

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

April 26, 2016, 6:25 PM to 7:40 PM, ITCA, 2214 North Central Avenue, Suite 100, Phoenix, Arizona.

### Board members:

Charles Vaughn, Chairman – absent

Rory Majenty, Vice-Chairman – absent

Joe Montana, Secretary – absent

Steve Malin, Treasurer – absent

Jamie Navenma – present

### Council Members:

Philbert Watahomigie, Vice-Chairman, Hualapai Tribe

### Support personnel:

Kevin Davidson, Planning Director and acting General Manager for the HTUA

Patrick Black, Fennermore Craig PLC, legal counsel for HTUA

Lou Schmitt, P.E., TTG Engineers, engineer for proposed power line to GCW

**1) Call to Order** – postponed pending quorum (quorum not met). Mr. Davidson welcomed the audience of half a dozen people to the meeting and began the PowerPoint presentation.

**2) Presentation of proposed amendment to the Hualapai Constitution.** Mr. Davidson introduced himself as the acting General Manager for the HTUA and began the formal presentation by giving some history on the HTUA as follows:

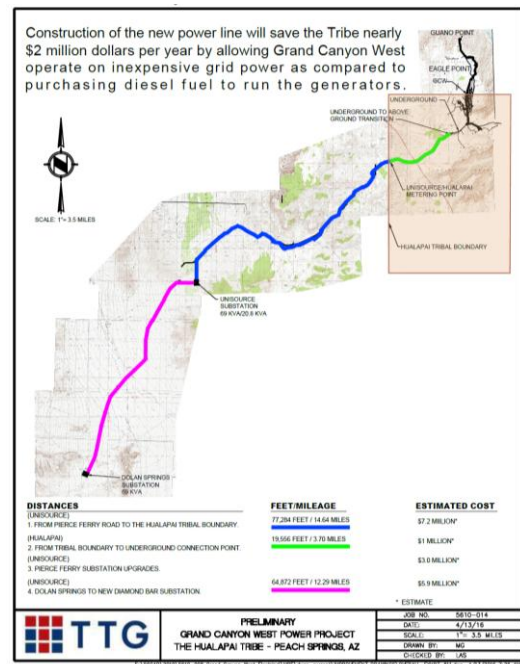
- The Hualapai Tribal Council created the Hualapai Tribal Utility Authority in 2014 to develop utilities important to the economic development of the Hualapai Tribe.
- The purpose of the HTUA is to provide electric power service, water service, and sewage service at certain locations within the Hualapai 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.

Mr. Davidson next HTUA Board members: Charles Vaughn, Chairman, Rory Majenty, Vice-Chairman, Joe Montana, Secretary, Steve Malin, Treasurer and Jamie Navenma. The HTUA typically meets once per month at the Hualapai Cultural Resources Department in Peach Springs between 9:00 AM and noon.

**a. Objectives of the Hualapai Tribal Utility Authority**

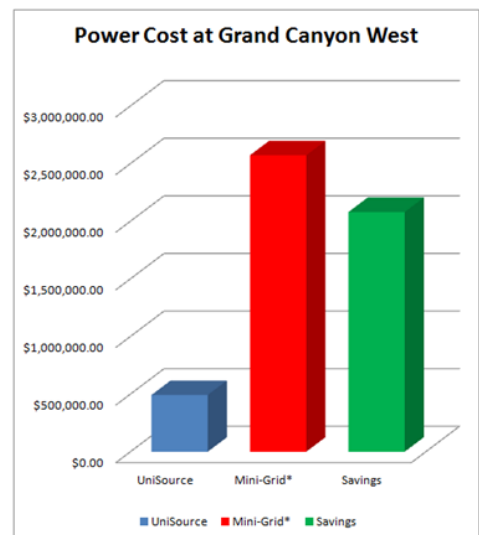
**Objective 1: Lower electric costs at Grand Canyon West**

**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 and the re-build along Pierce Ferry Road is estimated at \$18 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.



