

Hualapai Tribal Utility Authority (HTUA) Meeting Minutes

December 16, 2015, 6:10 PM to 8:40 PM, Inter Tribal Council of Arizona, 2214 North Central Avenue, Suite 100, Phoenix, Arizona.

Board members:

Charles Vaughn, Chairman – present at 6:20 PM

Rory Majenty, Vice-Chairman – absent

Joe Montana, Secretary – present

Steve Malin, Treasurer – present

Jamie Navenma – absent

Support personnel:

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

1) Call to Order – postponed pending quorum. Mr. Davidson welcomed the audience of over 30 people to the meeting and began the PowerPoint presentation.

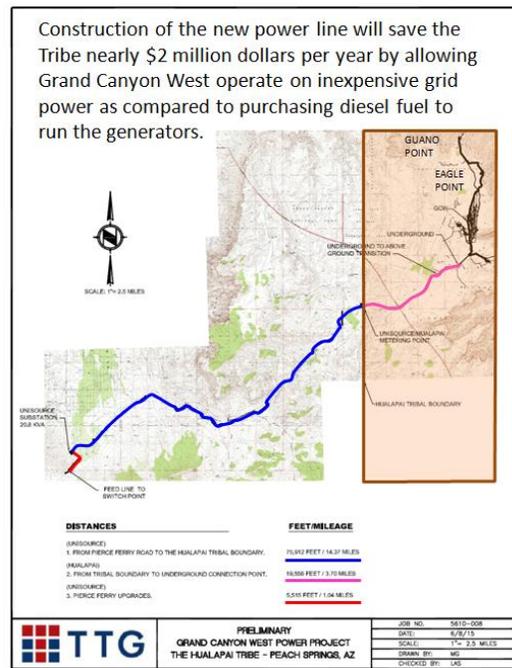
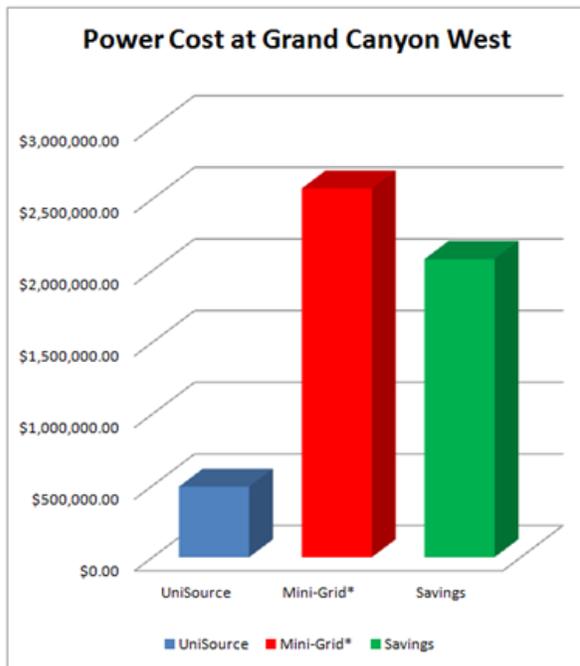
2) Presentation of proposed amendment to the Hualapai Constitution. Mr. Davidson introduced himself as the acting General Manager for the HTUA and began the formal presentation by giving some history on the HTUA as follows:

- 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 - 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 -

