the Schedule D1 power.

**d. Draft application to Arizona Power Association (APA) for Post 2017 Boulder Canyon Project**

**Schedule D2 due on May 18th (Planning)** Mr. Davidson and Mr. Schmitt reviewed the application to the APA which includes both historic electricity usage from MEC and an estimation of electricity usage at Grand Canyon West. The application is requesting 100 KWs from the Schedule D2 power pool with points of power delivery at WAPA's Hilltop or McConnico substation in Mohave County. The application is due to the APA on May 18<sup>th</sup>. Mr. Vaughn signed the application on behalf of the HTUA. Mr. Malin noted that the mini-grid at Grand Canyon West has been operational for the past few weeks with the successful start-up of the Caterpillar diesel generators.

**e. Special Election Process**

**i. Recap of April 1, 2015, HTUA Board meeting** Mr. Davidson briefly reviewed the last HTUA meeting and noted the Board's preference to amend the Hualapai Constitution under the guidance of Article XV to add a new section under Article XVI which would give Tribal Council the power to approve requests by various economic development entities controlled by the Tribal Council to take on debts and liabilities exceeding the current \$250,000 limitation set down in Article XVI, Section 2 (b) 1.

**ii. Discussion with James Williams, BIA, on amending the Hualapai Constitution** Mr. Williams reviewed the constitutional amendment process. The Council must call for the special election. Once done, the BIA will handle the registration and voting. All ballots are mailed and cast by absentee voters because there will not be a public polling place set up to cast a ballot. In order to be a valid election, at least 30 percent of the voters registered by the BIA must cast a ballot. A simple majority vote is required for the constitutional amendment to pass.

Mr. Francis said that amendment process under Article XV of the Hualapai Constitution is preferable with its lower voter threshold needed to approve an amendment as compared to obtaining an express waiver of sovereign immunity where 30 percent of the eligible voters must vote in favor of the express waiver per Article XVI as noted above. Mr. Malin asked if the recent Secretarial vote from last August had a 30 percent turnout. Mr. Williams said the vote was valid and added that the tribe should try to promote the proposed ballot measure. The vote in August was not well advertised. Mr. Davidson said

the ballot measures failed by a 70-22 vote. Mr. Francis asked how much promotional activity the tribe is allowed to do for the special election to amend the Constitution. Mr. Williams said the tribe should consider it a voter education campaign. 25 CFR is neutral on this topic. Mr. Francis asked how long the process would take. Mr. Williams stated the process and timeframe as follows: First, the Tribal Council must formally approach the BIA with the request for the election. Second, the Secretary of the Interior must decide whether to approve the election. It would likely take around 6 months for the Secretary to make that determination, but has taken up to one year on at least one occasion. Once the decision is made to approve the election, BIA must hold the election within 150 days. Mr. Francis and Mr. Williams will discuss the detail further after the Board meeting.

Mr. Francis stated the language for the Constitutional amendment would read as follows: "Notwithstanding Section 2 of this Article, a 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." This language will be refined prior to placing it in a Council resolution and subsequent transmittal to the BIA. Mr. Montana asked if the new language would conflict with Article XVI, Section 2 (b) 1. Mr. Francis said the new language would only be intended to apply to entities engaged in economic or commercial development activities as described in the proposed amendment language. Furthermore, the amendment language would certainly provide a different waiver process for such entities; however, it would not "conflict" with Article XVI Section 2 (b) 1 (in the sense that Article XVI Section 2 (b) 1 would trump it) because it would simply be another section of the Tribal Constitution alongside Article XVI, Section 2 (b) 1, and would carry the same force of law as would Article XVI, Section 2 (b) 1. Mr. Malin asked if it would be appropriate to have a second ballot measure to just approve funding for the Diamond Bar Road power line in case the first measure was unsuccessful. Mr. Vaughn disagreed with that strategy and said the first measure covers all aspects and is universal while the second ballot measure would only complicate the issue for the voters. Mr. Williams cautioned the Board by noting that the Council could demur when asked to approve the resolution to allow for the Constitutional amendment and ask the voters to determine the matter with a special election under Article XVI, Section 2 (b) 1 – Express Waiver of Sovereign Immunity.

Mr. Vaughn suggested that the tribe's web site be updated to begin the public education campaign. The web site should have the Board member's biographies, meeting agendas and minutes, maps and charts, etc. . . The web site will help educate the Hualapai Tribal members living off of the reservation as well.

Mr. Francis asked if the Board was comfortable with the Council having the power to waive sovereign immunity in the manner that the HTUA has been contemplating, that being the effect of successful approval of the proposed amendment to the constitution. Mr. Vaughn said "yes" because the Council will debate the topic in an open meeting and tribal members are encouraged to express their opinions in that public forum. Mr. Vaughn questioned whether the new Constitutional language should be for a limited vs. express waiver of sovereign immunity? Mr. Francis said the proposed amendment, as presently drafted, is not specific to either an express or a limited waiver. The waiver must be only for economic or commercial development activities as specified in the amendment. Mr. Vaughn believed the tribal membership would only be in favor of limited waiver of sovereign immunity; approving an express waiver would be problematic. Mr. Francis said adding "limited" prior to "waiver" is possible, and agreed to modify the language accordingly. However, the waiver would need to be "express" in the sense that HTUA would be expressly waiving its immunity. Mr. Francis stated that he understood Mr. Vaughn's concern to be that the amendment should contemplate limited rather than unlimited waivers of immunity, and reiterated that the waiver language approved and discussed at prior meetings was limited rather than unlimited. Mr. Williams asked if another word could be substituted for "waiver." The HTUA Board reached a consensus to allow Mr. Francis and Mr. Williams to discuss the matter of the amendment process after the meeting.

Mr. Montana asked what steps are needed to begin the process. Mr. Vaughn said we need to have, 1) the Council send a letter to Mohave County telling of its intent to establish a utility line and requesting a utility easement along Diamond Bar Road, 2) the HTUA Board approve the language for the Constitutional amendment, 3) a resolution for the Council to approve to call the special election to be conducted by the BIA, a 4) a web site created to begin the voter education. Mr. Black said that Council prefers to have the HTUA Board initiate the public education prior to having the resolution sent to Council so the HTUA will be seen as taking the lead on the issue.

Mr. Vaughn said the public education component of the Constitutional amendment process should include a description of the project with visual aids (photos, maps, charts). For example, a map showing

the power line along Diamond Bar Road and new development at Grand Canyon West made possible by the lower costs electric power is important to show. Mr. Davidson briefly reviewed the draft Fact Sheet which explains the cost savings of grid power over diesel generation and the ability to serve more development at Grand Canyon West which in turn creates more revenue for the tribe. Mr. Vaughn said the Fact Sheet ought to include the benefits to other parts of the Hualapai Reservation. This should help the approval of the constitutional amendment. Mr. Davidson will send the Fact Sheet to Mr. Francis for further development.

**5) Opening negotiations with APS on renewal of 500 KV right-of-way (Planning)** Mr Davidson said that members of Tribal Council will have their initial meeting with APS on May 7th in Phoenix. The meeting is intended to show the Tribe's desire to begin negotiations with APS and to show how much growth has occurred on the reservation in past two-plus decades since the two parties met last to negotiate the right-of-way.

**6) HTUA Staffing and 2015 Budget Discussion** Mr. Davidson told the Board that Council had approved the HTUA budget in the amount requested. Mr. Vaughn recommended that a separate web site be created and an RFP be issued for such services. Mr. Davidson will prepare an RFP for review at the next meeting. Also, Davidson will e-mail the General Manager job description to the Board members for review at the next meeting.

**7) Other Matters** Mr. Montana presented two additional examples for the HTUA seal and for the letterhead. By consensus the Board chose the original design presented at the April 1, 2015, meeting (see graphic at right).



**8) Set time and location for next meeting** The next meeting will be held on June 11, 2015, starting at 9:00 AM at the Hualapai Cultural Resources Department.

**9) Adjourned at 11:40 AM**

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

June 11, 2015, 9:15 AM to 12:20 PM, Hualapai Cultural Resources Department

### **Board members:**

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – absent

Joe Montana, Secretary – present

Steve Malin, Treasurer – present for a portion of the meeting (via telephone)

Jamie Navenma – present

### **Support personnel:**

Kevin Davidson, Planning Director

Patrick Black, Fennemore-Craig, P.C. (via telephone)

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

### **Guests:**

Chris Simpson, Stinson Leonard Street

Sharon Ng, Stinson Leonard Street

Jim Bertrand, Stinson Leonard Street

Jonas Payne, PBR

Waylon Honga

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

### **2) Roll Call**

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

Motion made by Mr. Montana to approve the May 5, 2015, meeting minutes with corrections. Motion seconded by Mr. Vaughn. Motion carried 3-0.

**4) Presentation by Stinson Leonard Street, LLP**

a. **GCW Energy Supply considerations given the options available as noted in the 2014 USDA/RUS study.** Mr. Simpson introduced Mr. Bertrand who began the presentation. The first part of the presentation will look at Grand Canyon West's electric supply considerations given the options available as noted in the 2014 USDA/RUS grant application. The second part will discuss development of a solar energy project that would generate revenue as noted in the 2014 BIA-IEED grant. The primary goal of the HTUA is to construct a 20.8 KV 20-mile power line along Diamond Bar Road to connect the Grand Canyon West mini-grid to the regional electric grid. The connection of the Grand Canyon West mini-grid to the regional electric grid involves several distinct parts as follows: 1) construction of a 20.8kV, 20-mile power line and interconnection to UniSource, 2) acquisition of a power supply to meet the 2.1 MW Grand Canyon West load (and if needed, for pump station loads that total about 4 MW), 3) operations of the interconnected system, 4) utility customer function: billing, metering, rates etc., and 5) financing, including credit support for long term purchases.

Mr. Vaughn asked how many volts transmission lines typically carry. Mr. Bertrand replied that transmission lines are typically designed for 69 KV and higher. Electric companies typically own smaller capacity, distributions lines. Transmission lines are subject to the Open Access Transmission Tariff (OATT) whereas distribution lines are not. Mr. Vaughn asked if the tribe could recoup its investment in the 20.8 KV line along Diamond Bar Road. That is possible. Mr. Simpson asked if ownership of the new Diamond Bar Road power line could be shared between the Tribe and Unisource, with UniSource owning that portion within their Mohave County franchise area and the Tribe owning that segment on the reservation. Mr. Simpson said he believed the portion within Mohave County could be built without having to amend the Hualapai Constitution. Mr. Vaughn said the amendment is necessary to operate the mini-grid at Grand Canyon West. These are tribal assets, as are the savings from operating the mini-grid, and worth more than \$250,000.

Mr. Bertrand continued with the Grid Operations portion of the presentation. This includes an interconnection agreement with the transmission utility, an engineering-procurement- construction (EPC) agreement with an electrical construction company, grid operations and compliance with transmission obligations. The tribe could issue an RFP for energy supply options for the 2.1 MW Grand Canyon West load (and if needed, for pump station loads that total about 4 MW). The RFP could include

wholesale power supply arrangements with Western Area Power Administrator (WAPA), electric utilities or independent power producers. The contract term can vary depending on other Hualapai Tribal Utility Authority (HTUA) objectives. Mr. Vaughn pointed out potential future loads for a hotel, new homes, etc, that make the demand problematic. The sequencing of these construction activities will be established by Council.

Operational functions that will be needed for serving the Grand Canyon West load include scheduling function for 24/7 operations. This may have to be done in five minutes increments, possibly by UniSource. Power purchases may need to include same day purchases and backed up by the existing diesel generators. Also, renewable portfolio obligations need to be considered. Many of these functions can be outsourced by the HTUA. Mr. Bertrand also noted the need for flexible power agreements that do not restrict the HTUA. Mr. Montana asked if renewable energy generated at Grand Canyon West could be exported off the reservation. Mr. Bertrand said the answer should be yes. Utility customer functions include metering, rate setting and billing. Reporting for compliance with financial obligations is also required.

**b. Development of a Solar Energy Project that would generate revenue as noted in the 2014 BIA-IEED grant.** Mr. Davidson reviewed the BIA-funded feasibility study that places up to 100 MW of solar PV in the Nelson area and 100 MW of solar PV in Clay Springs. Mr. Vaughn said the solar array should be in Clay Springs and not at Nelson. Mr. Vaughn noted that the western boundary of the Reservation is not accurate and that it should be moved westward to reflect the original 1883 boundary. The current boundary monuments were relocated eastward by ranchers several decades ago. The relocated boundary could include some of Clay Springs trust land. Mr. Payne asked if the boundary line was still in dispute. Mr. Vaughn said the tribe has been hesitant to pursue the issue given the current conservative composition of the US Supreme Court.

Mr. Bertrand continued with a review of the 2014 – BIA - IEED – Tribal Energy Development Capacity Grant. The grant allows the tribe to hire a renewable energy expert to seek a buyer of solar power produced on the reservation and then to prepare an energy capacity assessment report. In regard to developing a solar project on the reservation, several items must be addressed including: 1) utility-scale solar pricing, 2) issuing an RFP to select among potential developers under any structure, 3) choosing among ownership structures, 4) financing considerations for various options and 5) determining

renewable energy needs in region. Mr. Payne asked what type of partnerships can the tribe enter into to develop a solar power plant. The BIA-funded solar feasibility study is somewhat out of date in regard to purchase power agreement (PPA) pricing. There is currently a glut of electrical energy on the market thanks to natural gas production. However, solar modules have also dropped in price to help offset the lower costs of energy. In addition, solar modules are more efficient than they were a few years ago when the feasibility study was written. Another issue with the feasibility study is that it did not address the soil conditions at two sites in any detail. Solar arrays tend to heat up the ground and this changes the soils' properties. How receptive is APS to purchase solar power from Hualapai? The APS owned 500 KV transmission line may have excess capacity now that Southern California Edison is no longer purchasing power from coal-fired power plants that connect to the line at the Moenkopi substation. Utility companies in Nevada may also provide a market for Hualapai power which can be accessed at the Eldorado substation. In California, the reported price for electricity is \$60 MWhr (with 30% investment tax credit which falls to 10% on 1/1/2017) if the facility is owned and operated by an independent power producer/developer. New build cost estimates have various ranges depending upon size of the power plant. A 100 MW solar power plant cost could range from \$220 to \$250 million. This price could be less depending on the developer and the ownership/financing structure. A 20 MW solar power plant is estimated to cost around \$50 million to build. Mr. Montana asked about concentrating solar power (CSP) and PV. Mr. Payne said that PV is becoming the industry leader for solar power plants given its reliability and lowering costs of equipment. However, CSP does allow for energy storage after the sun sets.

Moving the discussion back to a potential solar power plant in Clay Springs, Mr. Bertrand recommended the tribe look for an EPC partner. How can the tribe develop a 100 MW solar power plant? The tribe would issue an RFP to identify a PPA and then select a buyer for the electricity produced from the solar power plant. If tribe wants to own the power plant, the tribe would issue a second RFP for an EPC. If not, and the tribe would prefer to simply lease the land for the solar power plant, then the second RFP would be to indentify a solar developer. What type of contract terms should be agreed to? Ownership structure may be: 1) Lease (with real estate taxes paid to the Tribe), 2) Lease with option to buy, 3) create a Hualapai subsidiary with tax equity, or some combination. Is the tribe willing to own and operate the power plant? An ownership flip could occur after ten years, once the tax equity investor has exhausted the tax credit. In order to monetize those tax attributes, tax credit investors use equity flip structures where the investor provides cash at or before commercial operation for a predominant

ownership position that allows the investor to harvest the tax benefits for a period of time, after which the predominant ownership flips back to the developer/tribe. What type of training will tribal members need to work at the power plant?

Mr. Vaughn asked about the effects of the expanding renewable energy market on coal fired power plants. Mr. Bertrand said there has been a decrease in electricity produced by coal-fired power plants due to increased mercury emission regulations and the availability of inexpensive natural gas. The demise of coal may be the result of utility companies building more profitable natural gas-fired power plants.

## 5) Project Updates

- a. **Update on BIA transfer of a portion of Diamond Bar Road to Mohave County (Planning)** The transfer of the BIA road right-of-way to Mohave County is pending a few minor repairs (gabions) and modifications (signage). These should be taken care of shortly.
- b. **Public meeting at Arizona Power Authority (Phoenix) for Post 2017 Boulder Canyon Project power on June 15th (Planning)** The application is requesting 100 KWs from the Schedule D2 power pool with points of power delivery at WAPA's Hilltop or McConnico substations in Mohave County. This will allow it to be accessed by UniSource. Mr. Davidson and Mr. Black will attend the APA meeting on June 15, 2015, and report back to the Board the results and any challenges to the Hualapai application. If successful, this allocation can be combined with Western allocation of 381 KWs of D1 power.
- c. **Public meeting at University Club (Phoenix) to discuss Post 2024 Marketing Plan for Salt Lake City Area Integrated Projects w/ Colorado River Storage Project management team on June 16th (Planning and Fennemore Craig)** Mr. Davidson and Mr. Black will also attend this power marketing meeting and report back to the HTUA their findings. The current CRSP allocation from SLCA/IP will expire in 2024 and Hualapai should position itself to renew this valuable federal hydropower allocation.
- d. **Meeting with APS negotiation team on July 21st and 22nd to tour Peach Springs/GCW and start on negotiations 500 KV transmission line (Planning)** On Tuesday, July 21, 2015, five members from APS, along with the tribe's attorney, an energy expert, the Planning Director, the Public Services

Director, and members of Council and the HTUA Board are set to tour portions of the Reservation which lie along the Eldorado-Moenkopi 500 KV transmission line. This will include areas along Indian Route 18 and Indian Route 1. The tour will begin at 8:00 AM or thereabouts and continue to Grand Canyon West for lunch and a special blessing for the negotiation team on the Skywalk. On Wednesday, July 22, 2015, the negotiation team will meet in the Health, Education and Wellness conference room at 9:00 AM and begin discussing the new terms and conditions of the 500 KV right-of-way renewal. This will be the first of several negotiations.

**e. Special Election Process**

i. **Recap of May 5, 2015, HTUA Board meeting** Mr. Davidson briefly reviewed the last HTUA meeting and noted the Board's preference to amend the Hualapai Constitution under the guidance of Article XV to add a new section under Article XVI which would give Tribal Council the power to approve requests by various economic development entities controlled by the Tribal Council to take on debts and liabilities exceeding the current \$250,000 limitation set down in Article XVI, Section 2 (b) 1.

ii. **Draft Resolution to initiate Constitutional Amendment Election with Department of Interior**

Mr. Francis reviewed the Secretary of the Interior's (BIA) amendment process checklist. Once the Hualapai Tribal Council approves the resolution to begin the Secretary of Interior amendment and voting process, the tribe will transmit to the BIA: 1) the original resolution, 2) the language for the amendment indicating how the Constitution will be revised (including a redline version), and 3) the reason and background for the amendment. The Secretary of the Interior has 90 days to review and approve the amendment then 150 days to conduct the election. Mr. Francis reviewed Article XVI, Section 2, of the Hualapai Constitution which requires that 30% of the eligible voters approve an express waiver of sovereign immunity for the tribe to incur debts exposing the Tribe to liability in amounts greater than \$250,000. The HTUA Board's decision to amend the Constitution by adding a new Section 3 to Article XVI, that will allow the Hualapai Tribal Council to grant limited waivers of sovereign immunity for economic development purposes, will grant more flexibility to the Council and remove the need to have a special election for each project. Mr. Vaughn stressed the need to prepare a cover letter for the resolution that explains the need for amendment and how and why past Constitutional amendments failed. Mr. Montana made a motion to approve the resolution with minor edits. Mr. Navenma seconded the motion. Motion passed 3-0. Mr. Davidson said he will present the Resolution to Council at the Regular Meeting in July.

**ii. Letter of Intent from Council to establish utilities along Diamond Bar Road** Mr. Davidson noted that the Letter of Intent was approved by Council on June 5, 2015, signed by the Chairwoman that day and mailed to the office of Steven Moss, Chairman of the Mohave County Board of Supervisors the following week.

**v. Discussion of advocacy and fact sheet for public outreach and education for the Special Election** Mr. Vaughn requested that the wording on the Fact Sheet be simplified. Mr. Montana would like the Fact Sheet to include development opportunities beyond Grand Canyon West, for example, renewable energy development. Mr. Navenma agreed that the scope of development in the Fact Sheet should be broadened. Broadening the scope of the Fact Sheet will not affect the proposed language of the proposed Constitutional amendment. Mr. Montana observed on the Fact Sheet that Grand Canyon West will save approximately \$400,000 per year by switching from the 16 independent generators to the mini-grid. Mr. Navenma said these savings should be explained as a benefit to the tribe. Mr. Vaughn requested that the construction cost breakdown for the new power line along Diamond Bar Road be removed from the map that will accompany the Fact Sheet so as not conflict with statements of price which may be made elsewhere in the Fact Sheet. Mr. Davidson said he will revise the map accordingly.

Mr. Honga, who is also looking to educate the electorate on various voting issues, has been invited to participate in the HTUA's Constitutional amendment by the Tribal Council. Mr. Honga said his efforts so far have been to remove the Secretary of the Interior from the Hualapai Constitution. Mr. Vaughn said if removal of the Secretary of Interior was added to the HTUA's more focused Constitutional amendment effort, it might cause both amendments to fail. Mr. Navenma said that Hualapai are one of the few remaining tribes with Secretary of the Interior over sight still written in their constitution. This may be an artifact from a time when council members were not as educated and sophisticated as they are today. The failure of the last vote to amend the Constitution in the summer of 2014, that would have removed the Secretary of the Interior from the Constitution, may be a reflection of the electorate not yet willing to give up that final approval of Council actions. Mr. Honga pledged his support to help the HTUA amend the Constitution as planned.

**6) HTUA Web Site**

a. **Draft RFP** Mr. Davidson reviewed the language of the draft RFP. The new web page shall include the HTUA's mission statement, services, HTUA board member biographies, meeting agendas and minutes, resolutions and the ordinance. This new page would be added to the Hualapai Tribe's home page under "Government." The RFP requests that the bidder provide services as follows: 1) orientation meeting, 2) web site approval and launch, 3) web site maintenance, 4) a link to other social media sites, 5) web site statistics and 6) contract administration. Mr. Vaughn emphasized the need for unfiltered dialog in real-time to get input on the Constitutional amendment process. This may be best achieved through a social media site such as Facebook. Mr. Montana said there are several social media sites where blogging can occur. Mr. Montana said this social media site could be moderated and maintained by the HTUA. The Natural Resources Department has a Facebook account and experience in maintaining its site. Mr. Vaughn requested the RFP criteria include: 1) the ability of the web site to contact all tribal members of voting age, 2) the web site developer must be able to work with the Hualapai Election Board and Tribal enrollment to identify eligible voters, 3) provide adequate notice for public meetings and 4) help the HTUA develop an outreach plan for the public meetings. The HTUA is looking to establish a permanent and serious presence on the tribe's web site. Mr. Davidson will revise the RFP accordingly and send out to the Board members to review.

**7) Other Matters**

a. **Review draft job description for HTUA General Manager** Mr. Montana asked how the general manager position will be funded beyond 2015. Mr. Davidson said the tribe receives approximately \$50,000 per year in payments from the Navajo Tribal Utility Authority for its CRSP allocation of federal hydropower. Mr. Navenma said these payments can be directed towards the HTUA's operations. Mr. Davidson will make an inquiry with the Finance Department on how to re-direct these funds. Action on advertising for a general manager was tabled until further notice.

b. **Tribal Solar Working Group meeting on June 23rd and 24th at NAU** Mr. Davidson invited HTUA board members to attend this meeting at NAU. The Tribal Solar Working Group will be discussing the solar project being developed on the Moapa Indian Reservation in Nevada among other topics of

interest to tribes (see: [http://www4.nau.edu/itep/tcerc/docs/TSWG\\_Agenda150623-3.pdf](http://www4.nau.edu/itep/tcerc/docs/TSWG_Agenda150623-3.pdf)). Mr. Navenma noted the success of wind and solar applications at Leupp, Arizona.