**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.

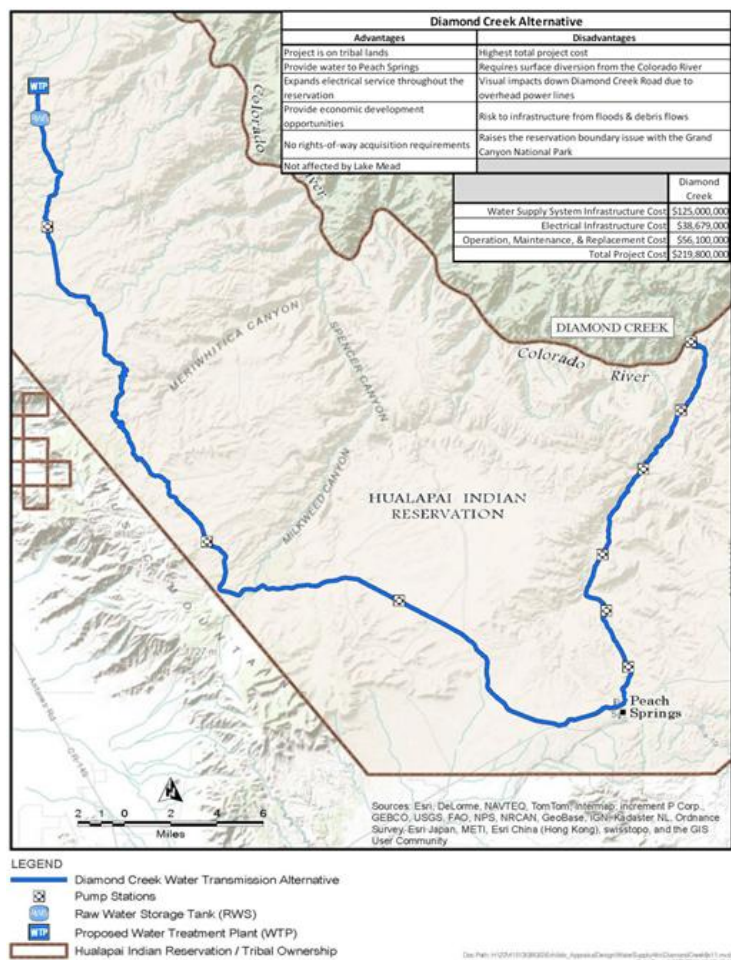


**Objective 3: Self-determination and Support for Peach Springs Electric Customers**

These include additional activities that the HTUA can undertake to help electric customers in Peach Springs such as: 1) construct a set of back-up diesel generators to provide electricity during power outages in Peach Springs, 2) provide training for Hualapai linemen who would be employed to work on the reservation’s power lines, and 3) create a program to install roof-top-solar arrays on homes and buildings in Peach Springs.

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



**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 Hualapai Reservation that provides for the wellbeing of the tribe, it is necessary to amend the Constitution to provide the Hualapai 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 HTUA 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.

The power line is designed to meet the future electrical demand for future development at Grand Canyon West. These electricity demands through 2018 include a new 250-room Resort Hotel & Full Service Restaurant (1,600 Kilowatts), a new Airport Terminal (540 KWs), a new Full Service Kitchen (193 KWs), new and existing housing (149 KWs), and a new Welcome Center (313 KWs). These demands exceed the current generator's capacity (2,175 KWs) by 620 KWs and do not include the existing load of 600 KWs to operate Grand Canyon West.

**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, with Tribal Council approval, 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 the 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. The 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. Council approved Resolution No. 79-2015 on October 1, 2015, to begin the special election process and the tribe sent the Resolution to the Department of Interior for review.
2. The Department of Interior authorized the Secretarial Election on March 14, 2016.
3. Department of Interior will hold the Secretarial Election on May 23rd.
  - a. Department of Interior will register Hualapai voters by April 29th
  - b. Ballot mail out on May 6th. 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 and advice to the HTUA Board. Ms. Tinhorn asked how the Council would deal with tribal entities that request a limited waiver of sovereign immunity be placed in one of their third-party contracts. Mr. Watahomigie noted that limited waivers have been reviewed by Council in the past for smaller projects and that Council has been inclined to accept them. Mr. Black added that the limited waiver of sovereign immunity allows for the arbitration and, if needed, litigation in federal court in addition to tribal court. Mr. Black also said the HTUA and Council should each hold a special public meeting to discuss the use of the limited waiver of sovereign immunity as shown in proposed Section 3 of Article XVI.

Ms. Smith asked if any tribal land could be seized by a contractor as result of the tribe signing a contract with a limited waiver of sovereign contained in it. Mr. Davidson said no. Mr. Black added that in the case of the power line along Diamond Bar Road, most of the land is outside of the reservation and along a Mohave County right-of-way or on Bureau of Land Management holdings. Ms. Smith advised the HTUA go “door-to-door” to provide this type of detailed explanation on the scope of the limited waiver of sovereign immunity as described in proposed Section 3. Mr. Black advised that the Council set up a 60-day comment period prior to Council action on Section 3.

Mr. Navenma said the Hualapai Housing Department could also benefit from the limited waiver of sovereign immunity in its future contracts to build and remodel its rental homes. The current \$250,000 limit in Section 2, Article XVI prevents the Department from constructing or remodeling more than a handful of homes on any one contract. With the new language proposed in Section 3, the Housing Department could apply for HUD’s Section 184 and Title VI loan program and with that money could construct 20 to 30 homes at a time and save costs due to the volume discount.

Ms. Smith, after looking through the 11-page Q&A summary of the December 16, 2015, meeting at ITCA, which she and her husband also attended, recommended reducing the detailed responses so they can fit on a few pages. This should make the answers more accessible and likely to be read.

Mr. Walema said the HTUA presentation should include other examples of where tribal utilities and other tribal housing departments have used a limited waiver of sovereign immunity and to what beneficial effect for tribal members. Mr. Davidson replied that we would do additional research on the topic. Mr. Navenma noted that Yavapai-Apache Nation, San Carlos Apache, Pueblo of Zuni, Pueblo of Acoma, Pascua-Yaqui are some of the housing programs that use these loan programs and have included the limited waiver of sovereign immunity language in their contract documents

**3) Time and location for next public meeting**

The next meeting will be held on April 27, 2016, starting at 6:00 PM at the Hualapai Tribal Gym in Peach Springs.

**4) Meeting Conclusion at 7:40 PM**