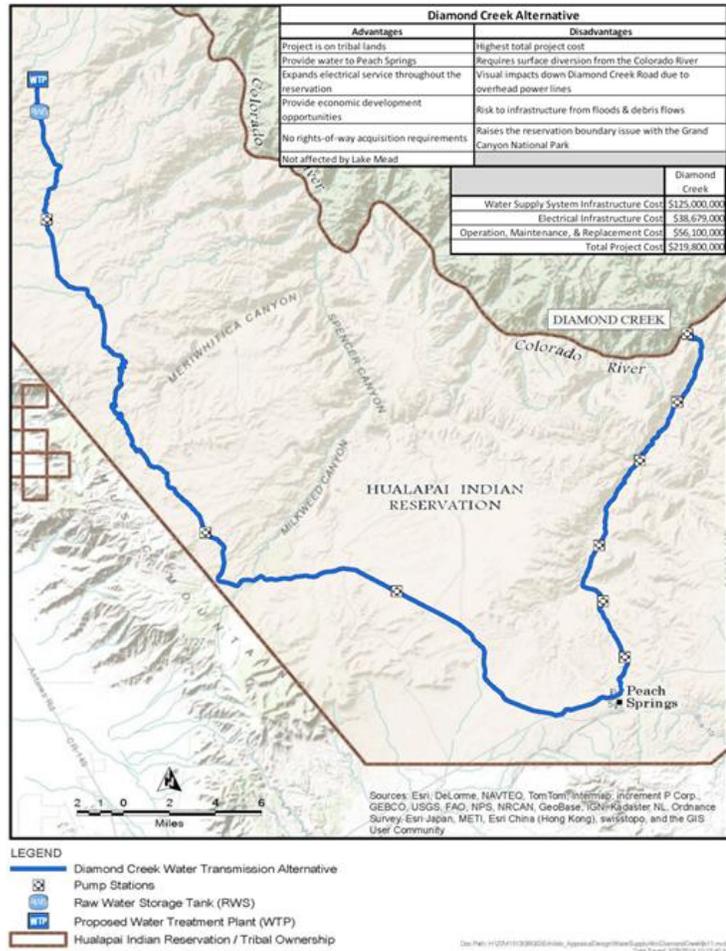
Like many other tribes with a utility authority, future events may enable the HTUA to purchase the present undependable electrical service and deliver more reliable service to the tribe. The existing electric service infrastructure could be purchased at the depreciated cost. In 2007, the depreciated 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). 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.
2. Tribe sent the Resolution to the Department of Interior on October 7, 2015, for 90-day review. Awaiting a decision by Department of Interior to initiate the Constitutional amendment process.
3. Department of Interior will hold a vote on the 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 and advice to the HTUA Board. The first question was: What happens if the project “goes bust?” Mr. Davidson replied that the lender who loaned the tribe the money would own the power line. Given that, can the bank/lending agency seize the land on which the improvements are placed? Mr. Davidson said that the limited waiver would not extend to reservation land and only allow the lender to take control of the capital asset, the power line. Mr. Vaughn added that Grand Canyon West has enjoyed a steady increase in tourism each year since it was opened and is set to have one million visitors in 2015 before the end of December. Grand Canyon West and the Grand Canyon Resort Corporation (GCRC) provide employment for many tribal members (250). The growth at Grand Canyon West has spurred demand for other development such as housing for tribal members. The short-term goal of the HTUA is build a power line to reduce power costs at Grand Canyon West. Some tribal members want to see more development at Grand Canyon West while others do not.

Mr. Bender asked what has been the experience of other tribes who have granted limited waivers of sovereign immunity to develop their large projects. Mr. Davidson referred to the three tribes (Ak-Chin, Gila River and Morongo Band of Mission Indians) that were noted in the presentation. More research about these tribes’ experiences will be presented at the next meeting.

Mr. Nish asked if the HTUA and the tribe are qualified to run this type of operation. Some tribes are not qualified to run their casinos (reference to gaming tribes in Phoenix metro area). Also, the tribe will have to employ outside contractors because it does not have the in-house experience to operate a utility company. This will most likely require the tribe to pay union wages (International Brotherhood of Electrical Workers). How can we ensure that corruption will not take place in the contracting process and in operations?

What does a limited waiver of sovereign immunity mean to the tribe? Mr. Davidson reviewed Slide No. 15 of the presentation, “a 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. Vaughn added that the contracts signed by the tribe have a dispute clause. This includes a hearing in tribal court, then tribal appeals court.

Ms. Tinhorn opined that the limited waiver may open “Pandora’s Box.” The wording in Article XVI, Section 2 provides a “check” on Council’s power by the voters. Mr. Vaughn said the existing language in Section 2 is too limiting for the tribe to act upon. When the Constitution was written in 1992, the authors did not envision the need for a greater than \$250,000 limit for Council. Without the limited waiver proposed in new Section 3, the tribe will continue to struggle economically.