**c. DOE conferences in July and September** Mr. Davidson noted that NREL will be holding a set of workshops for tribes looking to build and finance community-scale and commercial scale solar projects. The first workshop will be held in Albuquerque (<http://www.energy.gov/indianenergy/events/new-mexico-tribal-leader-forum-and-community-scale-workshop-tribes>) on July 27, 2015. The second workshop will be held in Golden, Colorado starting on September 1, 2015.

**d. Bids due for IEED RFPs on June 15th – distribution to HTUA Board for ranking and referral to Council for award on July 10th.** Mr. Davidson said the bids for HTUA board training, Purchase Power Agreement identification and negotiation, and the solar apprenticeship training program will be sent to the HTUA Board before the next meeting for their review and recommendation for award to Council on July 10<sup>th</sup>.

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

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

**9) Adjourned at 12:20 PM**

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

July 16, 2015, 9:30 AM to 12:20 PM, Hualapai Cultural Resources Department

### **Board members:**

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – present (via telephone)

Joe Montana, Secretary – present

Steve Malin, Treasurer – present (arrived during review of Item 4c)

Jamie Navenma – present

### **Support personnel:**

Kevin Davidson, Planning Director

Patrick Black, Fennemore-Craig, P.C. (via telephone)

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

### **Guests:**

Karin Wadsack, NAU

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

### **2) Roll Call**

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

Motion made by Mr. Navenma to approve the June 11, 2015, meeting minutes as written. Motion seconded by Mr. Montana. Motion carried 3-0-1. Mr. Majenty abstained not having attended the June 11, 2015, meeting.

### **4) Project Updates**

- a. **Update on BIA transfer of a portion of Diamond Bar Road to Mohave County (Planning)** The transfer of the BIA road right-of-way to Mohave County is pending final review by the BIA. Storm damage repairs have been completed.

**b. Arizona Power Authority Post-2017 Hoover power allocation meeting on July 17th (Planning)**

The Hualapai application is requesting 100 KWs from the Schedule D2 power pool with points of power delivery at WAPA's Hilltop or McConnico substations in Mohave County. This will allow power to be accessed by UniSource. Mr. Davidson will attend the July 17, 2015, meeting where APA will adopt its final allocation plan. So far, Hualapai have 100 KWs in each of the four allocation scenarios. Mr. Vaughn asked about the cost of wheeling and line capacity. Mr. Davidson replied that this power may be wheeled through UniSource's grid to Grand Canyon West, provided the power line is constructed along Diamond Bar Road. The 100 KW allocation is equal to about the energy use of 20 homes and within a typical power line's capacity.

**c. Review of meeting on Post 2024 Marketing Plan for Salt Lake City Area Integrated Projects w/**

**Colorado River Storage Project (CRSP) management team (Planning)** Mr. Davidson and Mr. Black attended this on June 16<sup>th</sup> in Phoenix. The current CRSP allocation from SLCA/IP will expire in 2024 and Hualapai should position itself to renew this valuable federal hydropower allocation. The existing CRSP customers in attendance were not interested in expanding the service area or allowing new customer into the pool. Also, there was no interest in providing updated load data. Mr. Davidson opined that it may be in Hualapai's best interest to ask that the Post-2024 marketing plan require updated load and annual usage data from its customers. Mr. Vaughn questioned this approach. Mr. Davidson said it may be a gamble since it assumes that Hualapai's load and usage has grown at a higher rate than others in the pool, hence giving Hualapai a larger allocation because they have a larger percentage of the allocation "pie."

**d. Meeting with APS negotiation team on July 21st and 22nd to tour Peach Springs/GCW and**

**start on negotiations 500 KV transmission line (Planning)** On Tuesday, July 21, 2015, five members from APS, along with the tribe's attorney, an energy expert, the Planning Director, the Public Services Director, members of Council and the HTUA Board are set to tour portions of the Reservation which lie along the Eldorado-Moenkopi 500 KV transmission line. This will include areas along Indian Route 18 and Indian Route 1. The tour will begin at 8:00 AM or thereabouts and continue to Grand Canyon West for lunch then a tour of the Skywalk. On Wednesday, July 22, 2015, the negotiation team will meet in the Health, Education and Wellness conference room at 9:00 AM and begin discussing the new terms and conditions of the 500 KV right-of-way renewal. This will be the first of several negotiations. On July

10, 2015, the Council selected Mr. Vaughn and Mr. Malin to represent the HTUA on the negotiation team.

Mr. Vaughn asked why the team will tour Route 18. Mr. Davidson said the field trip will stop at the Limestone airstrip which offers a good view of the 500 KV and large, relatively flat area for a potential utility scale solar array on a square mile of land. Mr. Vaughn noted that this area also provides pasture land for cattle grazing and prefers not to have it taken over by other uses. Mr. Vaughn recalled the concern discussed during the June 11<sup>th</sup> presentation by Stinson Leonard Street was the need to analyze the effects of heat build-up from solar operations on the site's soils to see what, if any, mitigation is needed.

Mr. Vaughn also noted that the western boundary of the reservation should be addressed. Originally, the western boundary was located in Clay Springs at the base of the Music Mountains and Grand Wash Cliffs. In the years following the establishment of the Hualapai Reservation in 1883, the monuments and fence line marking the boundary have been moved several miles eastward by ranchers in the Hualapai Valley. However, given the fact that the tribe has yet to settle the water rights claim to the Colorado River, broaching the boundary dispute the federal government may not be wise. Mr. Montana added that the USGS has conducted research on the Colorado River's projected future flow and additional usage may not be sustained. Mr. Vaughn said that so far the USGS has not been involved in the water rights discussion with Hualapai.

e. **Special Election Process**

i. **Recap of June 11, 2015, HTUA Board meeting** Mr. Davidson briefly reviewed the last HTUA meeting and noted the Board's preference to amend the Hualapai Constitution under the guidance of Article XV to add a new section under Article XVI which would give Tribal Council the power to approve requests by various economic development entities controlled by the Tribal Council to take on debts and liabilities exceeding the current \$250,000 limitation set down in Article XVI, Section 2 (b) 1. Once the Hualapai Tribal Council approves the resolution to begin the Secretary of Interior amendment process, the tribe will transmit to the BIA: 1) the original resolution, 2) the language for the amendment indicating how the Constitution will be revised (including a redline version), and 3) the reason and

background for the amendment. The Secretary of the Interior has 90 days to review and approve the amendment then 150 days to conduct the election.

**ii. Review of Draft Resolution to initiate Constitutional Amendment Election with Department of Interior and presentation to Council on July 10<sup>th</sup>** Mr. Davidson reviewed the Council meeting on July 10<sup>th</sup> where Council voted 2-2-3 and failed to approve the resolution. The Council's reasons were as follows: 1) need to send the amendment question out to the public for their input prior to the Council vote, 2) language allowing "entities" a limited waiver of sovereign immunity is too broad in respect to "entities," and 3) language may allow Council to do more than what we currently intend causing an abuse of power. Mr. Vaughn said that the third reason for concern is resolved by the constitutional protection of individual tribal members from Council overreach. Mr. Francis suggested that "entities" be further defined as "government entities" which are authorized by Council. Mr. Vaughn opined that limiting the constitutional amendment to only the allowing the HTUA to take on debt's greater than \$250,000 would most likely fail. Mr. Black suggested the HTUA develop two versions of the amendment, one with a broad definition of "entities" and the other with narrow definition such as only the HTUA. Mr. Majenty said public opinion may change with the upcoming right-of-way negotiation with Arizona Public Service over the 500 KV power line. Mr. Davidson added that he had asked three tribal utilities in Arizona about their current debt limit. The Tohono O'odham have the highest debt limit of \$25 million.

**iii. Discussion of advocacy and fact sheet for public outreach and education for the Special Election** Mr. Vaughn requested that the HTUA put together a mailing to invite tribal members to the upcoming public meeting. Mr. Davidson said he would prepare a draft mailer for review at the next HTUA meeting. The meeting should occur in August at the gym in Peach Springs with dinner provided. Mr. Majenty suggested a second public meeting be held at Grand Canyon West for employees who cannot make the dinner meeting in Peach Springs. If the second public meeting date is set in advance, GCRC could offer administrative leave for employees who want to attend.

Mr. Vaughn requested that the wording on the Fact Sheet be simplified and reduce the length of the longer bullet points. Mr. Navenma advised that the benefits of renewable energy described in Item No. 5 be linked to Item No. 8. Mr. Davidson said he will revise the Fact Sheet.

**5. BIA/Tribal Energy Development Capacity Building Bids (Planning)**

a. **Review and Recommendation to Council on HTUA Training award** Mr. Davidson reviewed the ranking sheets from the BIA. Kanim Associates received the highest score. Mr. Navenma asked if the HTUA is bound to accept the BIA offer. Mr. Davidson said it was not. After some discussion, Mr. Vaughn made a motion to recommend to Council that Kanim Associates be awarded HTUA Training contract. Mr. Montana seconded the motion. Motion passed 4-0-1 with Mr. Navema abstaining.

b. **Review and Recommendation to Council on PPA award** Mr. Davidson reviewed the ranking sheets from the BIA. Stinson Leonard Street, LLP received the highest score. After some discussion, Mr. Vaughn recommended that Stinson Leonard Street, LLP be awarded the Purchase Power Agreement contract, provided they do not have a conflict of interest with another client. Mr. Navenma made a motion to recommend approval. Mr. Malin seconded the motion. Motion passed 4-1.

**6) Other Matters**

a. **Review of revised RFP for HTUA web site** Mr. Davidson reviewed the language of the draft RFP that was revised based upon input from the Board at their June 11<sup>th</sup> meeting. The revised RFP requests: 1) the ability of the web site to contact all tribal members of voting age, 2) the web site developer must be able to work with the Hualapai Election Board and Tribal enrollment to identify eligible voters, 3) provide adequate notice for public meetings and 4) help the HTUA develop an outreach plan for the public meetings. Mr. Majenty noted the RFP's due date was July 31<sup>st</sup>. Mr. Davidson said that was a legacy date from the first draft and that he will extend the date to allow the RFP to circulate for a full 30-days. The revised language to the RFP was approved by consensus.

b. **Northern Arizona University Wind and Solar Status Report – Karin Wadsack** Ms. Wadsack, a researcher and renewable energy policy advisor at NAU, is the author of Arizona's Biennial Wind and Solar Report which examines goals by different state agencies, namely the Arizona Corporation Commission, projects placed into service by utility companies and those projects planned. Ms. Wadsack began her formal presentation by reviewing two Fact Sheets – one for solar and the other for wind. Currently, Arizona has installed 1,532 MWs of utility-scale photovoltaic and concentrated solar (reflective trough technology) with over 1,000 MWs in development on non-tribal lands and over 5,000

MWs on tribal lands, much of this being on the Hopi Reservation. Marciopa and Yuma Counties lead the way with over 500 MWs of installed capacity. Several hundred new jobs have been created ranging from engineering through product supply, construction, operation and spin-off industries supporting the endeavor. Nearly 400 companies are in the state's solar industry and employ over 9,000 people. In 2014, all new electric generation capacity in the state came from solar installations. Large corporations such as Wal-Mart, Intel, and REI have been purchasing solar power on the open market. Over \$600 million was invested in Arizona solar development in 2014. All this solar power is enough to supply the electric needs of 294,000 homes!

Arizona also has a respectable wind resource with over 10,000 MW of potential development. Currently, there is 238 MWs of installed capacity with 30 MWs under construction. Over 1,000 MWs of wind development potential have been studied on tribal lands. Over 1,000 jobs in Arizona can be attributed to wind farm development with nearly \$500 million invested so far. Wind projects built in Arizona, Nevada, Utah, New Mexico, Colorado and Wyoming since 2002 have saved 3.3 billion gallons of water in 2014 and reduced CO<sub>2</sub> emissions by nine million metric tons as compared to conventional fossil fuel power plants producing the same amount of energy. Ms. Wadsack also noted that Xcel Energy of Colorado has a significant amount of wind power in its portfolio, some of which extends to the Midwest. Having wind turbines spread over 1,000 miles helps Xcel with the problem of power drop off due to intermittent wind resources – there is always wind blowing somewhere in their power grid.

Mr. Davidson asked about the dampening effect on the industry due to the expiration of the federal Investment Tax Credit (ITC) which will be reduced from 30% to 10% after December 31, 2016, and how much of a renewable energy project must be operational by that date to receive the full amount. Ms. Wadsack said that to receive the 30% ITC, only that portion which is in operation can receive the credit. For example, if a 100 MW solar plant had the first 20 MW phase operating by December 31, 2016, then the cost of that phase would receive the 30% ITC, and the future phases a 10% ITC. However, getting the first phase on-line requires most all of the soft costs (environmental, permitting and engineering) be accomplished as well as having the generator tie-line and substation constructed to allow the first phase to connect to the grid, so over 20% of the project costs may be expended to get the first 20% of capacity on-line. The costs associated with the start-up of the first phase should be eligible for the 30% ITC. Mr. Vaughn asked why the ITC would be cut. Ms. Wadsack said the fossil fuel industry does not appreciate tax incentives that support their competitors. Mr. Vaughn inquired as to what effect the lifting of

sanctions on Iran, resulting in more Iranian oil on the market, would impact the price of energy in the U.S. Ms. Wadsack replied that the price of electricity would probably not be greatly reduced because most US power generation is from coal, natural gas, hydro, nuclear and renewables with very little derived from oil.

Mr. Malin asked at what price per MWhr would a wind farm have to sell power to make it a good investment. Ms. Wadsack said the price should be at least \$25 per MWhr, provided the 30% ITC is being taken advantage of to finance the project. For a solar farm, it is \$42 MWhr with the 30% ITC subsidy. The Navajo Generating Station, which operates on coal, is selling electricity at \$30 MWhr. This price is likely to increase given future environmental controls and the creation of a “carbon” market where CO<sub>2</sub> emissions are priced at more than just a few dollars per ton. Mr. Navenma added that Hopi are planning a 1,000 MW solar array. Ms. Wadsack said this project may be expanded to 4,000 MWs but there is no feasible way to export the power to the regional market. Mr. Navenma said he was also involved in testing the wind resources for the Sunshine wind farm located on private land east of Flagstaff when he worked for the Hopi Tribe. The Hopi are open to wind development but prefer not to have it located on their reservation. However, Hopi is not too interested in investing money off the reservation which leaves the tribe in a conundrum. Hopi’s on-reservation economic development activity revolves around traditional arts and crafts.

Mr. Vaughn said the tribal council must articulate their vision for clean energy development. The council is less inclined to develop a wind farm but seems more open to solar development. Ms. Wadsack said that wind turbine technology is allowing wind farms to be built in lower speed wind regimes where they proved to be un-economical just a few years beforehand. The new turbines have larger rotor diameters and turn at slower speeds. The slower rotation also reduces the chances of turbine blades striking birds that fly through the array. Having slower moving rotors is also an effective mitigation measure since the operator will have less need to pay compensation to a mitigation bank for bird strikes. Mr. Vaughn noted that solar development seems to be more effective in Arizona as compared to wind development.

In conclusion, Ms. Wadsack said the Bureau of Reclamation (BOR) has an initiative to help tribes build renewable energy projects. Mr. Montana asked if renewable energy projects could also generate

income by selling carbon credits. Ms. Wadsack replied that they could as long as the electricity they are replacing comes from a coal-fired power plant. Currently, these credits are valued at \$1 per MWhr.

**c. Tribal Solar Working Group meeting on June 23rd and 24th at NAU (Planning, HTUA Board members)** Mr. Davidson briefly reviewed two of the presentations made at the Tribal Solar Working Group.<sup>1</sup> The BoR is developing a plan to phase out 360 MWs of coal generation at the Navajo Generating Station by the end of 2019. This electricity is used to power the Central Arizona Project (CAP) pumps to bring water from Parker Dam to Phoenix and then to Tucson. The BoR is seeking a clean, reliable and cost-effective replacement power source. Both Navajo and Hopi are looking to provide this replacement power with solar farms which are still in the conceptual stage. Mr. Davidson has contacted Mr. Black of the BoR, who made the presentation, and discussed the possibility of Hualapai providing some part of the replacement power by 2020. This power could be wheeled over Western's Mead-Peacock 345 KV high voltage transmission line that the tribe's renewable energy feasibility studies have looked at in the Hualapai Valley or possibly the Eldorado-Moenkopi 500 KV line whose right-of-way is subject to renewal in the next 14 months. The Hualapai site's distance from Navajo and Hopi makes the solar resource more robust in that it is less likely to be effected by the same weather pattern which may reduce power output if all of the solar development was done at one location.

The second presentation was from the Moapa Band of Indians in Nevada who are placing into service up 700 MWs of solar photovoltaic modules to help Southern California Edison meet their renewable energy requirements. When complete, this will be largest the solar project in the United States. The contractor has been accommodating to the tribe's TERO requests; any tribal member has the right to work on the project and be trained to do the job.

Mr. Montana and Mr. Navenma also attended the meeting and were impressed by the presentations. Mr. Navenma said he went on the field trip to the STAR school north of Flagstaff and is ready to start working on his own solar project.

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

---

<sup>1</sup> See: [http://www7.nau.edu/itep/main/Energy/energy\\_tswg\\_prevmtg](http://www7.nau.edu/itep/main/Energy/energy_tswg_prevmtg) for a list of presentations from 6/23/15.

The next meeting will be held on August 6, 2015, starting at 9:00 AM at the Hualapai Cultural Resources Department.

**8)      Adjourned at 12:12 PM**

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

August 6, 2015, 9:15 AM to 11:40 AM, Hualapai Cultural Resources Department

### **Board members:**

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – present (via telephone)

Joe Montana, Secretary – absent

Steve Malin, Treasurer – present

Jamie Navenma – absent

### **Support personnel:**

Kevin Davidson, Planning Director

Patrick Black, Fennemore-Craig, P.C. (via telephone)

Lou Schmitt, P.E., TTG (via telephone)

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

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

### **2) Roll Call**

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

Motion made by Mr. Vaughn to approve the July 16, 2015, meeting minutes with minor corrections.

Motion seconded by Mr. Malin. Motion carried 3-0.

### **4) Project Updates**

- a. **Update on BIA transfer of a portion of Diamond Bar Road to Mohave County (Planning)** The transfer of the BIA road right-of-way to Mohave County is pending final review by the BIA. No change of status since last meeting.

**b. Arizona Power Authority Post-2017 Hoover power allocation meeting on July 17th (Planning)**

The Hualapai application is requesting 100 KWs from the Schedule D2 power pool with points of power delivery at WAPA's Hilltop or McConnico substations in Mohave County. This will allow power to be accessed by UniSource. Mr. Davidson attended the July 17, 2015, Arizona Power Authority (APA) meeting where the APA commission adopted a fifth option, presented at the meeting, which still apportions Hualapai 100 KWs as the four previous allocation scenarios. Applicants may protest the final proposal for the next 30 days.

Mr. Black noted the contracting process with the APA is shorter than the Western contracting process and appears to be in conflict with the Western which must be concluded by October 1, 2016. The APA must have the Western contract amounts (KWs) firmed up in order to complete their contracts. New customers must also pay APA reimbursable advance payments to compensate the APA for the contracting process. Mr. Black noted that the payment of reimbursable advances to the APA may be borne by a third-party in a benefit arrangement, akin to Hualapai's current arrangement with NTUA. If the HTUA pursues this option, then it is quite possible that the host utility paying the up-front costs will require a long-term contract to recoup its expenses. This would make it more difficult for the HTUA to shift from a benefit arrangement with a host utility to directly purchase power from the host utility. Mr. Davidson concluded by saying that there is also need for the APA to consider refusals of power by new allottees and then determine how to distribute that amount, if any, among the remaining customers.

**c. Western Area Power Authority Post-2017 Hoover power contract (Fennemore Craig)** Mr. Black said the new contract language is likely to include a hydrological "trigger." Once activated, it will reduce the amount of power produced by the dam. The factors used to "trigger" power reduction may be less snow or rainfall amounts, lower lake levels, etc. Mr. Black advised that Mr. Davidson take the lead on the Western contracting procedure given that he has been involved in the process for the past several months.

**d. Meeting with APS negotiation team on July 21st and 22nd discussing 500 KV line (Planning)**

On Tuesday, July 21, 2015, four members from APS, along with the tribe's attorney (Sonosky Chambers), the tribe's energy expert (Analysis Group), the Planning Director, and members of the HTUA Board (Mr. Vaughn and Mr. Malin) toured along the Eldorado-Moenkopi 500 KV transmission line between the Limestone airstrip east of Peach Springs and Grand Canyon West. After leaving Grand Canyon West,

several members of the team returned to Peach Springs via Antares Road to see the location where the 500 KV line crosses Antares Road. The 2012 BIA-funded solar feasibility study identified sites near the Limestone airstrip and just east of Antares Road to locate a utility-scale solar farm of between 20 MW and 100 MWs in size. A third potential solar site, not identified in the feasibility study, is at Plain Tank near the VORTAC (VHF Omnidirectional Radio Range Tactical Aircraft Control) site. This site offers a wide expanse of open, flat land, with little vegetation, on which to place a solar power plant.

On Wednesday, July 22<sup>nd</sup>, the negotiation team comprised of those members mentioned above and Council members Watahomigie, Pagilawa, Clark, Crozier and Imus (via telephone) met with the APS team to: 1) discuss the negotiation process and goals of each party, 2) what economic calculations should be used to determine the value of the right-of-way in 2016, 3) what type of non-monetary compensation the tribe would like from APS, 4) the NEPA and Hualapai Tribal permitting process, and 5) set a schedule for the next set of negotiation meetings.

Mr. Davidson said he asked APS to look into the possibility of constructing a substation on the 500 KV line as one of the non-monetary compensation options. This would allow the tribe to pursue one of the utility-scale solar power plants indentified in the feasibility study. Mr. Froetscher of APS replied that such a study would take several years to complete; however, the possibility of constructing a substation near the Limestone Airstrip could supply a new power source to feed a new 69 KV line that could be built from the new substation some six miles southward to the existing Nelson substation, the same substation that Mohave Electric Cooperative (MEC) uses to serve Peach Springs. Such a project would cost approximately \$20 million but would allow for a tribal utility-scale solar array to be connected to the grid and provide back-up power to MEC's radial electric line which has a notorious reputation for long power outages. Mr. Davidson said Mr. Froetscher did not offer to build the project as part of the right-of-way compensation package to the tribe, but did not seem to entirely dismiss it either.

Mr. Vaughn said he had a less rosy impression of the tribe's meeting with APS. The weakness of the 2012 solar feasibility study is that it does not identify a buyer for the electricity generated from a tribal solar project. Identifying a buyer of the electricity, through a purchase power agreement (PPA), must come first to attract the investment capital. Also, APS was clear in saying that they will not be seeking a PPA since they have sufficient solar and wind projects planned in their energy portfolio to meet the Arizona Corporation Commission's renewable energy requirement of 15% by 2015. Mr. Davidson

replied that the new BIA energy capacity building grant, whose bids the HTUA Board reviewed and selected at the last meeting, will provide some training to the HTUA to seek out and acquire PPAs.

