

## **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 the 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**