

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).

Proposed HTUA Budget 2015				
Consultant	Rate	Units/Month	Months	April-Dec 2015
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
				\$38,970
Board Member Travel	Rate/Mile	Miles		Total
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
				\$3,150
Memberships	Annual Dues			Total
Arizona Tribal Energy Assoc	\$1,500			\$1,500
				\$1,500
Public Outreach	Rate/Cost	Units/Month	Months	Total
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
				\$7,720.00
Total Budget				\$51,340.00

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.

8) Adjourned at 12:00 PM