The discussion next turned to the existing and future electric load at Grand Canyon West and the proper sizing of power line along Diamond Bar Road. Mr. Davidson noted a significant comment made by Mr. Froetscher at APS was the need to build a large enough power line to allow growth at Grand Canyon West and building a 69kV line may be in the best interest of the tribe. In response to the friendly advice from APS, Mr. Schmitt said the current load at Grand Canyon West is running at approximately 500 KWS which is less than one fourth of the capacity of the current generator set (2,200 KWS). Mr. Becherer reviewed three growth and load time frames. In the 2 to 5 year period, Grand Canyon West will require 1.9 MWs, in the 5 to 10 year period this load will increase to 3.4 MWs and the 10 year plus period the load is expected to be 6.0 MWs. Given that a 20.8 KV power line can handle 6 MWs of load, it should be adequate for the ten year period. Mr. Becherer advised that the power poles and support structures be upgraded with the initial construction to allow for a heavier circuit (power line) in the future when demand exceeds 6 MWs. The upgraded poles will increase the costs of the new power line by 15% to 20%. Mr. Becherer added that the existing diesel generator plant's capacity is predicted to be exceeded in the 2 to 5 year period, if GCRC wants to keep one of the three generators on standby, to only be used if one of the other units breaks down. If the 2 to 5 year growth prediction is realistic, then building the new power line to Grand Canyon West is critical in next 2 to 5 years.

Mr. Vaughn asked if the planned residential community at Grand Canyon West was in the future load calculations. Mr. Becherer said he accounted for 25% of the residences to be built. The 10 year period includes the moderate priced hotel, the resort hotel, new airport terminal, new entrance/commercial area as well as upgrades to the existing tourist venues of Guano Point, Eagle Point and Western Town; however, the golf course has not been included. Mr. Black asked if the electric demand to pump water up from the Colorado River was in the 10-year estimate. Mr. Becherer said it was not, nor is this load in the recently adopted Master Plan for Grand Canyon West. Mr. Vaughn shed some light on why it was not included. In 2014, the Hualapai Council chose the Diamond Creek pipeline option because this option would also serve Peach Springs with water. In addition, the National Park Service objected to the Quartermaster the diversion point which is at Grand Canyon West.

Mr. Black said that building a 69 KV power line is very expensive (**estimated cost of 69 KV line is \$25 million vs. \$14 million for the 20.8 KV line**). Also, a 69 KV line is more likely to be considered a transmission line vs. the planned 20.8 KV line which is considered to be a distribution line, similar to those as you would see in town. In addition, if the Federal Energy Regulatory Commission (FERC) determines the 69KV line to be a transmission line, it must be made available for other land owners along Diamond Bar to connect to. This would include the Grand Canyon Ranch. Mr. Vaughn asked Mr. Black for a legal precedent on FERC's past determination on defining transmission lines.

Mr. Vaughn added that APS recommended a 69 KV substation be placed at the load center (Grand Canyon West). Mr. Majenty asked how the 20.8 KV line size was determined. Mr. Black replied that UniSource determined the power line's size based upon a 2011 study. Mr. Majenty said the study may be inaccurate and mostly likely outdated. Mr. Malin said the current tourist volume at Grand Canyon West, which should top one million visitors this year, is ahead of the growth projection shown in the recently adopted Master Plan which does not show one million visitors for another two to three years. Mr. Malin said the time line for growth stated in the Master Plan for Grand Canyon West should be updated. Also, APS was quite sincere in their advice to the tribe on building a larger than 20.8 KV power line to provide for future growth. Larger lines also may be more capable of handling lightning strikes. Mr. Black said the APS perspective is most likely based on APS' policy of having their customers pay for new power lines via increased electrical rates. Mr. Becherer said that resistance to lightning strikes is more a matter of the power pole's strength rather than the amount of voltage in the line and advised that stronger poles be added to the project. Mr. Majenty asked about the maintenance cost for the two sizes of power lines. Mr. Becherer replied the larger line may have more maintenance costs. Mr. Vaughn said the new power line planned along Diamond Bar Road would require additional upgrades at UniSource's Dolan Springs substation. Is it appropriate for the tribe to pay for these upgrades?

Mr. Majenty asked if the new mini-grid at Grand Canyon West, also sized at 20.8 KV, is adequate to handle the new buildings (hotels, convenience store, etc) that will be connecting to it. Mr. Becherer said the mini-grid can be reconfigured to handle the buildings as needed. Also, the mini-grid can accept power from a 69 KV power line. Mr. Becherer advised that a 69 KV line not be used as a distribution line within Grand Canyon West since it would be akin to "swatting a fly with a sledge hammer." If a 69 KV line is constructed along Diamond Bar Road, the transformer to step the power down to 20.8 KV would be built at the Reservation boundary. Mr. Schmitt said the electrical current (amperage) can be

increased to provide for more electrical loads at Grand Canyon West. Mr. Schmitt asked if this discussion on power line options could be presented to Tribal Council at a workshop.

Mr. Majenty requested an Executive Session. Motion seconded by Mr. Vaughn. Motion carried 3-0. Regular meeting reconvened in approximately 20 minutes.

**e. Special Election Process**

i. **Recap of August 6, 2015, HTUA Board meeting** Mr. Davidson briefly reviewed the last HTUA meeting and noted the Board's preference to amend the Hualapai Constitution under the guidance of Article XV to add a new section under Article XVI which would give Tribal Council the power to approve requests by various economic development entities controlled by the Tribal Council to take on debts and liabilities exceeding the current \$250,000 limitation set down in Article XVI, Section 2 (b) 1.

ii. **Review of cover letter and draft resolution to initiate Constitutional Amendment Election with Department of Interior and presentation to Council in September** Mr. Davidson reviewed the memo and resolution to be presented to Council. Mr. Vaughn requested that "Nation" be replaced with "Tribe" in the first paragraph of the resolution and that "Resolution" be replaced with "Ordinance" in language of the proposed constitutional amendment, also contained in the draft resolution. Resolutions are only for matters of temporal concern to Tribal Council whereas ordinances have a permanent effect. Mr. Majenty requested that the phrase "and its members" be placed after references to the Hualapai Tribe in paragraph two of the resolution and within the proposed constitutional amendment. Mr. Black said he will make these changes. Mr. Vaughn moved to approve these modifications to the resolution and the draft amendment. Mr. Malin seconded the motion. Motion carried 3-0.

iii. **Discussion of advocacy and fact sheet for public outreach and education for the Special Election** Mr. Davidson reviewed the draft public meeting poster and invitation letter. Mr. Davidson has attached his e-mail address to the invitation letter so he can respond to inquiries before the meeting and even send out minutes from past meetings to those who want to catch up on the HTUA's efforts. Mr. Davidson said he is also working with the Election Board to obtain the list of eligible voters to send the meeting invitation letter to. Mr. Vaughn said his GCRC e-mail address could also be added to the

notification letter. Mr. Vaughn said the wording for the Fact Sheet still needs to be simplified and he will send Mr. Davidson his revisions shortly.

Mr. Majenty recommended that rather than rush into a major public presentation, that the HTUA conduct a pilot presentation. The presentation should state objectives of the HTUA upfront and why the Constitution must be amended to meet these objectives. For 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 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 (power line) to secure the loan. With the power line in place, the Hualapai Tribe will save money which it can then reinvest to serve the Hualapai people. The Board agreed to hold a pilot presentation on August 27<sup>th</sup> at the Cultural Center at noon time and invite the Elders. Mr. Davidson will make arrangements for lunch to be served.

## **5. BIA/Tribal Energy Development Capacity Building Bids (Planning)**

- a. **HTUA Training schedule** The Board requested that training from Kanim Associates be conducted in September. Mr. Davidson said he will contact the consultant and request a set of dates.
- b. **Purchase Power Agreement schedule** The Board requested that training from Stinson Leonard Street , LLP, be conducted in September. Mr. Davidson said he will contact the consultant and request a set of dates.

## **6) Other Matters**

- a. **Review of inquiries from bidders on RFP for creating HTUA web site** Mr. Davidson noted that he had received a few inquiries from vendors looking to bid on the HTUA's web site. Bids are due on August 21<sup>st</sup> and will be ready for review at the next Board meeting.
- b. **Ownership status of Hualapai Tribe's land holdings in Clay Springs** Mr. Davidson reviewed a recent BIA title status report which shows the nine sections of land in T27N, R15W, Gila and Salt River

Meridian, and Section 3 in T26N, R15W, GSRM, are held in trust by the federal government for the benefit of the Hualapai Tribe. This land was originally transferred by the Atchison, Topeka and Santa Fe Railroad in exchange for land within the Hualapai Reservation (Peach Springs Station). The case was adjudicated in the Arizona District of Federal Court in 1967 to quiet the title to the land.

**c. Interest from NextEra in developing a solar farm adjoining Clay Springs** Mr. Davidson briefly reviewed the updated Confidentiality Agreement signed between tribe and NextEra Energy Resources. This is an update of the Confidentiality Agreement signed in 2012 which had expired. The renewal will allow NextEra to continue their relationship with the tribe in pursuing the development of a utility-scale solar farm on the Hualapai Reservation. Mr. Vaughn noted that this may be more of a theoretical pursuit on the part of the Planning Department given that a final site has not been selected nor a buyer for the electricity identified. Mr. Davidson said he is hopeful that the negotiations with APS on the renewal of 500 KV power line right-of-way and the upcoming grant-funded training (see above) will help make this ambitious project less theoretical.

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

The next meeting will be held on August 27, 2015, starting at 11:30 AM at the Hualapai Cultural Resources Department.

**8) Adjourned at 11:40 AM**

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

August 27, 2015, 11:38 AM to 12:58 PM, Hualapai Cultural Resources Department

### **Board members:**

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – absent

Joe Montana, Secretary – present

Steve Malin, Treasurer – present

Jamie Navenma – present

### **Support personnel:**

Kevin Davidson, Planning Director

Patrick Black, Fennemore-Craig, P.C. (via telephone)

### **Guests:**

Barbara Tinhorn

Vivian Sue Parker

Drake Havatone

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

### **2) Roll Call**

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

Mr. Vaughn noted that the minutes should be revised to accurately reflect Mr. Malin's concerns on the current tourist volumes exceeding the growth projections shown in the new Grand Canyon West Master Plan. Mr. Navenma made a motion to approve the August 6, 2015, minutes with the supplemental explanation asked for by Mr. Vaughn. Motion seconded by Mr. Malin. Motion carried 4-0.

### **4) Pilot presentation to Elders regarding proposed amendment to the Hualapai Constitution**

Prior to the start of the formal presentation, Mr. Black began with an overview the HTUA and its

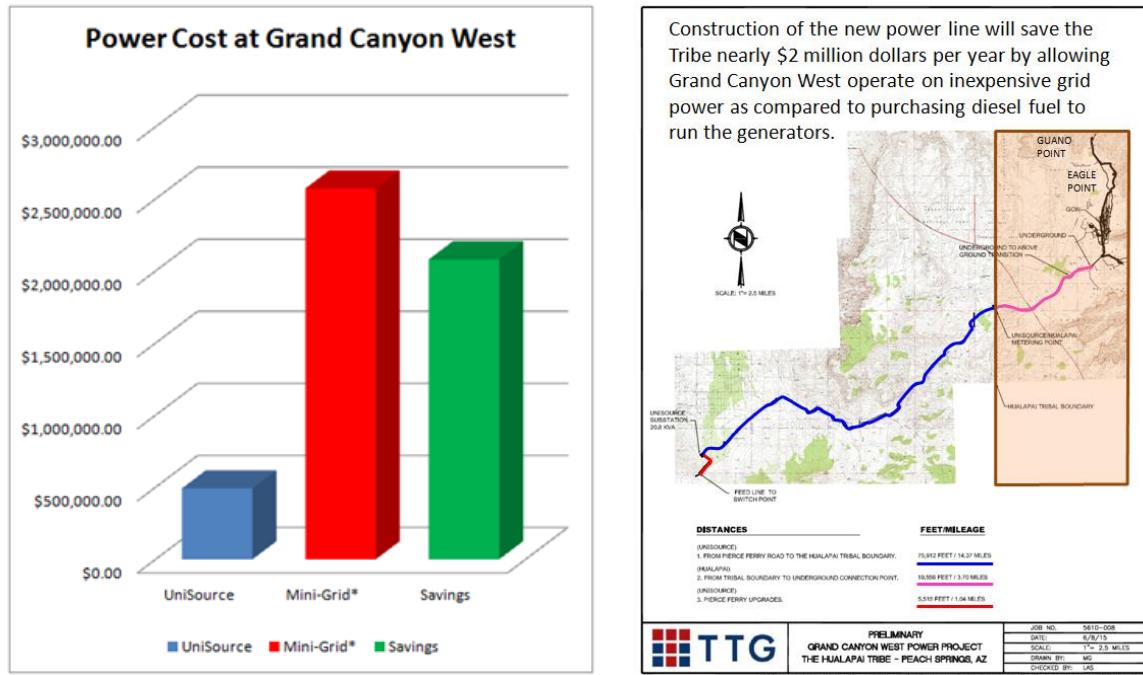
creation in September of 2014 by the Hualapai Tribal Council with its mission to develop utilities important to the economic development of the Hualapai Tribe. Bringing electric power to Grand Canyon West via a new power line that will connect the West Rim to the UniSource utility grid located some 20 miles away, outside of the reservation, is the first task of the HTUA. The HTUA would own the utility assets such as power poles, wires, transformers, and sub-stations, but not the reservation land on which these items are placed. Mr. Vaughn asked if the HTUA could purchase land for its own use. Mr. Black said that it could but that this land would be outside of the reservation boundary. 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. Vaughn reviewed Article V, Section (n) of the Hualapai Constitution which limits land leases to \$50,000 and no more than 1,000 acres without approval of the Hualapai voters in a special election. This provision, as well as the constitution's limitation on liabilities not to exceed \$250,000 without approval of at least 30% of the eligible voters in a special election (Article XVI.2), places a severe limitation on the tribe's growth potential. The proposed amendment to Article XVI would allow for a limited waiver of sovereign immunity that tribal council could grant to economic development such as the HTUA to take on debt in excess of \$250,000 to build infrastructure, namely a power line to Grand Canyon West. Ms. Tinhorn, the first to arrive at the meeting, asked that the voting public be properly noticed about the Council's actions, such as approving a resolution to allow the BIA/Department of Interior to begin the constitutional amendment process. Mr. Davidson said that the Council publishes their agendas and that every resolution is subject to referendum per Article XIII of the Constitution. With the arrival of Ms. Parker and Mr. Havatone, Mr. Davidson began the formal presentation as follows:

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 is \$15 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 (see below).

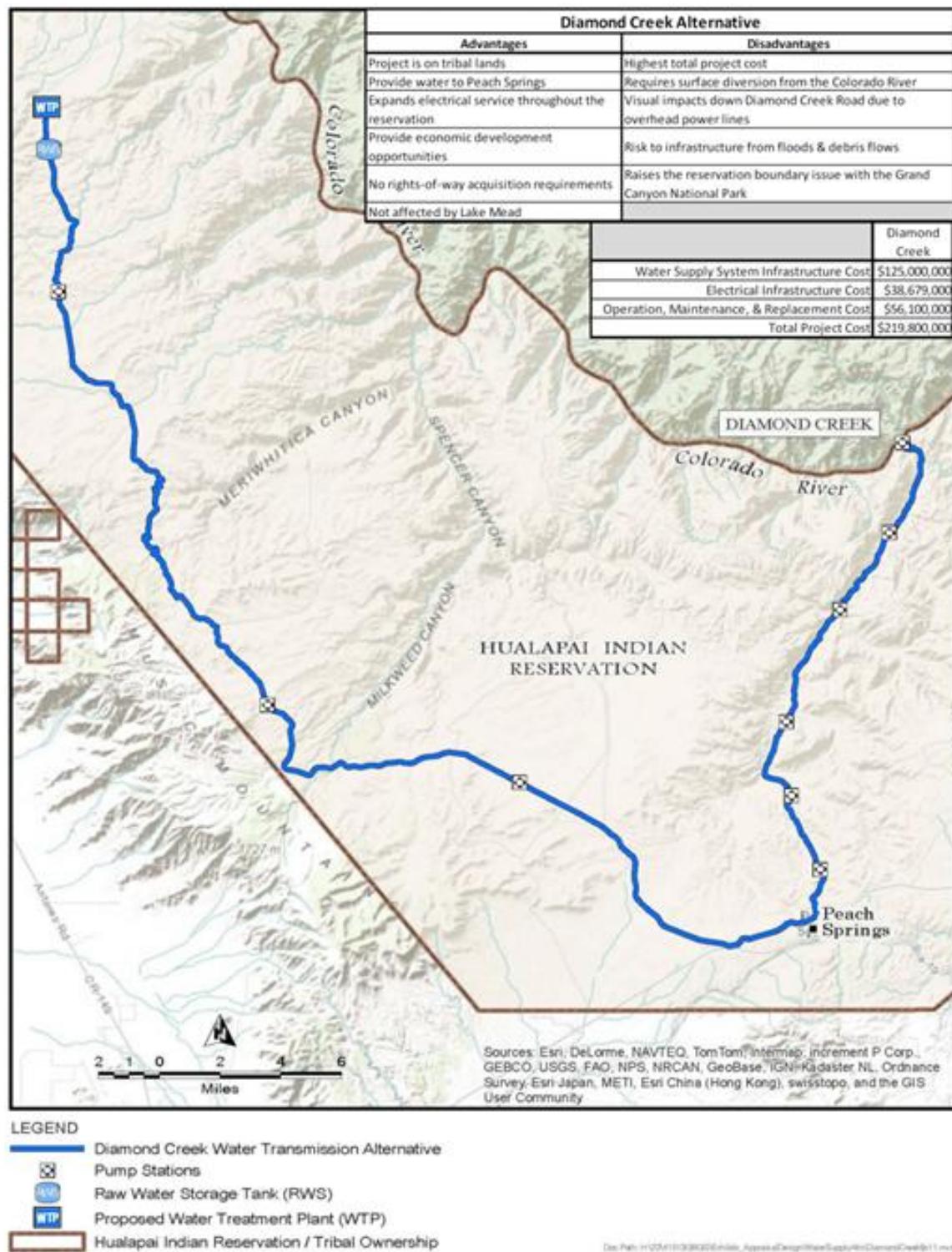


**Objective 2: Acquire Mohave Electric Cooperative's power lines on the Reservation** - Like many other tribes with a utility authority, future events may enable the HTUA to purchase the present undependable electrical service and deliver more reliable service to the tribe. The existing electric service 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

**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

below). Moving the water requires the building of pumping stations and power lines along Diamond Creek Road and Buck and Doe Road.



Doc Path: H:\QDR\10308026\mike\_Approval\Design\Water\Assess\WTR\DiamondCreekAlt.mxd  
Date Saved: 4/26/2014 10:12:45 AM

**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 tribe that provides for the wellbeing of the tribe, it is necessary to amend the constitution to provide 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 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 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.

**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 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 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.



Morongo Band of Mission Indians built their casino (see photo) after approving a waiver of sovereign immunity.

**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. Present Resolution to Council for approval.
2. Tribe sends Resolution to Department of Interior for 90-day review.
3. Decision by Department of Interior to initiate Constitutional Amendment process.
4. Department of Interior will hold vote on Amendment within 150 days of initiation.
  - a. Department of Interior will register Hualapai voters.
  - b. 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 to the HTUA Board. Ms. Tinhorn asked about the BIA/Department of Interior registration and voting process. Mr. Black said he would follow-up with Mr. Williams at the BIA's Truxton Cañon Agency. Ms. Parker said she appreciated the HTUA's efforts to make the public presentation and

also noted the need to bring the Colorado River water to the tribe for its use. Mr. Havatone did not have any comments.

**5) Other Matters** Mr. Davidson will set up training sessions for the Board members with Kanim Associates and Stinson Leonard Street for October.

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

The next meeting will be held on September 24, 2015, starting at 9:00 AM at the Hualapai Cultural Resources Department. Mr. Davidson also reminded the Board members to bring their ranking sheets for the three firms bidding on the HTUA website design to the meeting.

**7) Adjourned at 12:58 PM**

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

September 24, 2015, 9:12 AM to 11:34 AM, Hualapai Cultural Resources Department

### **Board members:**

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – present

Joe Montana, Secretary – present

Steve Malin, Treasurer – present at 11:30 AM

Jamie Navenma – present at 10:15 AM

### **Support personnel:**

Kevin Davidson, Planning Director

Patrick Black, Fennemore-Craig, P.C. (via telephone)

### **Guests:**

Thomas Grover

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

### **2) Roll Call**

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

Mr. Vaughn noted that minor typographical errors need to be corrected in the minutes. Mr. Montana made a motion to approve the August 27, 2015, minutes with minor corrections. Motion seconded by Mr. Vaughn. Motion carried 3-0-2.

### **4) Project Updates**

- a. **BIA transfer of a portion of Diamond Bar Road to Mohave County.** Mr. Davidson said that the Hualapai Tribe's engineer, Mr. Wisely, P.E., is working with a consulting engineer on the drainage design to show that the new roadway's design and construction does not adversely impact

downstream properties. The Mohave County Public Works Department's engineer is also reviewing the roadway geometry and guardrail placement to determine the proper speed limits. When both of these engineering studies are complete, the roadway should be ready for transfer to Mohave County for maintenance. Mr. Vaughn asked if the Hualapai Tribe has a sufficient level of engineering knowledge to sign off on their part of the engineering exercise. Does the engineering analysis include more than just the impacts to the private properties downstream? Mr. Vaughn also said Mohave County should set the speed limit and other signage standards for the roadway. Mr. Majenty said the operations of Grand Canyon Ranch (Mr. Turner) may be impacted by the flooding. Mr. Majenty also asked if the time line for the road's engineering analysis and acceptance by Mohave County coincides with the anticipated Special Election process. Mr. Davidson estimated these engineering studies will take three to four months to complete. The time line for the special election provided Council acts in October to send the request to the BIA, would be up to seven months or sometime in early spring of 2016 before the election is held. Mr. Majenty asked if the proposed zip line by Grand Canyon Ranch crosses Diamond Bar Road. Mr. Davidson said he has not been informed of a site plan being submitted to Mohave County but will check and also ask about any policy Mohave County Public Works may have for zip lines crossing public roadways.

**b. Arizona Power Authority Post-2017 Hoover power allocation contracting.** Mr. Davidson reviewed the three Arizona Power Authority (APA) policies for the allocation of Hoover power as follows: 1) Bill Crediting Arrangements (Resolution No. 15-17) allows an allottee of Hoover power who cannot take the power directly the ability to have their load serving entity (utility company) provide a reduced electric bill based upon the lower cost of Hoover power. The arrangement must be approved by the APA and the allottee is still responsible for making monthly payments for Hoover power to the APA. 2) Collection and Distribution of Repayable Advances (Resolution No. 15-18) requires that new allottees repay their proportional share, based on their power allocation, cost incurred by other power contracts paid to Western Area Power Administration prior to October 1, 2017, for capital improvements made to the Hoover Dam facility. The Hualapai Tribe is a new allottee and subject to this charge. These repayable advances will be paid through the power sales contract that APA has with each allottee. The payments will start on October 1, 2017, and may extend for five years. The estimated amount Hualapai will be pay is \$7,227 or \$120.48 over 60 months. 3) Transmission Service for the Post-2017 Period (Resolution No. 15-19) provides for the elimination of duplicate purchase of transmission rights on one or more transmission paths between

Hoover and the allottee's load. Those customers not requiring the APA to procure or coordinate transmission will not be charged. This would be the case for Hualapai. The APA will assist customers in obtaining transmission rights and deliver power to the Parker-Davis system. Mr. Davidson added that the APA has not adopted a benefit arrangement policy, so on September 15, 2015, he presented this request on behalf the HTUA to the APA. The benefit arrangement would be structured akin to the benefit arrangement the tribe has with the Navajo Tribal Utility Authority and allow for the partnering utility to send the Hualapai a check each month vs. lowering the utility bills of multiple tribal accounts. Mr. Vaughn asked how the Aha Macav receives power. Mr. Davidson said the Aha Macav took over MEC's service area several years ago. Mr. Black noted that condemnation of a service provider's existing utility system would be the last resort. Such action by the tribe may send the wrong signal to investors looking to do business with the tribe. Acquiring the MEC infrastructure is a long-term goal. Mr. Vaughn asked what type of training and capacity should the HTUA staff and field crews have to operate a fully functional electrical utility. Mr. Majenty asked Mr. Davidson to investigate the costs of operating the HTUA as a fully functional electrical utility. Mr. Montana concluded the discussion by asking if the HTUA could develop its own generation capabilities.

**c. Meeting with Arizona Public Service (APS) negotiation team on September 15th regarding 500 KV power line.** Mr. Vaughn reported that the APS negotiation team told the Hualapai negotiation team that the tribe's opening offer was too high. The Hualapai negotiation team based their multi-million dollar offer on relevant Navajo and Hopi right-of-way lease comparables whose value was estimated by the tribe's energy consultant. APS reported that the compensation paid to Hopi and Navajo was overestimated by the tribe by a factor of three to four times so the Hualapai offer to APS was much greater than what APS had expected. Mr. Vaughn also noted APS' potential option to remove the 500 KV line from the Hualapai Reservation and re-build it around the reservation's southern boundary. This demolition and reconstruction is estimated to cost some \$182 million to APS and is most likely a bluff on their part to see how Hualapai would react. Mr. Vaughn did note that if the 120 towers were taken down, the concrete foundations would make fine rip-rap to stabilize several wash banks and the like.

**d. USDA, Rural Utility Service, High Energy Cost Grant to build power line along Diamond Bar Road.** Mr. Davidson reviewed the USDA grant award to build a portion of the 20.8 KV power line

proposed along Diamond Bar Road to serve Grand Canyon West. The \$1,881,130 grant represents approximately 16 percent of the electrical load at Grand Canyon West that is dedicated to serving the residential units (employee housing). The 2014 grant application only allowed funding to serve residential loads; however, the grant can be used to fund the residential part of a larger energy development which serves a commercial/industrial development as well. The remaining 84% of the project costs will be made up by the tribe either through a loan or cash or a combination of both. Mr. Romano, the tribe's Washington DC lobbyist and former long-time employee of the USDA, opined that this government agency typically has a long-response time in issuing the grant agreement which will "start the clock" on grant expenditures. Once the grant agreement is signed, the USDA will usually expect some progress within the first 12 – 18 months, such as a loan application or other funding commitment to cover the remaining 84% of the power line's cost.

Mr. Majenty asked if the tribe could upgrade the power line from 20.8 KV to 69 KV to carry electricity. Mr. Romano noted that the grant application referenced the 20.8 KV line a dozen times and to change to a 69 KV line may raise some "eyebrows" at USDA. Mr. Davidson said the 20.8 KV line's carrying capacity may not be the factor limiting growth at Grand Canyon West. If the tribe cannot bring Colorado River water to the reservation, then Grand Canyon West's growth will be limited by the water supply from West Water well field. However, if the Colorado River diversion point is located on a side canyon (Tanyika) at Grand Canyon West, then more power will be required at Grand Canyon West to pump the water up 4,000 feet from the river to the plateau. Mr. Majenty noted that Walker Service Electric, an electrical contractor from Kingman, estimated the current generator set could supply just enough electricity for a 250-room resort hotel.

Mr. Vaughn asked if the tribe could implement only the residential part of the grant. Mr. Davidson replied that the grant was written in such way that it will be matched with the loan (or cash) to build the entire power line as one project. The USDA does not want to construct a partial project which may never be completed. However, some of the grant money may be released for engineering design purposes with the approval of USDA's field agent, Mr. Larry McGraw. The Board noted it would like to play an active role in future grant applications.

**e. Public presentation regarding proposed amendment to the Hualapai Constitution on September 29, 2015 at Tribal Gym.**

- i. **Presentation Materials** Mr. Davidson reviewed the Fact Sheet, Power Line Map and PowerPoint slides. The first two items will be hand-outs given to the attendees. In response to a community member's inquiry as to why was the HTUA not formed as a separate corporation, akin to Grand Canyon Resort Corporation, Mr. Black said the Council's desire was to have more control over the HTUA's operations. Mr. Vaughn advised that the presentation include the Council's economic development goals and how the HTUA's activities will help make these goals become a reality. Mr. Majenty said the presentation should list the short and mid-term development goals shown in the new Grand Canyon West master plan. Mr. Vaughn added that a significant number of tribal members live in the Phoenix metro area and that holding a meeting in Phoenix, possibly at the offices of the Inter-Tribal Council of Arizona, would be appropriate. The HTUA Board should obtain Council approval prior to setting up the meeting.
- ii. **Presenters** Mr. Davidson recommended that as many Board members as possible be present at the public presentation. Mr. Majenty said he will be conducting four meetings with tribal members who work for Grand Canyon Resort Corporation at Grand Canyon West on October 1<sup>st</sup> between 9:00 AM and 5:00 PM.
- iii. **Hospitality Management** Mr. Davidson said he will be ordering dinner and desert on behalf of the HTUA. Dinner will begin serving at 5:30 PM prior to the start of the 6:00 PM presentation.
- iv. **Resolution to Council** Mr. Davidson reviewed the draft resolution. Council is scheduled to consider the resolution at its regular meeting on October 1, 2015. Mr. Davidson suggested Mr. Black also attend the Council meeting to answer technical questions.

Having arrived at the conclusion of the discussion, Mr. Grover asked about the proposed language of the limited waiver to be added to the Constitution and the amendment process with the Secretary of the Interior. Mr. Vaughn reviewed the language of proposed Article XVI.3 and why it was needed to transcend the \$250,000 debt limit set in Article XVI.2. Mr. Grover emphasized the need to keep the explanation in layman's terms so as not to confuse the voters.

## 5) BIA/Tribal Energy Development Capacity Building Training (Planning)

- a. **Purchase Power Agreement training schedule for October.** Mr. Davidson said that Stinson Leonard Street can offer their training session for the Board members either October 19<sup>th</sup> or 20<sup>th</sup>.

Mr. Majenty said that he and Mr. Malin will be at a GCRC Board meeting on these two days, but that the Board may proceed with the training.

**b. HTUA training schedule for October.** Mr. Davidson will set up the training session for the Board members with Kanim Associates for October 26th since all Board members should be able to attend at this time.

**6) Other Matters**

**a. Review of bids on RFP to create the HTUA web site.** Mr. Davidson presented the bids received from CivicPlus, Tinhorn Consulting and Anchor Wave. The bid by CivicPlus is somewhat higher than those from Tinhorn Consulting and Anchor Wave partly because they will include the cost of hosting the site whereas the other two vendors require the HTUA to pay for a third-party host. Mr. Vaughn asked how much will the hosting service cost. Mr. Davidson said the fees should be a few hundred dollars per year based upon his discussion with the tribe's Information Technology staff. Mr. Vaughn directed the HTUA Board members to send their ranking sheets to Mr. Davidson by September 28<sup>th</sup> so he can rank them and make a recommendation to Council on October 1<sup>st</sup>. Mr. Davidson noted that the HTUA budget had only set aside \$2,250 for web development and recommended that this dollar amount be increased to cover all bids, including CivicPlus' bid of \$12,992. Mr. Majenty made a motion to transfer \$15,000 from the HTUA's Consultant budget (Labor line item of \$36,000) to the Public Outreach budget (Web Site line item of \$2,250). Mr. Montana seconded the motion. Motion passed 4-0-1.

**b. Clean Power Plan and implications for renewable energy development in Arizona** Mr. Davidson gave a brief review of the Clean Power Plan's (CPP) impact on electrical power generation in Arizona. The EPA has established the CPP to set carbon reduction goals in pounds of carbon dioxide emitted per mega-watt hour of power produced in each state by 2030. For Arizona, the goal is reduce from 1,552 lbs per MWhr to 1,031 pounds per MWhr by 2030, with interim step reductions through 2029. Mr. Davidson said this 34% reduction in carbon output, mostly achieved by replacing coal generation with natural gas and renewable (wind and solar) sources, will likely increase the cost of electricity in the state, especially for the electrical distribution cooperatives (MEC, etc.) who purchase about three-fourths of their power from coal generation owned by the

Arizona Electric Power Cooperative (AEPCO) that operates the Apache Generating Station in Cochise County.

**c. Request for meeting with Bureau of Reclamation on NREL II/Navajo Generating Station, Post-2019** The HTUA Board directed Mr. Davidson to invite Mr. Black and Ms. Thayer to a future Board meeting.

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

The next meeting will be held on October 29, 2015, starting at 9:00 AM at the Hualapai Cultural Resources Department.

**8) Adjourned at 11:34 AM**

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

October 29, 2015, 9:20 AM to 12:27 PM, Hualapai Cultural Resources Department

### **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

Patrick Black, Fennemore-Craig, P.C. (via telephone)

### **Guests:**

Melvin Hunter Jr., Bureau of Indian Affairs, Truxton Canon Agency

Richard Campos, Mohave Electric Cooperative

John Williams, Mohave Electric Cooperative

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

### **2) Roll Call**

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

Mr. Montana made a motion to approve the September 24, 2015, minutes with minor corrections.

Motion seconded by Mr. Vaughn. Motion carried 3-0-2.

### **4) Project Updates**

a. **APS negotiations on 500 KV power line, if available** Mr. Davidson said that APS has yet to respond to the tribe's request for a written proposal. The proposal should be delivered in the next few weeks, according to Ken Miller of APS.

b. **Follow-up on Amendment to Hualapai Constitution**

- i. **Public presentation held on September 29, 2015 at Tribal Gym** Mr. Davidson reviewed the material presented at the public meeting including the Fact Sheet, Power Line Map and PowerPoint slides. Approximately 50 tribal members attended the public meeting with opinion on the amendment being split roughly 50/50. Mr. Vaughn asked that the HTUA members proof read amendment materials and other information placed on the tribe's website during the development of the HTUA's website.
- ii. **Council meeting on October 1<sup>st</sup>** Mr. Davidson reported that the Council resolution requesting the Secretarial special election process, approved in an 8-0 vote by Council, was transited to the BIA on October 8<sup>th</sup>.
- iii. **Transmittal of amendment and special election request to BIA** Mr. Hunter, who will be organizing the Secretarial election, noted that the tribe's request has been forwarded to the BIA's regional office for review. There is no time limit to review the request, but a determination should be timely. Once a positive determination is made, the BIA has 150 days to register voters and hold the election per 25 CFR, part 81. Mr. Hunter will work with Ms. Mahone from the Tribe's Enrollment Department to generate an up-to-date list of eligible voters who will be 18 years of age on the date of the election. In the case of excessive "return to sender" mailings due to incorrect names and addresses, additional public outreach should be performed. Mr. Vaughn recommended that Mr. Davidson also work with Ms. Mahone on assembling the list of eligible voters. Mr. Hunter stressed the need of the HTUA to educate the voters in advance of the election on the specifics of the ballot measure. The 2014 effort to amend the Constitution largely failed due to lack of voter education by the tribe. Mr. Hunter will send a detailed schedule of the election process to Mr. Davidson for review and for discussion at a future special meeting with the HTUA Board.
- iv. **Potential public meeting in Phoenix at ITCA** Mr. Davidson said a public meeting in Phoenix, at the offices of the Inter-Tribal Council of Arizona, would be a logical venue given that

approximately 100 tribal members live in the Phoenix metro area. This meeting may be set up for December.

v. **Additional Public Outreach** Mr. Black reminded the HTUA that the Council expects additional public meetings if the amendment fails, then the HTUA may be dissolved since the \$250,000 Constitutional debt limit would preclude it from entering into contracts more than that amount. Mr. Vaughn added that failure of the amendment would also severely hamper, if not stop, other economic development activities of the tribe.

c. **Western Area Power Authority Post-2017 Hoover power allocation and contracting.** Mr. Davidson briefly reviewed the 10-page contractor's comment letter on Western's contracting process. This letter is a product of no less than 25 active contractor participants. Major issues discussed are 1) Western's use of BCP power because it appears Western has allocated all of Hoover's capacity to the contractors and has retained none for its own operations, 2) voting of contractors on Westerns operations, which appears to be purely advisory in nature, and 3) definitions of force majeure which may include low lake levels due to drought.

d. **Arizona Power Authority Post-2017 Hoover power allocation contracting.** Mr. Black reviewed the meeting he and Mr. Davidson had with Robert Johnson and John Underhill of APA on getting the tribe's 100 KW allocation to the reservation: The APA is open to a Bill Crediting Arrangement (Resolution No. 15-17) which allows an allottee of Hoover power who cannot take the power directly the ability to have their load serving entity (utility company) provide a reduced electric bill based upon the lower cost of Hoover power. The arrangement must be approved by the APA and the allottee is still responsible for making monthly payments for Hoover power to the APA. When asked about developing a special benefit arrangement with a third-party utility, akin to the Hualapai agreement with NTUA, the APA was less enthusiastic given the potential of the power to be sold for a profit by the third-party utility and a potential negative reaction of other APA contractors who will see this as a special advantage given to Hualapai and no other contractors. Also, the temporary nature of the benefit arrangement may also be an obstacle because these are long-term contracts. Hopefully, Hualapai will have its power line built to Grand Canyon West in the next few years so it can take the power directly.

e. **Mohave Electric Cooperative's service on Hualapai Reservation**

Mr. Campos and Mr. Williams of MEC thanked the HTUA for inviting them to the meeting. Mr. Vaughn asked what plans MEC has to improve electric service to the Hualapai Tribe and if other communities served by MEC have similar issues with service reliability. Mr. Campos said the recent power outage on October 13th could be directly attributed to storm damage. The outage on October 25<sup>th</sup> was a planned outage due to repair work by APS at its Round Valley Substation. The Round Valley substation transmits power northward to the Nelson 69 KV Substation, via a radial line, where it is then distributed to Peach Springs, the 70-mile power line along Route 18 and the lime plant operated by Lhoist, Inc. The western part of the Reservation, including the Music Mountain School and the Buck and Doe housing developments, is supplied power from the Hualapai Substation located near the Kingman Airport. To increase electric service reliability at the Nelson Substation, Mr. Campos said a second transformer is planned for the Round Valley Substation. However, this will not solve future failures on the radial line. There is an “open switch” between the Hualapai and Nelson Substations which is designed to keep at least half of the community with power in the event one substation fails. Mr. Campos continued by saying that MEC is upgrading its power line between Valle Vista and Hackberry Road (11.5 miles). These improvements should benefit service reliability on the reservation. These improvements will allow the two substations to serve each of the two service loads, as described above, if needed. In conclusion, Mr. Campos said new switches, animal guards, lightning arrestors, and fault relays at the Nelson Substation will help determine the exact location of future outages, hence decreasing the repair time.

Mr. Williams said the power lines were sized by MEC in the 1950s. Population and electric load growth has increased considerably over the past half century. With existing loads, the Hualapai and Nelson substation systems are sized appropriately but nearing reliability limits in this area. Instead of just upgrading the circuits between Valle Vista and Hackberry to meet normal forecasted load increases, MEC has elected to improve the reliability of both circuits and provide a stronger tie between these substations for the purpose mentioned previously. Mr. Vaughn noted that the lime plant, under the ownership of Chemstar, had diesel generators in the 1970s to supply its start up power needs and then it would draw from the Nelson Substation. Mr. Vaughn asked why MEC did not start these improvements on the Peach Springs end of the power line? Mr. Campos replied that utility companies start on the service side of their line rather than at the end. This approach allows

for the proper sizing of the circuit and does not leave smaller conductors in the middle that could act like a fuse.

Mr. Campos reviewed MEC's energy portfolio. The portfolio is a mix of coal (61%), hydro (5%), natural gas (31%) and renewables, such as wind and solar (3%). Most utility companies create an energy budget for peak load year to year vs. month by month. This allows the utility company to have power available to meet Arizona Corporation Commission (ACC) and Federal Energy Regulatory Commission (FERC) reliability requirements. Mr. Vaughn asked if the increase in solar energy in a utility company's portfolio is the result of legislative mandates. Mr. Campos said that MEC is working on a new 10 MW solar array and hopes to have it on line by 2018. This solar site will be in the South Mohave Valley a short distance from the new 5 MW solar array that has recently come on line. Mr. Malin asked if MEC has any additional plans for solar development. Mr. Davidson asked if MEC was on track to meet the ACC's Renewable Energy Standard and Tariff Rules of having 15% of its energy come from renewable sources by 2025. Mr. Williams said electric cooperatives such as MEC are not subject to the same percentage requirements for renewable energy production as investor-owned electric utilities such as APS and Unisource Electric. MEC's future plans, as illustrated in a hand-out provided by MEC, are to have up to eight percent of their energy derived from solar. Given that, Mr. Davidson asked if MEC would be interested in helping the tribe develop a 5 MW solar array on the reservation. The tribe may use New Market Tax Credits and also be eligible for a dollar per dollar matching grant from the Department of Energy to build the solar array provided that most of the load being served by the array is located on the Hualapai Reservation. With the tribe having access to these two forms of financing, the solar array should be less costly to develop than on similarly situated private land where these sources of funding are not available. Mr. Williams said that MEC is open to reviewing all solar proposals within its service area. The proposal may be addressed to Mr. J. Tyler Carlson, CEO of MEC.

Mr. Vaughn asked about the need for Hualapai representation on the MEC board and the election procedure. Mr. Campos referred to Ms. Gillman as MEC's main office contact for board election information. Board members are elected by members of the Cooperative. [Candidates must give notice of intent to run for a Board position in January. The election is held in June.](#) MEC has three districts, two along the Colorado River and the third covering Valle Vista, Hackberry, Valentine, Truxton, Peach Springs, Blake Ranch, Wikieup and parts in between.

Mr. Vaughn asked from what source does MEC purchase its coal power. Mr. Campos replied that MEC purchases its coal power from the Arizona Electric Power Cooperative (AEPCO). AEPCO also sells other sources of power such as natural gas. Solar is still the most expensive source of electric power at approximately 5 cents per KWhr; however, larger utility scale solar power plants can reduce this price to 4 cents per KWhr. By comparison, coal is at 2.5 to 3.5 cents per KWhr to purchase. Coal is a more cost stable and reliable source of power whereas natural gas prices are subject to seasonal fluctuations and hydro power may also be a variable resource given drought and environmental constraints placed on the Bureau of Reclamation's operations. Mr. Campos noted that the peak production for solar, typically high noon, is not aligned to consumer demand which occurs largely after 4:00 PM. Until energy storage technology becomes mature, solar cannot meet peak demand. Mr. Vaughn asked about converting a solar modules DC output to MEC's distribution voltage of 24.9 KV AC. Mr. Williams said the voltage is converted from DC to AC through an inverter and is then stepped via a transformer. It is less costly to step up to 24.9 KV vs. 69 KV line voltages.

In moving forward, Mr. Vaughn asked how best should MEC and the tribe handle the notification to the public of future power outages. Mr. Campos replied that MEC has a set customer telephone numbers which are called automatically; however, over three fourths of these telephone numbers are either disconnected or wrong. In the past, MEC has mailed out postcards to rate payers asking each to update their contact information. To help get the word out on the reservation, Mr. Vaughn said the HTUA can add this information to its public outreach effort. Mr. Davidson asked Mr. Campos for a copy of the post card which he can publish in the Gamyu. Mr. Williams added that automatic telephone calling during a power outage is part of the Smart Grid; information received from callers helps identify the type and location of the outage. To date, MEC has spent approximately \$12 million on creating a Smart Grid, about half of this funding has come from grants. Wide spread outages can be detected with the Smart Grid and telephone calls reporting the power outage can be used to further determine the location of the power failure.

Mr. Davidson asked how many miles of distribution line are within the MEC's CC&N within the reservation. Mr. Williams estimated some 60 miles. Given that, Mr. Davidson estimated the cost of power, if measured by the mile, would be more costly on the reservation than elsewhere with MEC's service territory. In 2014, the tribal customers paid about \$900,000 in electric bills, or

approximately \$15,000 per mile of distribution line. MEC's 2014 annual report indicates that the electric cost per mile of distribution for their entire service area is over \$50,000. Given this cost difference per mile, the HTUA would have to be run very economically to keep rates the same as those currently paid by MEC's customers.

Mr. Vaughn asked if Hualapai members could be trained as linemen. Mr. Campos said the MEC apprenticeship program requires four years with 144 hours of instruction per year. Mr. Campos added that a pre-apprenticeship program, taking only four months, may be had for about \$10,000 per student, with grant funding being an optional way to pay for the course. The course work includes electrical theory, mathematics, understanding the National Electric Code and OSHA requirements, and computer technology for the Smart Grid. Mr. Vaughn asked about the need for mathematics. Mr. Campos noted that on occasion linemen have to adjust measurements in the field, so math skills are essential to make sure things are installed correctly. Mr. Williams suggested that line construction workers, not linemen per se, may be a better option for trainees. Mr. Campos stated apprenticeship program attendees have a 75% dropout rate on average. Mr. Vaughn asked what the starting pay is for linemen. Mr. Campos said between \$26.00 and \$29.00 phr. Apprentices earn about 70% of this amount. These pay rates are made possible by membership in the International Brotherhood of Electrical Workers (IBEW) union. Presently, MEC employs 12 linemen, three apprentices, three groundmen and seven other personnel to support field operations. To conclude, Mr. Williams noted that in all MEC has approximately 45,000 power poles on a 15 year inspection rotation so his field crew is always working on the system.

- 5) Review of HTUA 2015 Budget and Plans for 2016 (Planning)** Mr. Davidson reviewed the budget and noted that Fennemore Craig's last invoice has been deducted from the HTUA's budget per the Finance Director. Mr. Davidson will discuss this with Ms. Easter in Finance. This shift of payments away from GCRC may cause the HTUA to request additional funding in 2016. Mr. Vaughn requested that the FY 2016 Budget contain additional money for web development. Mr. Davidson suggested that at least \$15,000 be requested for linemen pre-apprenticeship school training. Mr. Montana stated anyone taking the tribally-funded training course sign a five-year commitment to work for the HTUA after graduation. Mr. Vaughn suggested that if the HTUA does not have any jobs available then the trainees may be released from this obligation.

In addition, Mr Davidson will request from ITCA a meeting date in December to hold a special outreach session for tribal members living in the Phoenix metro area. For the Thanksgiving dinner in Peach Springs, Mr. Davidson will place the essence of the PowerPoint presentation onto display boards for public view.

**6) BIA/Tribal Energy Development Capacity Building Training (Planning)**

- a. **Feed back on HTUA training by Kanim Associates** Mr. Davidson referenced the hand out materials presented by Kanim and Associates at their HTUA training earlier in the month. No comments.
- b. **Feed back on Purchase Power Agreement training by Stinson Leonard Street** Mr. Davidson referenced the hand out materials presented by Stinson Leonard Street at their HTUA training earlier in the month. No comments.

**7) Other Matters (Planning)**

- a. **HTUA website development** Mr. Montana and Mr. Davidson are working with AnchorWave on mock-up design for the HTUA's new website.
- b. **Preparation of Annual Report to Tribal Council per Section 110, HTUA Ordinance** Mr. Davidson will prepare a draft report for review at the next Board meeting
- c. **Tentative meeting with Bureau of Reclamation on NREL II/Navajo Generating Station on 11/30/15** Mr. Davidson asked the Board if they would like to hold their next regular meeting on November 30th to coincide with Ms. Thayer's and Mr. Black's trip to Peach Springs to discuss the NREL II plan. The Board was agreeable to this meeting date.

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

The next meeting will be held on November 30, 2015, starting at 9:00 AM at the Hualapai Cultural Resources Department.

**9)      Adjourned at 12:27 PM**

**Appendix B: Public Outreach for Amendment to Hualapai Constitution**

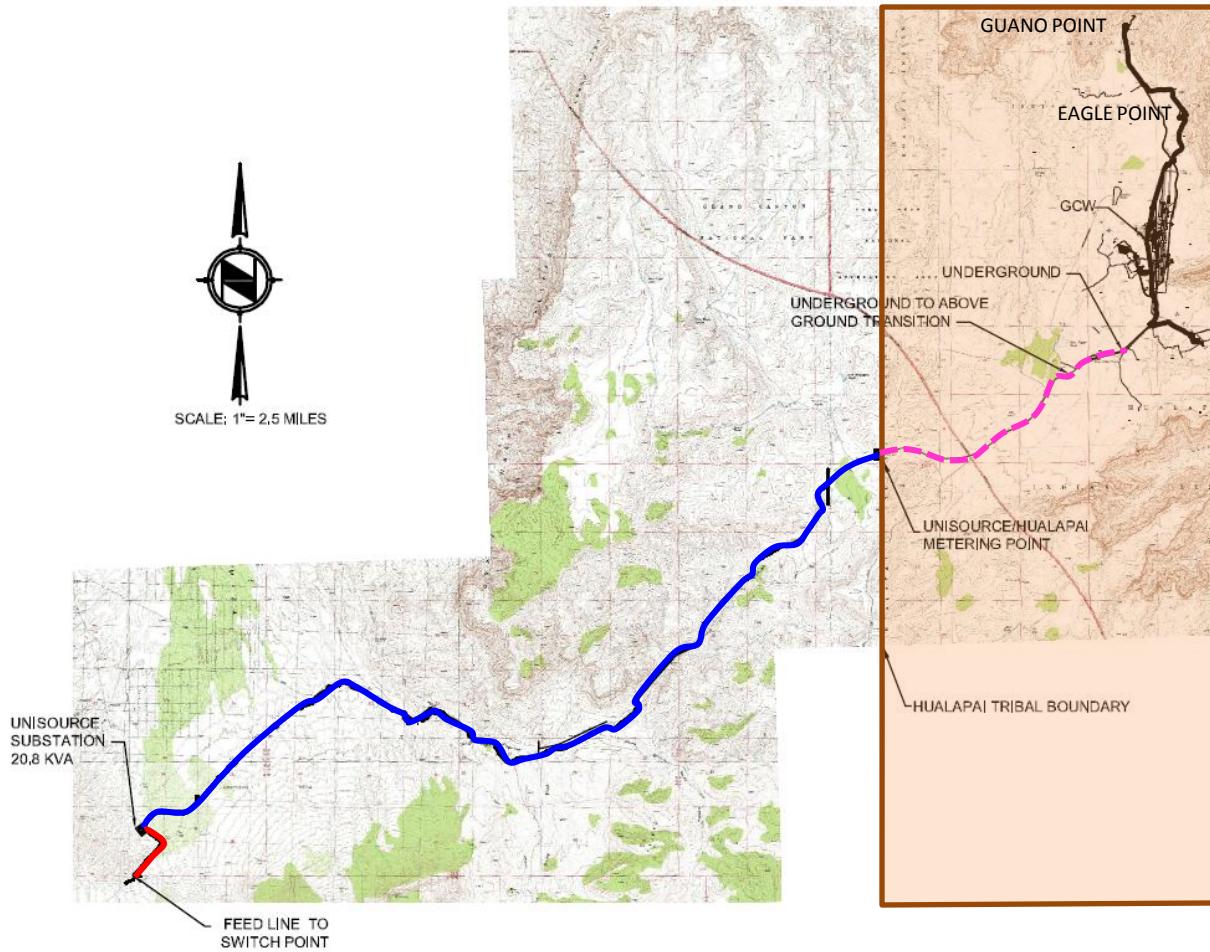
## **FACT SHEET FOR THE PROPOSED AMENDMENT TO THE CONSTITUTION OF THE HUALAPAI INDIAN TRIBE**

- 1. 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.**
- 2. 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.**
- 3. 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.**
- 4. 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.**
- 5. 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.**
- 6. 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.**
- 7. TO ATTRACT FUTURE ECONOMIC DEVELOPMENT TO THE TRIBE THAT PROVIDES FOR THE WELLBEING OF THE TRIBE, IT IS NECESSARY TO AMEND THE CONSTITUTION TO PROVIDE THE TRIBAL COUNCIL THE ABILITY TO ENSURE ECONOMIC DEVELOPMENT.**
- 8. 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.**
- 9. 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.**
- 10. 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 HTUA SUCH AS POWER LINES, SUBSTATIONS, GENERATORS AND OTHER FACILITIES IT MAY OWN AND OPERATE.**

**PREPARED BY: HUALAPAI TRIBAL UTILITY AUTHORITY, SEPTEMBER 24, 2015**

# Diamond Bar Road Power Line

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



## DISTANCES

(UNISOURCE)

1. FROM PIERCE FERRY ROAD TO THE HUALAPAI TRIBAL BOUNDARY.

(HUALAPAI)

2. FROM TRIBAL BOUNDARY TO UNDERGROUND CONNECTION POINT.

(UNISOURCE)

3. PIERCE FERRY UPGRADES.

## FEET/MILEAGE

75,912 FEET / 14.37 MILES

19,556 FEET / 3.70 MILES

5,515 FEET / 1.04 MILES



**TTG**

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

JOB NO.	5610-008
DATE:	6/8/15
SCALE:	1" = 2.5 MILES
DRAWN BY:	MG
CHECKED BY:	LAS

# **Proposed Amendment to the Hualapai Constitution**

Presented by:  
Hualapai Tribal Utility Authority  
September 29, 2015

# Presentation Outline

- Introduction to the Hualapai Tribal Utility Authority
- Objectives of the Hualapai Tribal Utility Authority
- Reason to amend the Hualapai Constitution
- Constitutional Amendment Process
- Conclusion

# **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**

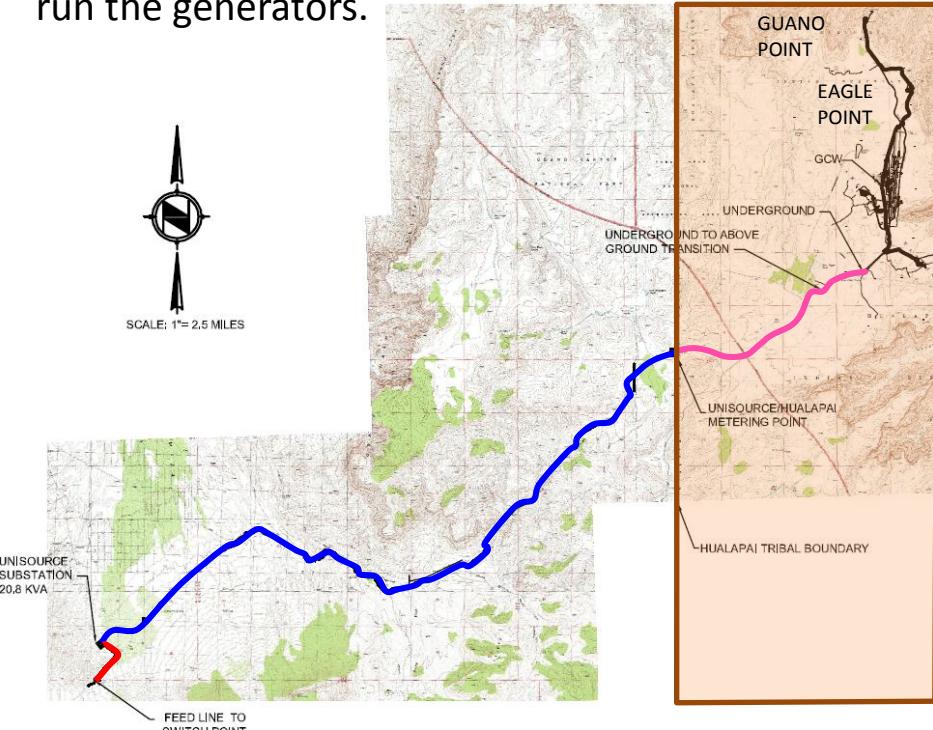
- Grand Canyon West, one of the economic engines of the tribe, would grow in profitability if connected to the regional electrical grid by a power line built along Diamond Bar Road.
- This would provide cheaper power to the tribe by line service rather than from diesel generation saving as much as \$2,000,000 in energy costs per year at present.
- As Grand Canyon West grows, so will energy savings.
- The expected cost of the power line along Diamond Bar Road is \$15 million.

# New Power Line to Serve Grand Canyon West

## Power Cost at Grand Canyon West



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

- (UNISOURCE)  
1. FROM PIERCE FERRY ROAD TO THE HUALAPAI TRIBAL BOUNDARY.  
(HUALAPAI)  
2. FROM TRIBAL BOUNDARY TO UNDERGROUND CONNECTION POINT.  
(UNISOURCE)  
3. PIERCE FERRY UPGRADES.

### FEET/MILEAGE

- 75,912 FEET / 14.37 MILES  
19,556 FEET / 3.70 MILES  
5,515 FEET / 1.04 MILES



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

JOB NO.	5610-008
DATE:	6/8/15
SCALE:	1" = 2.5 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.

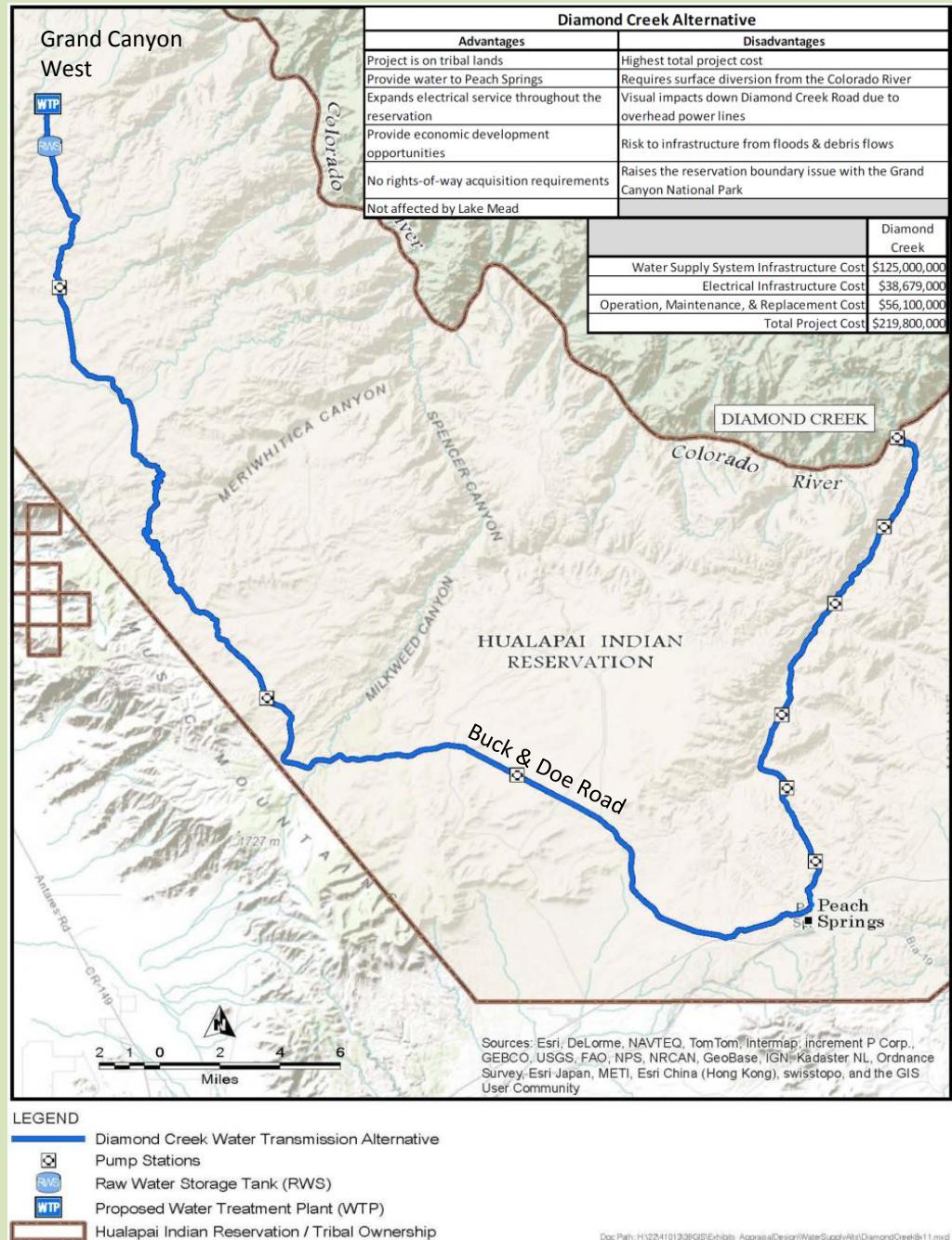
## **Objective 3: Self-determination**

## **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 GCW 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 amend the Constitution?

- 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.
- 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 amend the Constitution?

- To attract future economic development to the tribe that provides for the wellbeing of the tribe, it is necessary to amend the constitution to provide 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 to enter into contracts that would fund these developments.

# Why amend 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 600 KWs.

# Why amend 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 Amendment to the Constitution adding 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, waive 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 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.

# **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.
- Morongo Band of Mission Indians built their casino after approving a waiver of sovereign immunity.



# Constitutional Amendment Process

- Present Ordinance to Council for approval on 10/1.
- Tribe sends Ordinance to Department of Interior for 90-day review.
- Decision by Department of Interior to initiate Constitutional Amendment process.
- Department of Interior will hold vote on Amendment within 150 days of initiation.
  - Department of Interior will register Hualapai voters.
  - 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

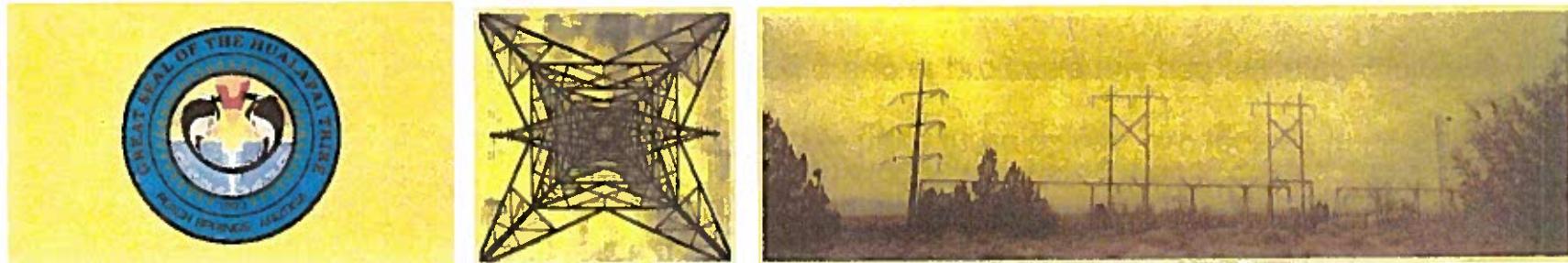
# Conclusion

- Questions, Comments and Advice to HTUA
- Future Public Meetings

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.

## **Appendix C: Board training presentations**



# TRIBAL UTILITIES & ENERGY

---

Charles R. Calica, Partner  
Kanim Associates, LLC

*Technical Affiliates at Baker Tilly Virchow Krause, LLP*



# About Kanim Associates, LLC

[www.kanimllc.com](http://www.kanimllc.com)

- **Profile:** Kanim Associates, LLC is a Native American, women, and Veteran owned professional consulting firm. We provide consulting services to many clients, including government agencies, tribal governments, tribal enterprises, non-profit organizations, and professional service firms.
- **Services:** Kanim Associates provides energy, utility, environmental, cultural resource, art, and education services. Our interdisciplinary services have been an asset to our clients' policy, business, program development, and technical initiatives.
- **Our Team:** The Kanim Associates, LLC team comprises a highly qualified group of professionals in the fields of Energy Policy, Natural Resource Management, Water Resources, Economic Development, Transmission, Energy Efficiency & Conservation, Tribal Cultural Knowledge, Cultural Competency, Government Services, Education, and Specialized Artistic Services.
  - Today, Kanim Associates, LLC has a dynamic team of Partners, Associates, and Allies to work on a wide variety of project types, ranging from environmental, to economic development, business services, public outreach, and more. We have three offices; two located in Oregon and one in Colorado.
  - Affiliates, Kanim Associates works with a strong group of professionals and affiliates, including our partners at Baker Tilly and Mr. Jim Yockey.



# Tribal Utilities & Energy

- Creating a tribal utility is an important element of tribal sovereignty.
- Creation of a utility can serve as a powerful mechanisms for a tribe to deal with surrounding utilities, federal and state agencies as well as its own community(ies).
- An electric utility can also be formed to serve other electricity related functions of a tribe.
- The functions of a tribal utility are generally within the discretion of tribal government and as such can be planned to grow over time or take on added responsibilities as certain goals are met.
- Decisions on tribal utility formation rely on the overall goals of a tribe and the chosen separation of governmental and utility business functions.



# Advancing Tribal Sovereignty

## *Tribal Utilities*

- Congratulations on Accomplishments!
  - Numerous major federal laws, including Title V of Energy Policy Act of 2005
  - Right of Way Negotiations and Policies
  - New tribal energy businesses and utilities
  - Tribal coalitions on specific topics
  - Renewable Energy/Energy Efficiency grants and projects
  - Transmission policy and operational changes
  - Strong NW Energy and Climate leadership



# Catalyzing Moment

- Climate change and environmental consequences.
- Grass roots and youth interest in self-sufficiency.
- Energy is big business and every business.
- Education and involvement is working!
- Strong leadership.
- Cost of renewable energy is competitive.
- Energy Efficiency is underappreciated!



# 10-Year Horizon

- Every Tribe will have at least one operating, successful Renewable Energy Project.
- We will change federal laws to truly encourage renewable energy projects and energy self-sufficiency on tribal lands.
- Tribal businesses will be models of energy efficiency with active efficiency teams.
- Every Tribe will have greater involvement in their utility services
  - Owning and providing electrical and other utility services.
  - Partnerships
  - Governance by
    - Regulation
    - Votes
    - Projects
    - Contracts
- Tribes will be a mainstream part of the energy industry with well publicized energy partnerships.



# Other features on the 10-Year Horizon

- Complicated financial models for funding projects will be used.
- Tribes will employ advanced accounting and metering tools to allow for net metering and aggregation of loads.
- Energy service success will lead to water services, telecom and data services, and energy business opportunities.
- We will crack the issue of poor housing in Indian Country through an energy partnership focus.
- Tribes will employ more technical professionals to guide these decisions at high salaries.
- Energy related education will be a new focus at tribal colleges and schools and in tribal longhouses.
- Federal energy funding may decrease but tribal energy income will increase due to tribal control and multiplication of service dollars staying on reservations.



# Preparation & Readiness

- Educate, educate, educate!
- Research your current energy and utility functions and the usages and costs. This is the first baseline of your opportunity.
- Find the smartest, most successful company or non-profit out there and become their partner with a plan for what the partnership can accomplish.
- Know and actively/constantly manage your risks.



- Develop our “wish list” of what we want- think big!
- Turn the “wish list” into policy change ideas.
- Present the policy change ideas to tribal and other coalitions and work collectively for change.



# **SOLAR ENERGY POWER PURCHASE AGREEMENTS: NEGOTIATING POINTS AND MORE**

**PREPARED FOR HUALAPAI TRIBE**

**BY**

**Stinson Leonard Street**

**(Initial Training Session: October 20, 2015)**

Guy C. Smith



**STINSON  
LEONARD  
STREET**



# **Solar PPAs: Introduction**

# Introduction

- Partner at SLS
- Co-Head of Renewable Energy and Energy Transactions Group
- Over 25 years experience working on complex energy and other infrastructure transactions

# Solar PPAs: Introduction

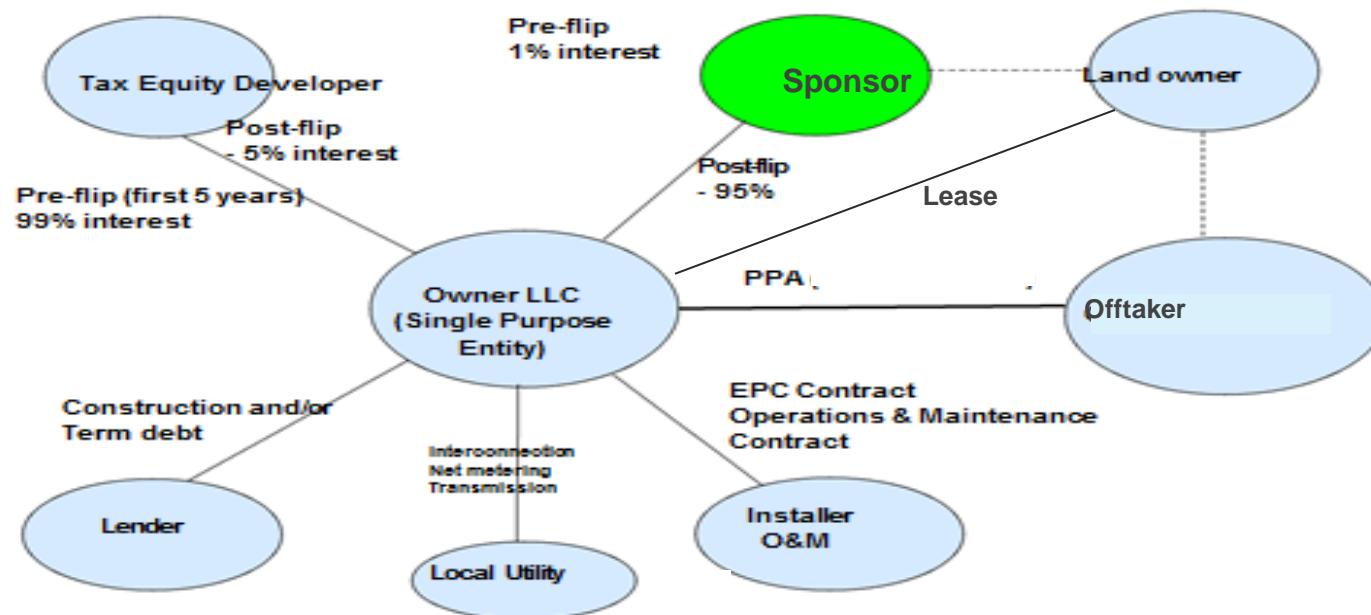
- Why PPA: Assures long-term revenue stream to support debt service and financeability
  - Solar – low operation and maintenance costs
  - Assuming financeable, reduces developer capital outlay
  - Environmental benefits
  - With solar, typically little performance risk (pay for what is delivered)/***but this is changing***

# Solar PPAs: Introduction

- Solar projects are not without their complexities.
  - Expensive but costs continuing to come down
  - Many agreements
    - ◆ PPA
    - ◆ Interconnection
    - ◆ EPC
    - ◆ O&M
    - ◆ Development Services/Real Estate Documents
    - ◆ Financing Agreements/Governance Documents
  - Lenders and tax equity investors (if applicable)

# Solar PPAs: Introduction

- Typical project structure:



# Solar PPAs: Introduction

- Incentives
  - Optimization important to make \$\$
  - ITC
  - Sale of Renewable Energy Credits
    - ◆ Separate from power
      - 1 credit per MWh green power
  - Accelerated depreciation (MACRS)
  - State/local incentives

# Solar PPAs: Introduction

- Objectives
  - Revenue
  - Support financing and buildout of infrastructure
  - Renewable Energy Credits
  - Self-supply?
- Other considerations
  - Will need to develop, finance, build, operate and maintain project
  - Will need to fulfill contractual obligations

# Solar PPAs: Introduction

- Objectives
  - Other considerations
    - ◆ Contract with third parties for development
      - Many models
        - Pure service contract
        - Carried interest
        - JV

# Solar PPAs: Introduction

- Key Points to Understand
  - Who are potential offtakers
    - ◆ What is their contracting process
      - RFP
      - Negotiated
    - ◆ Capacity needed
    - ◆ Financial strength
  - How would interconnection work/proximity to transmission
  - Merchant market?

# Solar PPAs: Introduction

- Key Points to Understand
  - Project location
  - Project size
  - Term
  - Applicable regulatory framework
    - ◆ Environmental
    - ◆ Construction
    - ◆ Operating

# **Solar PPAs: How to Identify Opportunities**

# Solar PPAs: How to Identify Opportunities

- Universe of offtakers
  - Utilities
    - APS
    - PGE
    - Cooperatives
  - Commercial entities
    - Looking to source green power to meet needs
    - Google
    - Amazon
    - Others – Clean Power Plan

# Solar PPAs: How to Identify Opportunities

- How assess need
  - RFP
  - Direct approach
  - Look for RPS requirements
  - Integrated Resource Plan
  - Be proactive not just reactive
- Wheeling prospects (more expensive)

# **Solar PPAs: Key Contractual Considerations**

# Solar PPAs: Key Contractual Considerations

- Term
- Conditions Precedent and Offramps
  - ◆ PPA often first project agreement executed
  - ◆ Conditions to effectiveness often execution of other key contracts
  - ◆ Deadline – if not met termination w/out liability

# Solar PPAs: Key Contractual Considerations

- Relationship with EPC contract – must keep in mind
  - Back-to-back concepts
    - ◆ Fixed price (implications for PPA pricing)
    - ◆ Guaranteed Final Completion/Substantial Completion/Mechanical Completion date and liquidated damages for delay
    - ◆ Guaranteed output/capacity and liquidated damages
    - ◆ Guarantees of performance

# Solar PPAs: Key Contractual Considerations

- Price
  - Adequate to support returns based on overall project economics
  - Fixed
  - Fixed with escalator
  - Test rate
  - RECs (who owns and who pays for them)

# Solar PPAs: Key Contractual Considerations

- Purchasing Framework
  - Take and pay
  - Seller sells and buyer purchases all output from the system
  - Delivered to delivery point (point of interconnection of project to electric system)
  - As available or output/availability guaranty
    - ◆ Buyer may require output guaranty especially if relying on RECs for RPS (availability guaranty as alternative).

# **Solar PPAs: Key Terms**

# Solar PPAs: Key Terms

- Term and Termination
- Facility Description
- Project Implementation
- Delivery
- Conditions Precedent
- Sale and Purchase of Energy
- Payment Calculations
- Billing and Payment

# Solar PPAs: Key Terms

- Operations and Maintenance
- Payment and Performance Security
- Default and Remedies
- Dispute Resolution
- Force Majeure
- Representations and Warranties
- Insurance
- Indemnification

# Solar PPAs: Key Terms

- Lender Provisions
- Assignment and Other Transfer Restrictions
- Miscellaneous

# **Solar PPAs: Contract Specifics**

# Solar PPAs: Contract Specifics

- Term and Termination
  - Term often tied to whether non-recourse or limited recourse project financing utilized
    - ◆ Term in such cases should be long enough to amortize the project debt
    - ◆ Adequate to produce revenues to pay-off the project debt
    - ◆ Usually 15-20 years
    - ◆ May have one or more extension options

# Solar PPAs: Contract Specifics

- Term and Termination
  - Effective Date – usually when signed
  - Performance obligations often tied to fulfillment or waiver of certain conditions precedent
  - Length of term is usually tied to no. of years following commercial operation date
    - ◆ Commercial operation date can be date when entire facility completed or when commercial operation achieved for one or more portions

# Solar PPAs: Contract Specifics

- Term and Termination
  - Commercial Operation Date
    - ◆ Partial concept:
      - 40 MW project
      - Commercial operation may occur in 5 MW increments (sequential)
      - May be negotiated point – Buyer wants project complete before pays contract price (may be paid at test energy rate (see below)).

# Solar PPAs: Contract Specifics

- Term and Termination
  - Termination prior to Commercial Operation Date
    - ◆ Typically include provisions allowing for termination by one or both parties if certain events occur or do not occur.
    - Examples include:
      - Failure of state public utility commission to approve PPA
      - Failure to obtain interconnection or transmission rights

# Solar PPAs: Contract Specifics

- Term and Termination
  - Failure to obtain real property interests (e.g., leases, easements, etc.) necessary for project
  - Failure to obtain necessary permits
  - Failure to achieve commercial operation by a specified date
- ◆ Typically required to exercise commercially reasonable efforts to meet conditions

# Solar PPAs: Contract Specifics

- Facility Description
  - Often includes description of facility being constructed and standards for construction – “Good Utility Practice”
  - Ensure consistent with EPC scope

# Solar PPAs: Contract Specifics

- Price
  - Contract price - flat, escalated and/or other features
  - Test energy price – May be price applicable before full commercial operation. Usually less than full contract price.
  - Excess rate – Often require seller to specify amount of energy anticipated to be produced each year. May charge lower rate if exceed % of estimated annual output (e.g., 120%).

# Solar PPAs: Contract Specifics

- Price
  - Environmental attributes/RECs (credits, benefits, emissions reductions, allowances, offsets, etc.)
    - ◆ Attach to solar power project during term of PPA
    - ◆ PPA should make clear whether energy is being sold with environmental attributes or not
    - ◆ Typically utility will want RECs, especially in state where there is an RPS.
    - ◆ Change in law risk that affects environmental attributes – utilities typically shift to developer (cap on costs is risk reduction option)

# Solar PPAs: Contract Specifics

- Delivery
  - Sale of energy to occur at specified delivery point
    - ◆ Busbar at project substation
    - ◆ Point of interconnection with transmission system/seller responsible for gentle line to point of interconnection
  - ◆ Title and risk of loss pass from seller to buyer at delivery point
  - ◆ In utility scale PPAs, seller typically required to comply with rules of transmission provider (e.g., curtailment instructions)

# Solar PPAs: Contract Specifics

- Permitting and Development
  - Under PPA, project owner made responsible for developing and constructing the project
    - ◆ Security deposits with utility often typical
  - Status reports
  - Milestones and delay damages
    - ◆ Likely to include milestones (e.g., commercial operation, when key permits obtained, when interconnection agreement in place, etc.)

# Solar PPAs: Contract Specifics

- Permitting and Development
  - Milestones and delay damages
    - ◆ If not achieve, buyer may have right to terminate, collect delay damages or require additional security from seller
      - Seller seek to limit milestones where failure to achieve would result in buyer remedy
      - Cap in delay damages

# Solar PPAs: Contract Specifics

- Permitting and Development
  - Interconnection and Transmission
    - ◆ Usually requires seller to bear costs of interconnection, including any network upgrades necessitated by project
    - ◆ Seller typically bears costs of transmitting energy to delivery point
    - ◆ Seller responsible for negotiation and obtaining an interconnection agreement with the transmission provider
    - ◆ Interconnecting utility rules and state law important

# Solar PPAs: Contract Specifics

- Performance Guarantees
  - May include output guaranty
    - ◆ Requires seller to pay buyer a certain amount if output over specified period fails to meet specified level
    - ◆ Period typically 1-2 years
    - ◆ Requires comfort with meteorological data, equipment reliability and capacity factor

# Solar PPAs: Contract Specifics

- Performance Guarantees
  - May include availability guaranty (preferable when compared to output guaranty)
    - ◆ Requires project to be available for certain percentage of time, after excluding hours for force majeure, certain amount of scheduled maintenance and certain other elements
    - ◆ Equipment manufacturer warranties may include availability component (although typically of limited duration)

# Solar PPAs: Contract Specifics

- Performance Guarantees
  - Typically include buyer right to terminate if output or availability of project is below a minimum for a specified period of years
  - Liquidated damages
    - ◆ Often fixed amount for specified measure of shortfall
    - ◆ Usually capped

# Solar PPAs: Contract Specifics

- Curtailment (often heavily negotiated)
  - Often provide for when a party has a right to curtail output or refuse to accept deliveries of energy (e.g., emergency condition affecting plant)
  - May permit buyer to curtail deliveries for convenience or threats to safety of site
    - ◆ In these cases, buyers usually has to pay purchase price for curtailed generation plus after tax value of any subsidy or REC revenues lost

# Solar PPAs: Contract Specifics

- Curtailment
  - Curtailment also caused by transmission congestion or conditions beyond the delivery point
  - How measure power that would have been produced is important
- Force Majeure – Excuses performance
  - Heavily negotiated
  - Well-drafted provisions list what is included and what is excluded
  - Payment obligations almost always excluded

# Solar PPAs: Contract Specifics

- Operation and Maintenance
  - Usually require seller to operate and maintain facility in accordance with Good Utility Practices.
- Metering
  - Important – as is basis for revenue
  - Typically seller is required to install and maintain meter
  - Other party has right to install check meter.

# Solar PPAs: Contract Specifics

- Metering
  - If inaccurate or out of service, PPA should specify how energy measured
  - Testing to be done regularly to confirm accuracy
  - Amount of variance permitted before deemed inaccurate
- Billing and Payment
  - How invoices are prepared and how frequently issued
  - Resolution of billing disputes
  - Audit rights

# Solar PPAs: Contract Specifics

- Default and Remedies
  - Usually list specific events of default
    - ◆ Failure to pay amounts due
    - ◆ Breach of obligations and representations and warranties
    - ◆ Bankruptcy
    - ◆ Default of party's guarantor
  - Cure
  - Termination and other remedies
  - Limitations on liability (cap on damages/disclaimer of consequential damages)

# Solar PPAs: Contract Specifics

- Change in Law
  - Can be heavily negotiated
  - Seller usually takes risk through effective date of PPA (priced cost of construction, operation and PPA compliance through that date)
    - ◆ Any change in law after that date is concern
  - Utilities want seller to absorb more and succeeding
  - Taxes and maintaining benefit of environmental attributes part of equation as well



# Solar PPAs: Contract Specifics

- Assignment
  - Rights usually limited unless consent of other party
    - ◆ Affiliates
    - ◆ Lenders
  - Project lenders and tax equity investors
    - ◆ Contemplates assignment of PPA by seller to project lender as collateral for financing
    - ◆ Consents and estoppels
    - ◆ Other protections (e.g., notice and additional cure period for default)

# Solar PPAs: Contract Specifics

- Credit Support
  - Guaranty from creditworthy affiliate (e.g., parent company)
  - Letter of credit or cash
  - Combination
  - Amount may vary depending on phase of project

# Solar PPAs: Contract Specifics

- Miscellaneous
  - Confidentiality
  - Governing law
  - Dispute resolution
  - Representations and warranties

# **Solar PPAs: Most Heavily Negotiated Terms**

# Solar PPAs: Most Heavily Negotiated Terms

- Output Guaranty – Big risk item - Seller protections
  - Need ramp up and rolling average overlay to make up losses
  - ◆ Seek one or 2 years of performance to be able to fix problems before output guaranty imposed
  - ◆ Annual target subject to 3 year rolling average and “true up”

# Solar PPAs: Most Heavily Negotiated Terms

- Output Guaranty – Big risk item - Seller protections
  - ◆ Try to set low bar and build in annual degradation - reduction of guaranty over time

# Solar PPAs: Most Heavily Negotiated Terms

- Output Guaranty – Big risk item - Seller protections
  - ◆ Exclude buyer curtailments or curtailments related to
    - transmission provider and other non-seller linked problems
    - Offer “Availability Guaranty”
      - The system will be available (i.e. ready and able) to produce solar power for a certain percentage of time (excludes maintenance etc.) – weaker guaranty

# Solar PPAs: Most Heavily Negotiated Terms

- Output Guaranty – Big risk item - Seller protections
  - Seek “back to back” output guaranty from EPC
  - Seek to rely on pass through of manufacturers’ warranties
    - ◆ Standard warranties
    - ◆ Understand scope – often limited to “repair or replace” – no damages
  -

# Solar PPAs: Most Heavily Negotiated Terms

- Output Guaranty – Big risk item - Consequences of breach of Output Guaranty
  - Liquidated Damages formula
    - ◆ Supply shortfall x cost per mWh (usually based on incremental cost of alternative procurement)
    - ◆ may include lost value of RECs if going to offtaker
  - Seller wants cap on LDs
  - Persistent failure to meet output guarantees => right of termination



# Solar PPAs: Most Heavily Negotiated Terms

- Curtailment
  - Reduction or suspension of delivery or acceptance of energy
  - Lost output reduces revenues and reduces benefits
  - Seller wants to treat lost output as if generated - Buyer to pay price plus after-tax value of lost benefits
  - How measure power that would have been generated during curtailment important

# Solar PPAs: Most Heavily Negotiated Terms

- Curtailment
  - Treatment should be based on underlying cause or allocation of risk
    - ◆ Transmission congestion
    - ◆ Inability or unwillingness of buyer to accept delivery
    - ◆ Emergency
    - ◆ Force Majeure
    - ◆ Other compromises
      - curtailed energy applied towards output guaranty/seller to mitigate loss – wheel/bypass and deliver to 3rd parties

# Solar PPAs: Most Heavily Negotiated Terms

- Force Majeure
  - Scope important
  - Seller wants broad scope
  - Buyer wants narrow scope
  - Governmental approvals/delay
  - Vendor and other parties' force majeure
  - Prolonged force majeure and termination rights

# Solar PPAs: Most Heavily Negotiated Terms

- Term-Related Issues
  - PPA binding from Effective Date (subject to conditions precedent)
  - Commencement of Term: “Commercial Operation Date” (COD)
    - ◆ Seller wants “target” COD
    - ◆ Buyer usually wants fixed COD (especially if utility that needs (green) power) with liquidated damages if delay.
    - ◆ Buyer may even want milestone schedule for individual components of project (financing, module purchasing, completion of permitting, etc.)

# Solar PPAs: Most Heavily Negotiated Terms

- Term-Related Issues
  - Term usually 15, 20 or 25 years, but can be less
  - May be renewals
  - Seller beware continuing obligations re output or may have to replace modules without charge
  - End of term Seller usually required to remove system

# Solar PPAs: Most Heavily Negotiated Terms

- Term-Related Issues
  - Buyer option to purchase (becoming more common)
  - Buyer may have option to purchase after year 5 when tax benefits have been exhausted (ITC, MACRS)
    - ◆ May be options every year after year 6, or every 5 years thereafter, at end of term only or no option at all – no standard.

# Solar PPAs: Most Heavily Negotiated Terms

- Term-Related Issues
  - Termination
    - ◆ Drastic remedy, so significant opportunities to cure and real time liquidated damages
    - ◆ Lenders and tax equity investor rights
      - Step in rights to cure
      - Notice and extended cure periods
    - ◆ Uncured breach by buyer
    - ◆ Forced buyout at greater of FMV and termination amount plus additional breach costs - liquidated damages

# Solar PPAs: Most Heavily Negotiated Terms

- Term-Related Issues
  - Termination
    - Termination for uncured material breach or chronic breach
    - Termination for prolonged force majeure.

# Solar PPAs: Most Heavily Negotiated Terms

- Change in Law
  - Important
  - Can make project uneconomic for seller
  - Big issue is change in law following effective date in PPA
  - Utility PPAs are passing change in law risk more and more to sellers
  - Can result in increase in construction, operation and compliance costs

# Solar PPAs: Most Heavily Negotiated Terms

- Change in Law
  - Utility in better position to avoid/mitigate cost
  - If utility buying power to meet RPS requirement, onus on seller to ensure qualifies
  - Examples of change in law: Can be change in tax, allocation of transmission costs, environmental compliance, etc.
  - Seller should understand and limit (if possible) change in law cost it may be responsible for.

# Solar PPAs: Most Heavily Negotiated Terms

- Change in Law
  - Some solutions
    - ◆ Only responsible for commercially reasonable costs
    - ◆ Cap on amounts
    - ◆ Split costs
    - ◆ Termination at certain level
    - ◆ PPA price adjustment

# Solar PPAs: Most Heavily Negotiated Terms

- Credit Support
  - Amount negotiated
  - Alternative forms of support negotiated
  - May warrant reciprocal guaranty/support depending on offtaker
  - Trigger events for requiring more onerous security

# Questions?

**Guy C. Smith**



612.335.1762



[guy.smith@stinsonleonard.com](mailto:guy.smith@stinsonleonard.com)

[www.stinsonleonard.com](http://www.stinsonleonard.com)



**Appendix D: Presentations by MEC, NAU and BoR**

# Hualapai Tribal Utility Authority Board Meeting

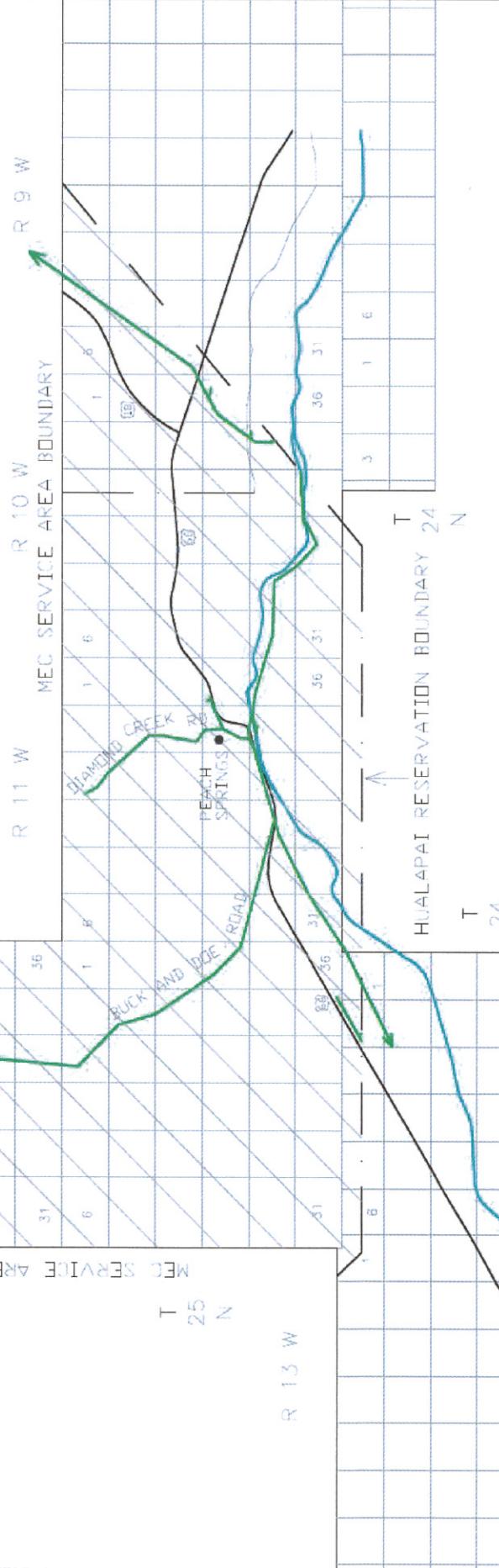
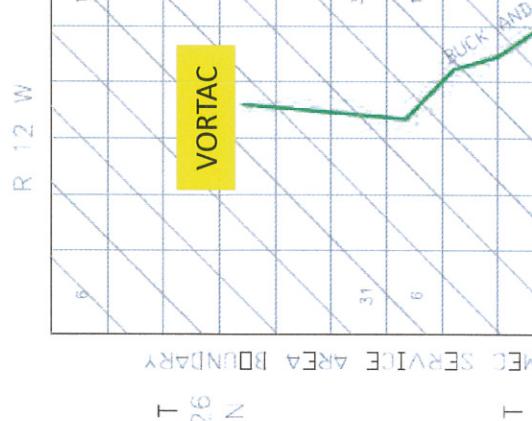
October 29, 2015

Hualapai Cultural Department Building

Peach Springs, AZ

Mohave Electric Cooperative, Inc.  
Rick Campos  
Manager of Engineering and Operations  
928-763-4115

## LEGEND

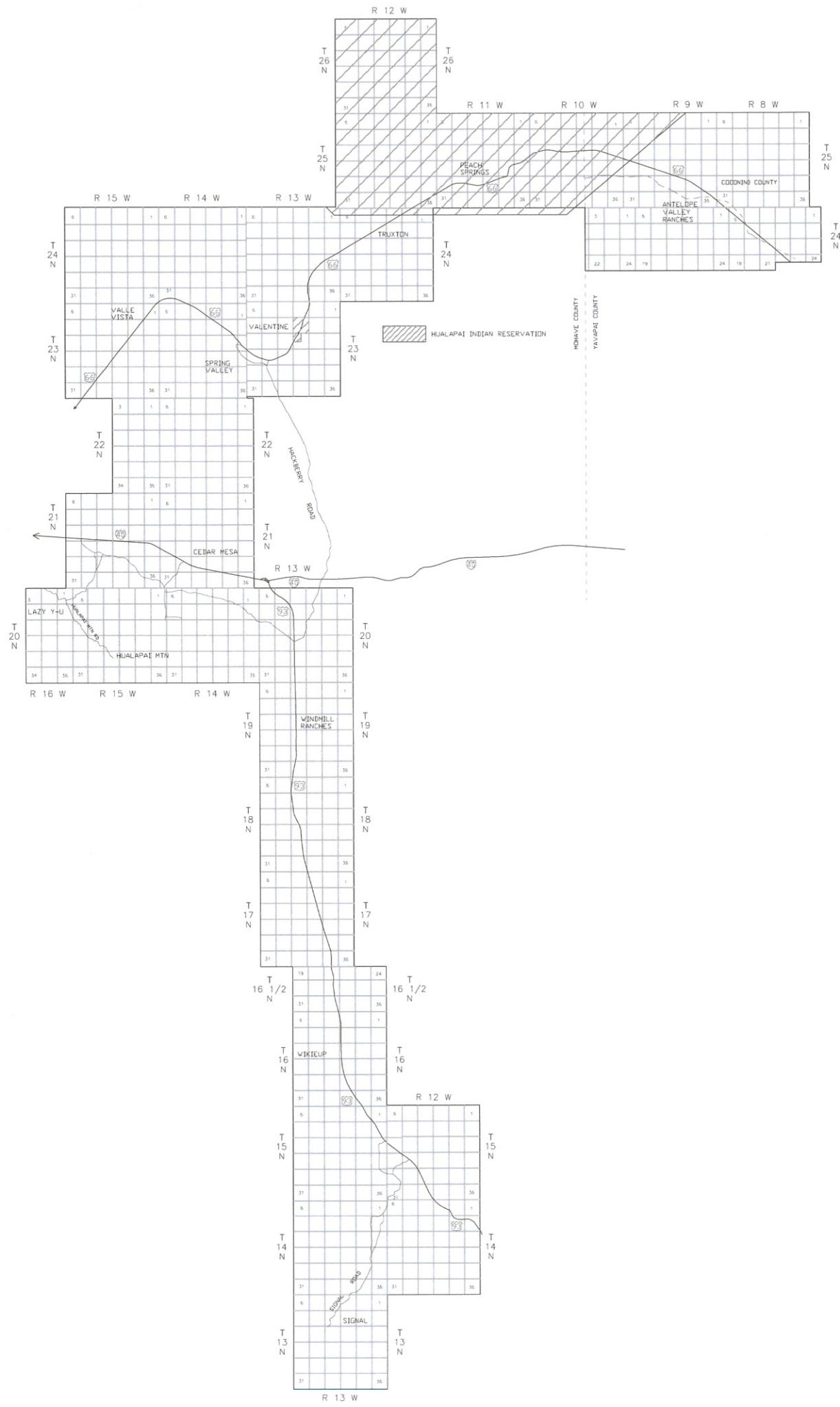


MOHAVE ELECTRIC COOPERATIVE INC.		DISTRIBUTION LINE ON HUALAPAI RESERVATION WITHIN MEC'S CERTIFICATE SERVICE AREA		SCALE 1 INCH = N.T.S.
ARIZONA	22	STATE & ID.	SEC. T-R	MAP NO.
FILED BY GARY FISER	REVISED 2-22-12	MOHAVE		
	DATE 2-21-12			

N

W

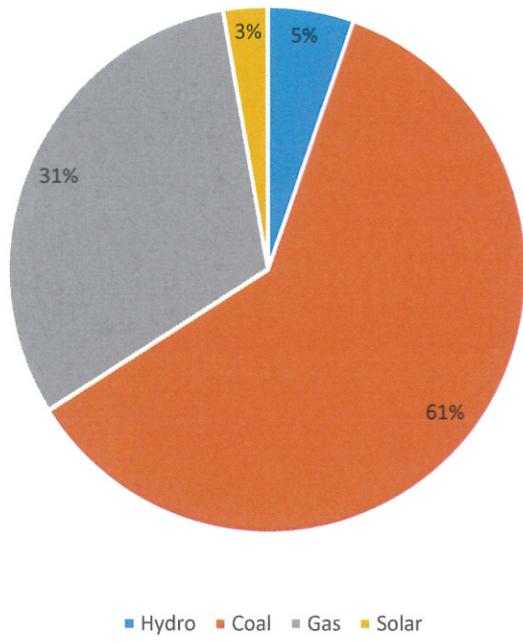
VALENTINE ●



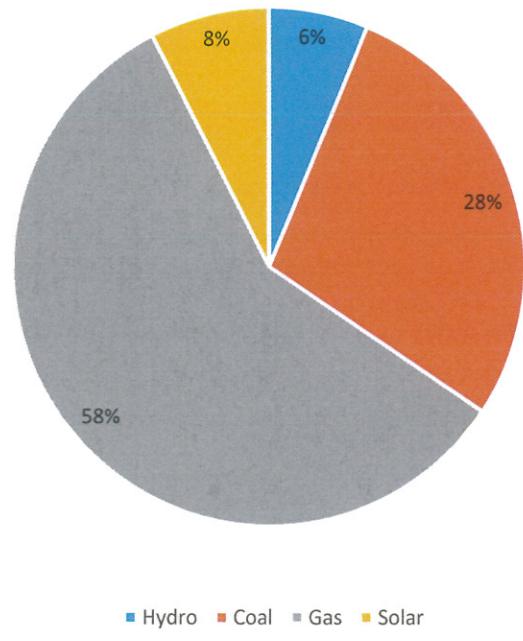
## Project Summary Sheet

	<b>2011-2015</b>	<b>2016-2019</b>
Distribution Projects	\$ 6,308,845	\$ 3,715,500
2011-2015 Approved projects complete or in progress		
2016-2019 Proposed		
69kV Projects	\$ 5,724,491	\$ 5,583,500
2011-2015 Approved projects complete or in progress		
2016-2019 Proposed		
Substation Projects	\$ 19,027,922	\$ 2,170,000
2011-2015 Approved projects complete or in progress		
2016-2019 Proposed (less RV Power Transformer)		
Maintenance Projects	\$ 1,064,800	\$ 2,120,000
2011-2015 Approved projects complete or in progress		
2016-2019 Proposed		
Smart Grid	\$ 6,263,749	\$ 4,000,000
2011-2015 MEC funds		
<b>Mohave Electric Total</b>	<b>\$ 38,389,807</b>	<b>\$ 17,589,000</b>
Power Provider Projects	\$ 42,190,000	\$ -
WAPA and SWTC		
<b>Power Provider Total</b>	<b>\$ 42,190,000</b>	<b>\$ -</b>
<b>Grand Total</b>	<b>\$ 80,579,807</b>	<b>\$ 17,589,000</b>

Mohave Electric Cooperative  
Existing Capacity Percentage by Fuel Type

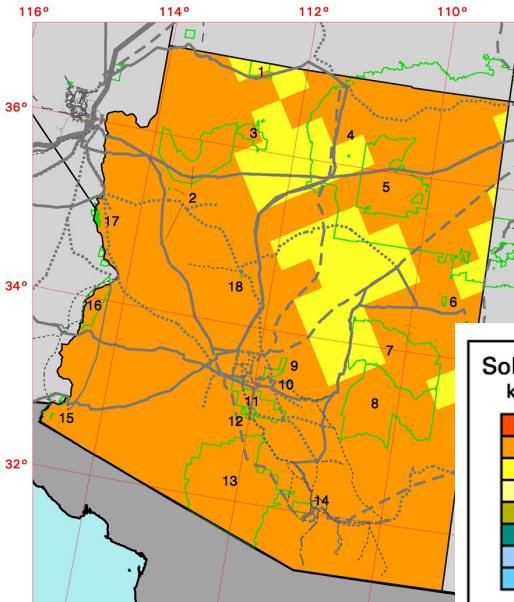


Mohave Electric Cooperative  
Future Capacity Percentage by Fuel Type



# Arizona Solar Energy Fact Sheet

## Solar Development Capacity



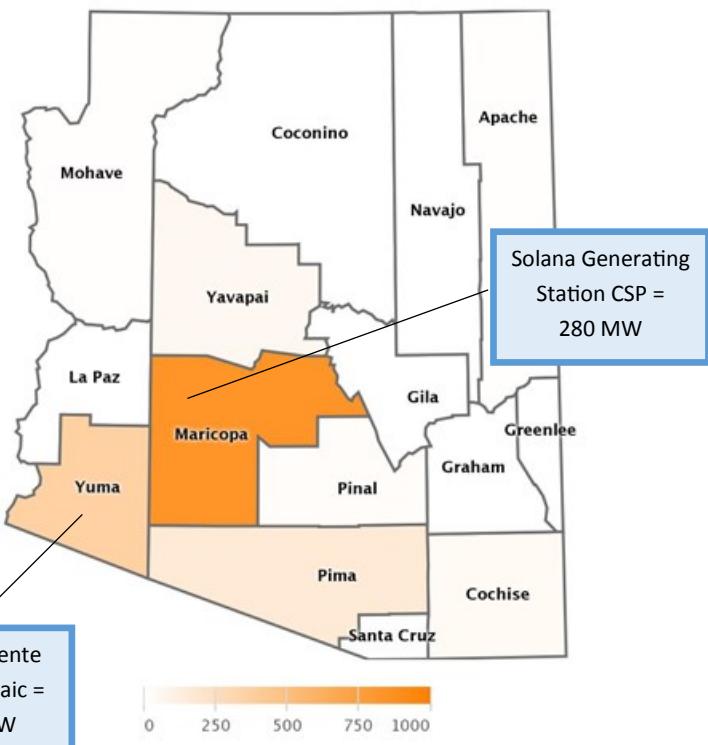
Indian Reservation	
1	Kaibab
2	Hualapai
3	Havasupai
4	Navajo
5	Hopi
6	Zuni
7	Fort Apache
8	San Carlos
9	Fort McDowell
10	Salt River
11	Gila River
12	Maricopa
13	Papago
14	San Xavier
15	Cocopah
16	Colorado River
17	Fort Mojave
18	Yavapai

- **Development potential:** tens of thousands of MW
- **Utility-scale PV & CSP installed:** 1532 MW
- **Under construction:** dozens of MW
- **In current project development stages (non-Tribal):** more than 1,000 MW
- **Tribal solar project feasibility work done:** more than 5,000 MW

## Arizona Large-scale Solar Projects

Arizona Solar Capacity Operating and Under Construction

As of May 1, 2015



## Economic impacts:

### Maricopa County, Arizona

### Solana Generating Station

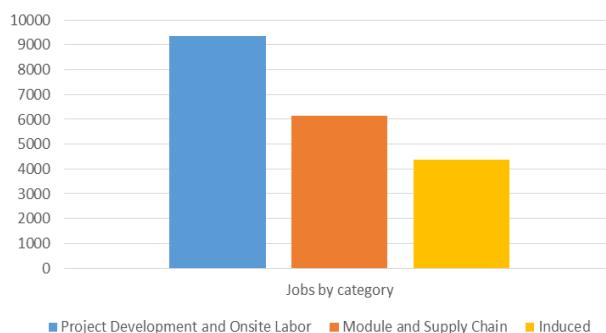
1500 direct construction jobs  
85 full time operations jobs

### Yuma County, Arizona

### Agua Caliente Solar

400 construction workers for 4 years

Construction jobs - 1199 MW PV development

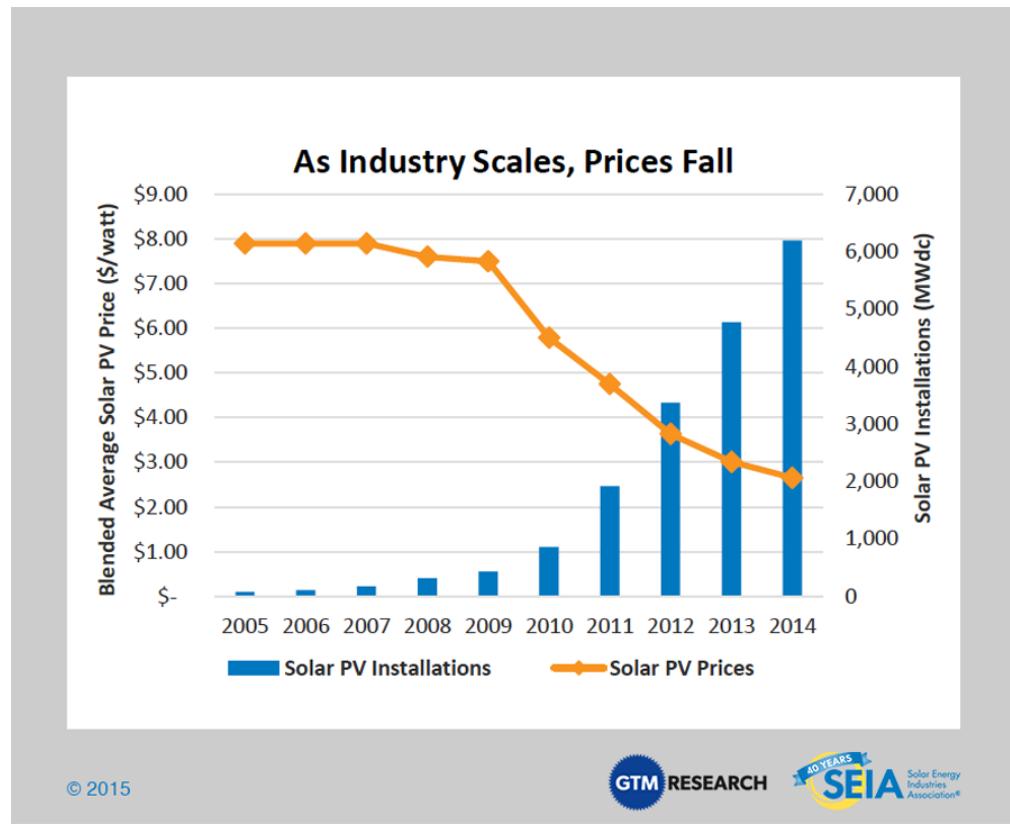


Construction job creation from operating AZ PV projects

Source: NREL JEDI model

# Arizona Solar Energy Fact Sheet

## Solar installations and prices nationwide

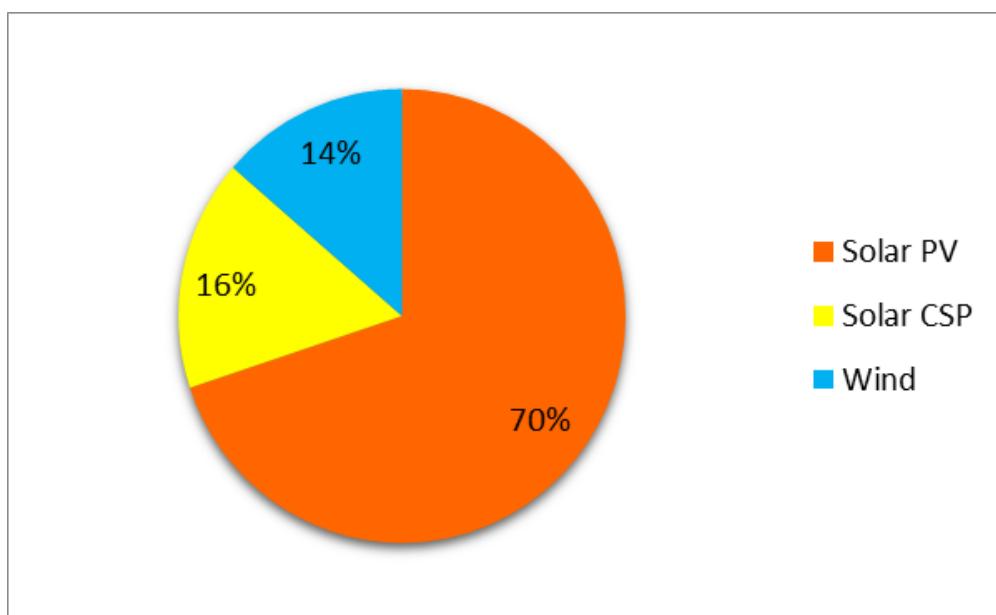


In 2014, all of the utility-scale electric generating capacity installed in Arizona came from solar

Companies including WalMart, IKEA, Apple, Intel, REI and Macy's have gone solar in Arizona

There are 394 solar companies throughout the value chain in Arizona, employing 9,200 people

A number of companies, tribes and organizations are exploring solar projects greater than 1,000 MW

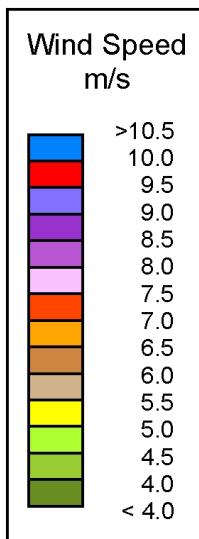
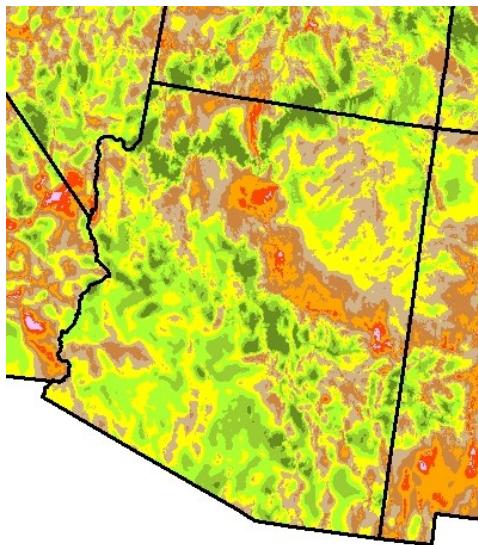


The solar generation capacity in Arizona generates enough power for 294,000 homes

In 2014 alone, \$614 Million was invested in solar project development and construction in Arizona

# Arizona Wind Energy Fact Sheet

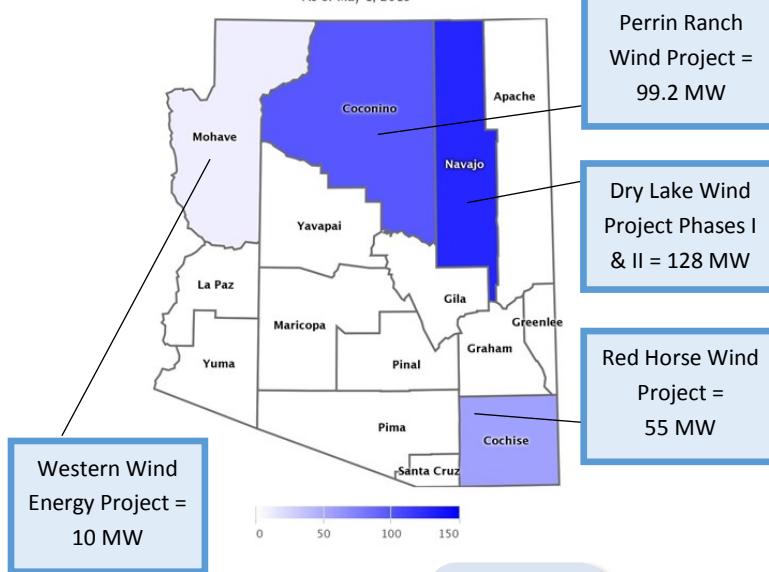
## Wind Development Capacity



- **Development potential:** more than 10,000 MW
- **Currently installed:** 238 MW
- **Under construction:** 30 MW
- **In current resource assessment or permitting stages:** more than 1,000 MW
- **Additional Tribal wind project feasibility work done:** more than 1,000 MW

## Arizona Wind Projects

Arizona Wind Capacity Operating and Under Construction  
As of May 1, 2015



238 MW Installed

= 43,000 homes powered

+ More than \$700K annual land lease payments to private land owners

+ \$490 Million invested

## Economic impacts:

### Coconino County, Arizona

#### Perrin Ranch Wind Project

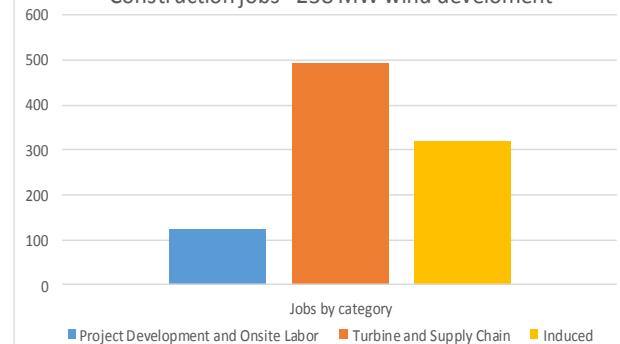
~\$473,000 annual tax payments to County

### Navajo County, Arizona

#### Dry Lake Wind Project, Phase I

>\$500,000 wages paid to local IBEW workers

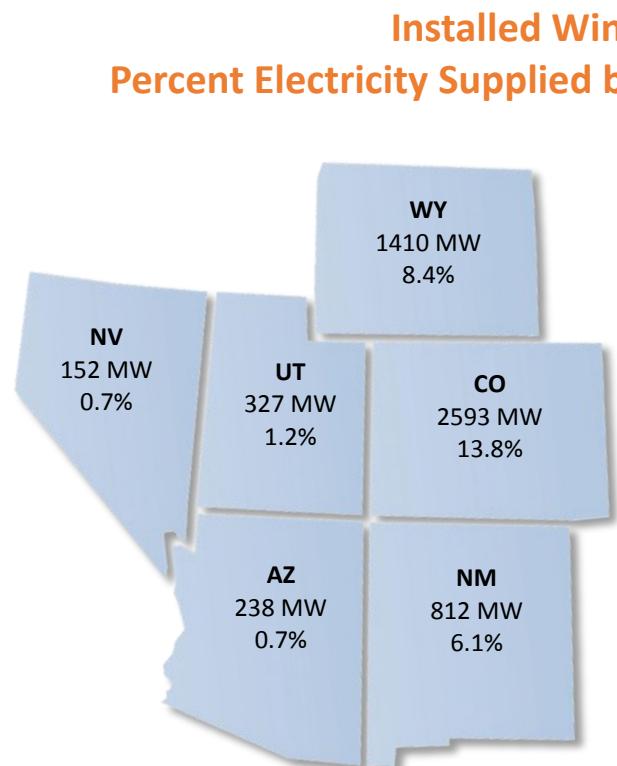
Construction jobs - 238 MW wind development



Construction job creation from operating AZ wind projects

Source: NREL JEDI model

# Four Corners Region Wind Energy Fact Sheet



**5,532**  
Megawatts  
installed  
2002-2014

**9 million**  
Metric Tons  
of CO<sub>2</sub> emissions  
avoided through  
wind energy  
annually

**3.3 billion**  
Gallons  
of water saved from wind  
energy annually

**National  
Wind Trends  
since 2000**

**+38%**  
Tower  
Height

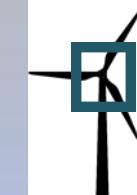


**+83%**  
Rotor  
Diameter

## Regional Market Drivers

Market Driver	AZ	CO	NM	UT	NV	WY
Sales Tax Exemption	Yes	Yes	Yes	Yes	Abatement	No
Tax Incentives	Corporate and Individual	Corporate	Corporate and Individual	Corporate and Individual	Corporate	None
Renewable Portfolio Standard	Standard (15% by 2025)	Standard (15% by 2020) IOUs; 20% by 2020	Standard (20% by 2020) IOUs; 10% by 2020 (rural co-ops)	Standard* (20% by 2025)	25% by 2025	No
Loan Program	Utility program	State, Utility, and/or local programs	State and/or local programs	State and/or local programs	State and/or utility programs	None

**+111%**  
Nameplate Capacity



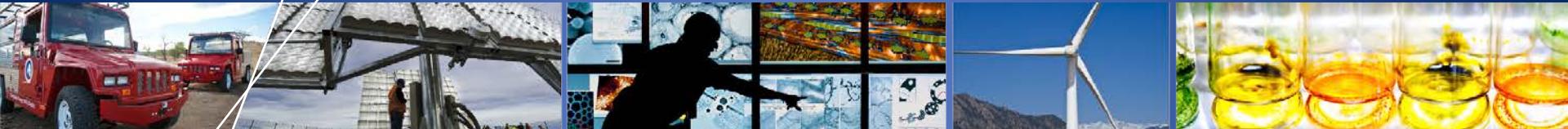
**64%**  
Decrease in cost per MWh



# Tribal Solar Working Group

Northern Arizona University

June 23, 2015



## Navajo Generation Station NREL II Study

# Presentation Outline

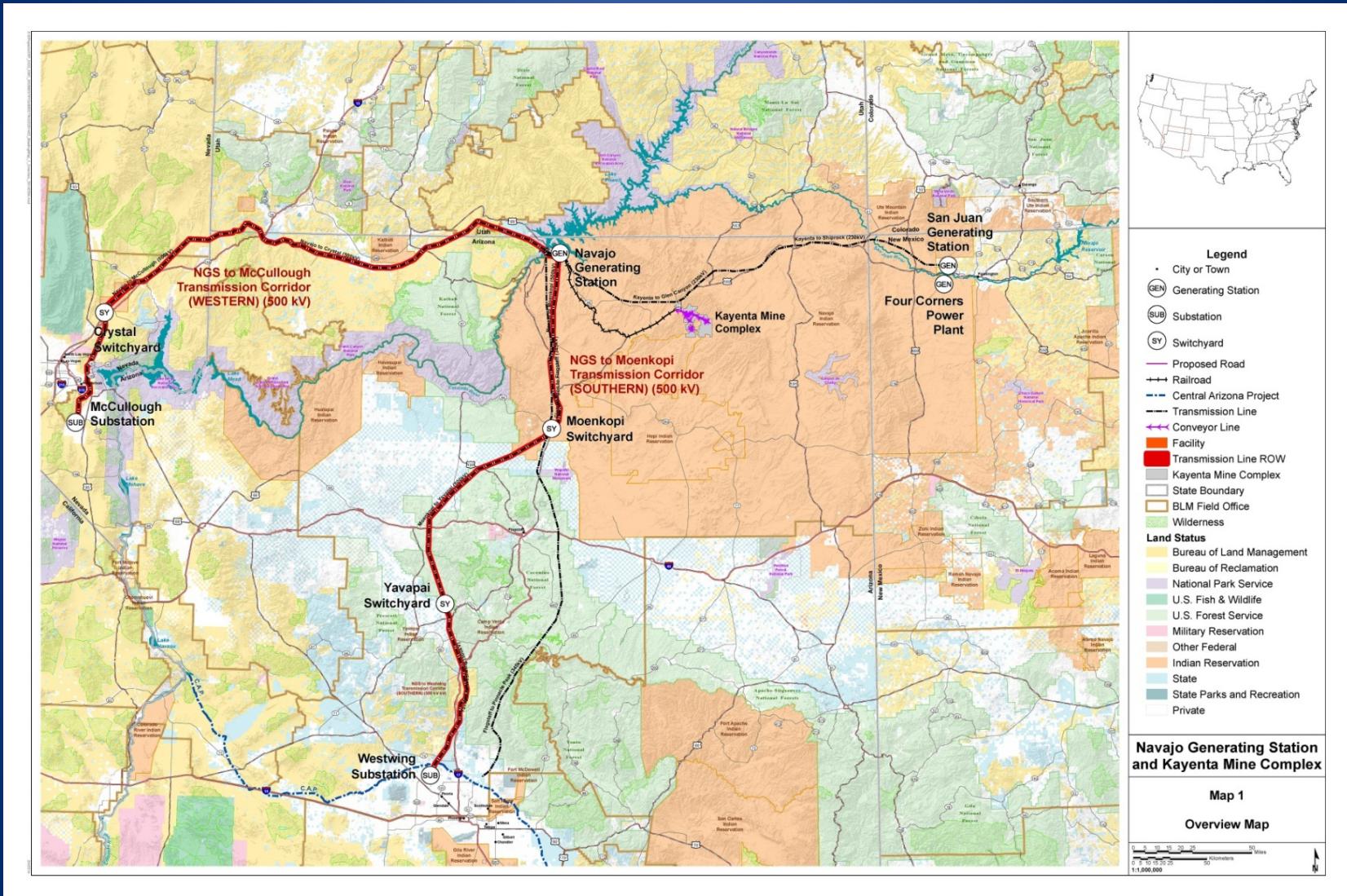
- Navajo Generating Station
  - Background
  - Technical Working Group Agreement
  - Environmental Impact Study
- NREL Phase 2 Study
  - Scope of Work
  - Baseline
  - Glidepaths
  - Milestones and Final Report
- Questions

# NGS Background



- 2,250 MW coal-fired power plant on lands leased from the Navajo Nation near Page, AZ
- Congress authorized construction of the CAP in 1968, including federal participation in the NGS
- Federal share in NGS is 547 MW
  - ~360 MW for CAP pumping
  - ~187 MW for surplus
- Federal NGS power surplus to CAP load is sold at market rates; revenues assist in CAP repayment and Indian water settlements under AWSA
- Coal used by the NGS is exclusively supplied by the Kayenta Mine, located on lands leased from the Navajo Nation and Hopi Tribe

# Post 2019 Continuing Operations



# EIS Purpose and Need

- NGS lease and right of way grants begin to expire in December 2019; significant permit revision application for Kayenta Mine under review by OSMRE.
- Purpose and Need (P&N) for Reclamation: Secure, after 2019, a cost-effective reliable source of power and energy that would be continuously available to operate the CAP, and generate surplus revenues.
- Proposed Action: Obtain necessary Federal approvals to continue the NGS and Kayenta Mine from 2020 through 2044.
- Any action alternatives considered must meet the P&N.
- Notice of Intent (NOI) to prepare a single Environmental Impact Statement (EIS) was published in May 2014.

# Major Federal Proposed Actions

- Approval of Plant Site Lease Amendment (BIA)
- Issuance of Grants of ROW and Easements for Plant, Railroad, and Transmission Lines on Navajo Reservation (BIA)
- Conversion of Revocable/Special Use Permits to §323/§169 Grants of ROW (BIA)
- Issuance of Southern and Western Transmission ROWs off Navajo Reservation (BLM, USFS)
- Issuance of ROW for Water Intake off Navajo Reservation (NPS)
- Water Service Contract Renewal through 2044 (Reclamation)
- Kayenta Mine Permit Revision for mining post-2019 (OSMRE)
- Coal Supply Agreement post-2019 (Reclamation)

# EIS Environmental Resources

- The EIS will include an analysis of the potential direct, indirect and cumulative impacts on resources, including, but not limited to:
  - Air Quality and Visibility
  - Cultural Resources
  - Biological Resources, including Endangered Fish
  - Environmental Justice
  - Indian Trust Assets
  - Public Health and Safety
  - Socioeconomics (particularly NGS-affected tribes)
  - Water Quality and Quantity

# EIS Alternatives – Background

- NEPA requires that at least one alternative to the proposed action be evaluated in the EIS
- NOI specified total and partial replacement of the Federal share would be considered for inclusion in the EIS
- Many diverse interests are focused on alternatives
  - e.g., Tribes, NGOs, business, facility owners and operators, public
  - Numerous comments received during public scoping
- General concerns expressed include:
  - Emissions (primarily greenhouse gases: e.g., carbon-dioxide)
  - Tribal socioeconomics
  - Costs (operations and water delivery)

# EIS Alternatives – Described in NOI

- Proposed Action: Continued operation of NGS and Kayenta Mine through December 2044 in compliance with BART
- No Action:
  - Reclamation and other Federal agencies would not provide the Federal approvals and/or decisions necessary to continue the operation and maintenance of the NGS-KMC facilities through December 2044
  - NGS would cease operation on December 22, 2019; CAP would find alternative power source(s)
- Action Alternatives:
  - *Total Federal Replacement* – all of the Federal share of NGS energy replaced by renewable resources or lower emitting sources
  - *Partial Federal Replacement* – a portion of the Federal share of NGS energy replaced by renewable resources or lower emitting sources
  - Any feasible alternatives that meet Reclamation's purpose and need identified during scoping

# EIS Alternatives – Development

- 169 action alternative proposals (total or partial replacement) received through the end of public scoping
- EIS team (with technical assistance from NREL) developed and employed objective screening criteria to carefully consider the technical aspects of each proposal
- Technical analysis outcomes:
  - Total and partial replacement is technically possible, although not necessarily feasible
  - Transmission is a limiting factor
    - Availability
    - Interconnection to the CAP electrical transmission system

# EIS Alternatives – Status

- Total Replacement
  - EIS team considering not analyzing in the EIS because it does not meet purpose and need (i.e., no surplus revenues)
  - Energy market today and in the reasonably foreseeable future would not support (i.e., cost of production exceeds market price)
- Partial Replacement
  - EIS team considering including a partial replacement alternative of 100 MW for analysis in the EIS
  - 100 MW based on available transmission near Phoenix
  - Three sub-options may be considered:
    - Long-term Power Purchase Agreement (PPA) from non-coal source
    - Long-term PPA from renewable sources
    - Solar facility on NGS-affected tribal land (programmatic approach)

# EIS Target Milestones



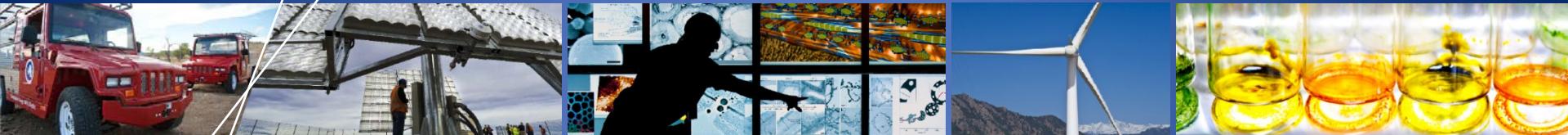
We are here

# Next Steps

- Outreach Effort on EIS Alternatives
- Draft the EIS
- Cooperating Agency review of the pre-public Draft EIS scheduled 1<sup>st</sup> quarter 2016

Russ Callejo  
NGS Program Manager  
Environmental  
[rcallejo@usbr.gov](mailto:rcallejo@usbr.gov)  
303-445-2918

Questions?  
[ngskmc-eis@usbr.gov](mailto:ngskmc-eis@usbr.gov)  
Sandy Eto, NEPA Coordinator 623-773-6254



# NGS Phase 2 Study

# Reclamation/Dept. of Energy - Interagency Agreement

- Executed agreement to enlist NREL – 2014
  - Technical Assistance
    - Clean Energy Development Planning
    - Carbon Accounting
    - NREL II Study – Baseline modeling and full study scope
    - NGS KMC EIS

# Joint Statement by DOI, DOE, EPA (2013)

- Long-term goals
  - Clean, affordable and reliable power
  - Affordable and sustainable water supplies
  - Sustainable economic development
  - Minimize negative impacts on those who currently obtain significant benefits from NGS
- Complete NREL Phase 2 report on NGS clean energy options to inform NGS Road Map

# NREL Phase One Study

- NREL Phase 1 (Jan. 2012)
  - Driven by EPA notice of intent to issue BART rule for NGS
  - Examined NGS history, operation characteristics, role in CAP rates, role in water settlement
  - Provided initial analytical benchmarks based on cost of NO<sub>x</sub> mitigation
- NREL Phase 1 supplement (April 2012)
  - Characterization of renewable resource potential that could contribute to an NGS replacement portfolio

# Technical Working Group Agreement

- Proposed “better-than-BART” alternative for reducing NO<sub>x</sub> emissions
- Additional federal commitments
  - Clean energy
  - Carbon reduction
- Proposed framework for NREL Phase 2 Study
  - Identified tribal and non-tribal constituencies
  - A study to inform a NGS Roadmap

# Phase 2 Study: Baseline

## Baseline

### Sectoral trends

Technology costs, policy environment, and operational advances; how utilities are responding (IRPs)

### Technical modeling

Quantify the likely changes in new capital investment (fixed costs) and production costs (variable costs) for electricity

### Economic modeling

Forecast how current sector-wide fixed cost and variable cost trends will affect the Arizona economy

# Phase 2 Study: Glidepath Options

## Glidepath options

### Utility-scale clean energy strategies

Appraise technically feasible options for providing CAP electricity, appraise impacts relative to baseline

### Expansion Capability

Appraise the feasibility of upsizing the utility-scale options to provide surplus power

### Impacts on NGS Constituencies

Evaluate the economic impacts of glidepath options; appraise local projects that could reduce disruptive effects

# What is a “Glidepath”?

- Multi-component strategy for transitioning federal interest in NGS to clean, low-emitting energy sources
  - Tests selection and timing of new technologies
    - NOT selection of specific projects within a technology category
  - Allows for some transitional operation of NGS, provided the glidepath achieves the federal goals
- Does not preclude operating NGS without federal participation
- Analysis of possible actions

# Several Glidepath Analyses

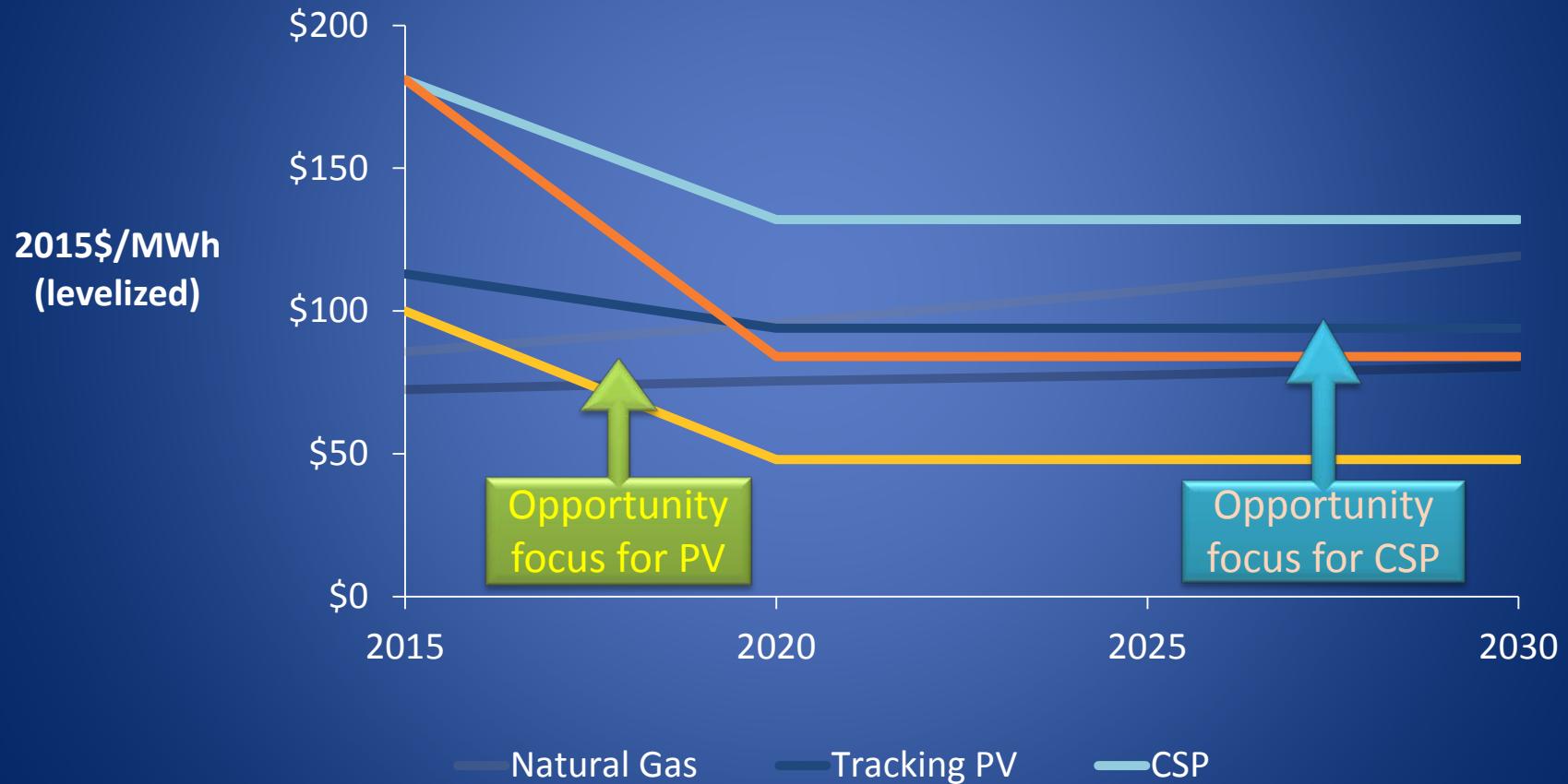
- Questions for each glidepath analysis
  - How will cost of component technologies change over time, and at what point might the technology become economically competitive?
  - How effectively does the glidepath portfolio contribute to federal goals?
  - What types of federal participation might make a glidepath more feasible or competitive?

# Portfolio Diversity



# Time Factor: Changes in Technology Costs

## High/Low Cost Trajectories for Solar, Natural Gas Generation



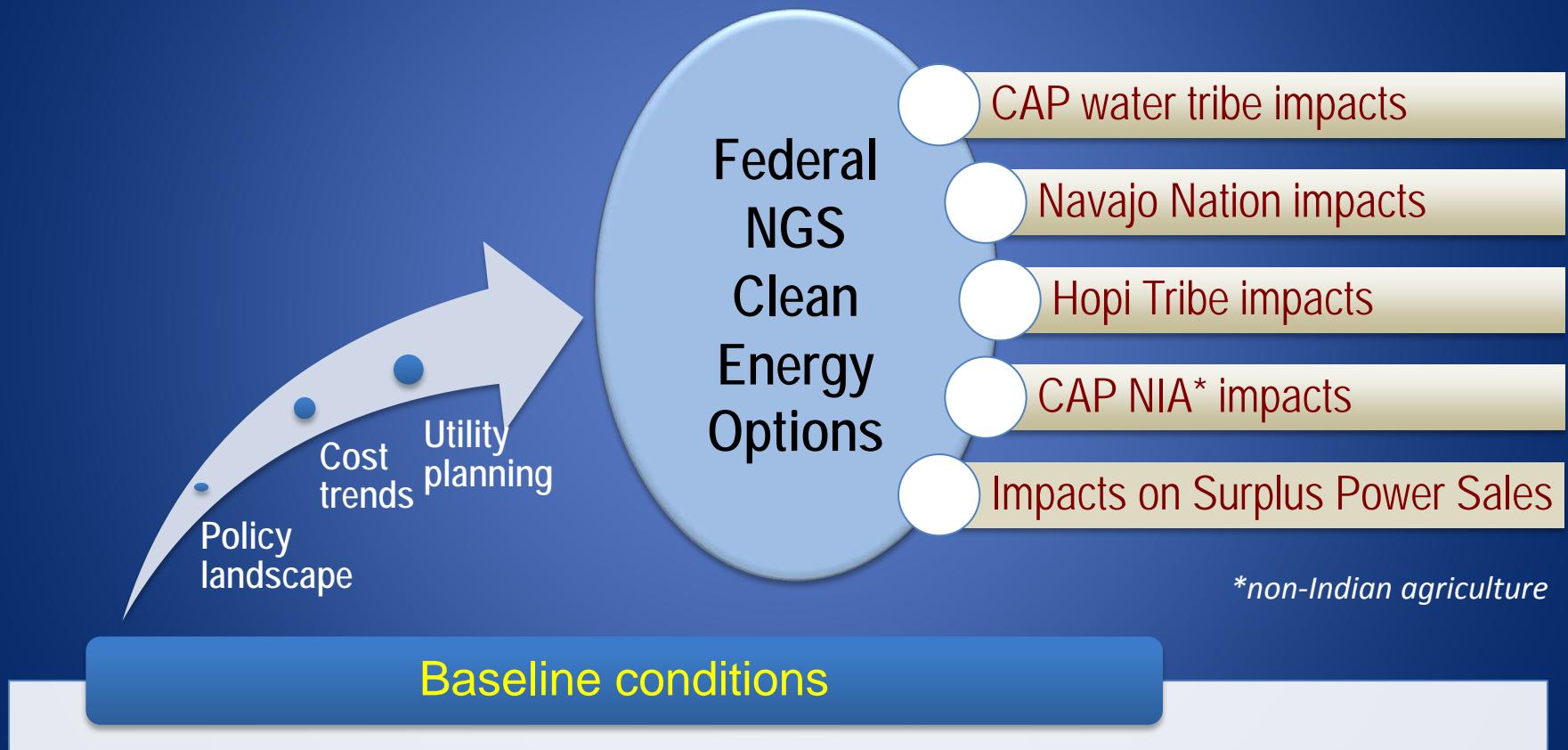
# Scope and Attributes

- Glidepath must comprise enough utility-scale projects to provide power to Central Arizona Project (CAP)
  - Frames a glidepath's size and focuses the analysis
  - Assumption: CAWCD may but need not select glidepath resources for CAP power
- Must be economically competitive
  - If not competitive for CAP, won't be competitive elsewhere
- Investigate potential of up-sizing to provide surplus energy

# Local Development

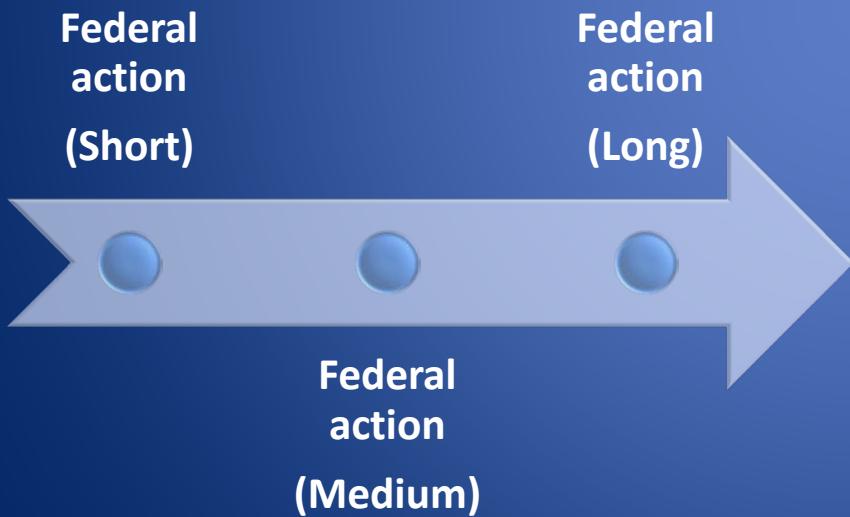
- Glidepath analysis will also appraise local energy-related strategies to minimize negative impacts and promote sustainable economic development for NGS Affected Tribes such as
  - Energy projects to improve local water delivery
  - Distributed solar
  - Upsizing utility-scale project to provide power for local tribal use

# Elements of NGS Phase 2 Study



# Road Map

*With NREL's Phase 2 study as a knowledge base, federal agencies will decide on actions to achieve goals*



- **Federal goals**
  - Clean, affordable, reliable power
  - Affordable, sustainable water supplies
  - Sustainable economic development
  - Minimize negative effects on tribes, others who receive benefits from NGS

# Phase 2 Informs the Federal Road Map

**Phase 2 Study**

By NREL

Is a knowledge base\*  
(analysis of options)

**Road Map**

By Federal  
Government

Is a set of decisions  
(selection of options)

*\*Phase 2 Study will not decide  
any specific project or federal action*

# Phase 2 Project Milestones

**Stakeholder outreach and scoping** Complete

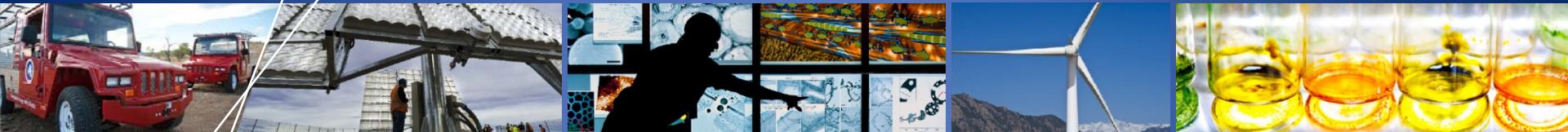
**Technical memoranda — baseline topics** September 2015

**Technical memoranda — glidepath topics** September 2016

**Final published report** October 2016

**Social media outreach** December 2016

# Questions?



Kevin Black  
NGS Program Manager  
Energy Development  
[kblack@usbr.gov](mailto:kblack@usbr.gov)  
623-773-6207

**Appendix E: Letter from Fennemore Craig**

# FENNEMORE CRAIG, P.C.

2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-3429  
(602) 916-5000

**Patrick J. Black**  
Direct Phone: (602) 916-5400  
Direct Fax: (602) 916-5600  
[pblack@fclaw.com](mailto:pblack@fclaw.com)

**Law Offices**  
Denver (303) 291-3200  
Las Vegas (702) 692-8000  
Nogales (520) 281-3480  
Phoenix (602) 916-5000  
Reno (775) 788-2200  
Tucson (520) 879-6800

November 11, 2015

Kevin Davidson, Planning Director  
Hualapai Tribe  
P.O. Box 179/887 W. Highway 66  
Peach Springs, Arizona 86434

**Re: Attorney Fees: Hualapai Tribal Utility Authority  
Cost Estimate for 2016**

Dear Mr. Davidson:

I am providing this letter response to your inquiry concerning projected legal fees for the Hualapai Tribal Utility Authority (“HTUA”) in 2016. As you are aware, the HTUA spent much of 2015 preparing to obtain the necessary authority from the Tribal Council and Tribal members to move forward with the interconnection project designed to bring electricity to the Grand Canyon West (GCW) facility. In addition, the HTUA worked to secure federal power allotments from both the Western Area Power Administration and the Arizona Power Authority for delivery in 2017.

Provided that the HTUA obtains the necessary authority to move forward with the interconnection project, much of 2016 will be spent negotiating the necessary contracts with UniSource Electric, Inc. (UNSE) and other entities to build, operate and secure wheeling agreements that will deliver power to GCW via a 20.8kV distribution line owed by the HTUA, and connected to UNSE’s transmission system for the import – and potential export – of electricity.

We anticipate spending approximate 15-20 hours per month supporting the HTUA activities, which include: (i) participating in all HTUA Board meetings; (ii) securing the necessary Tribal member votes to enable the HTUA to contract with 3<sup>rd</sup> party vendors; (iii) finalizing federal power contracts with WAPA and the APA, (iv) negotiating various supply and wheeling agreements to power operations and GCW; and (v) assisting in the loan application through the USDA’s RUS loan program.

# FENNEMORE CRAIG, P.C.

Page 2

David Francis, an associate with our firm, and myself will be primarily responsible for handling energy-related matters on behalf of the HTUA. Based on our hourly rates, we estimate that legal fees for 2016 will run approximately between **\$72,000** to **\$96,000** dollars. By way of comparison, we have billed the HTUA approximately \$73,000 through October 2015. As always, we will endeavor to ensure that the HTUA continues to receive value for our services, and continue to write down fees as appropriate.

Should you have any questions or would like to discuss this matter further, please do not hesitate to contact me at your convenience. Thank you.

Sincerely,



Patrick J. Black