Returning to growth, Ms. Powskey said that developing more housing at Grand Canyon West should be reconsidered (relation to grid power being used to allow more growth). Mr. Malin said that Grand Canyon West is nearing its one millionth visitor for 2015 and such a visitation rate requires supporting infrastructure at the facility. Ms. Vaughn asked how long it has taken Grand Canyon West to reach 1 million visitors. Is it too risky to promote all this tourism given the international and domestic situation (reference to recent terrorist attacks in Paris and San Bernardino)? Can another source of power be developed on-site to supply Grand Canyon West, such as wind and/or solar? Mr. Vaughn said that for wind and solar development, a purchase power agreement (PPA) is required with the end user, which may take more than a year. In addition, solar and wind are transient resources, not base load power which is required at Grand Canyon West, something the power line can provide.

Mr. White asked if the owner of the Diamond Bar Ranch (reference to previous owner who was hostile to the construction of the new power line) can block the power line along Diamond Bar Road which passes through the private land. Mr. Davidson said that the Diamond Bar Ranch is now under new ownership which does not appear to be hostile to Hualapai. Mr. Vaughn added that the BIA has purchased an easement through this property which has allowed for the new roadway to be constructed. Mr. Malin concluded by saying that the power line may be routed around the private parcel if required. Can a private land owner located along the route of the new power line tap into this new power line and take all of Grand Canyon West’s power? Mr. Davidson said the other land owners who want to draw service from the power line would have to pay UniSource to upgrade the power line to a higher voltage by installing a larger circuit in order to keep the same amount of energy flowing to Grand Canyon West.

Should there be a dollar amount cap on the proposed limited waiver in Section 3? What should that cap be set at? How does Council know when to invoke Section 2 vs. Section 3 of Article XVI? Mr. Vaughn replied that Council must use their own judgment, as elected decision-makers, to know when to use Section 3 over Section 2. Did the language of Section 3 come from Tribal Council? Mr. Davidson said it was largely developed by the HTUA Board and its legal counsel as a result of Council tasking the HTUA to construct a power line to Grand Canyon West. Mr. Vaughn clarified and said that the Resolution approving the proposed amendment language and requesting the Secretarial Election was approved by Council in October of this year.

Mr. Fliesaway asked if the HTUA was created akin to GCRC as an independent corporation. If so, these questions are irrelevant. Mr. Davidson referred to Article V (w and x) of the Hualapai Constitution and said that Council had the authority to create the HTUA. Mr. Davidson will provide Mr. Fliesaway with the original resolution that adopted the HTUA ordinance in 2014. Mr. Vaughn confessed that in the mid 1990s he too had opposed GCRC taking on debt (bank loan) to construct the Hualapai Lodge, but has slowly changed his mind over the years given the growth the tribe has experienced in the last decade.

How much power does Grand Canyon West use per day, per year? Mr. Davidson said that the three diesel generators at Grand Canyon West peak at about 600 KW (kilowatts) per hour on high-demand days. That is equal to the energy use of at least 60, maybe 100 homes. Mr. Davidson said his home uses about 20 KWhrs per day and some 6 MWhrs per year and noted that the value of a megawatt is 1,000 kilowatts.

Will tourists, coming primarily from Las Vegas, want to stay at a resort hotel at Grand Canyon West? What will they do overnight? Mr. Davidson said that GCRC has a market study in-hand which was produced as part of the new Master Plan for Grand Canyon West that was completed in late 2014. The Master Plan shows a resort hotel. Mr. Smith asked who performed the market study indicating that a resort hotel will be profitable at Grand Canyon West. Mr. Davidson said he will ask GCRC to share the market study.

Mr. Smith asked if the power line proposed along Diamond Bar Road is the only power line planned to be built to serve Grand Canyon West. Is there a back-up power source planned because utility grids are unreliable? Mr. Davidson said this is the only power line planned at this time. However, referring back

to Slide No. 9 of the presentation, the water pipe line proposed along Diamond Creek Road up to Peach Springs and then along to Grand Canyon West via Buck and Doe Road will have no less than seven pumping stations which will require some 4,000 KWs of electrical power pump the water to these destinations. The last pumping station is less than 20 miles from Grand Canyon West, so extending the power line that will supply these pumps with a electricity a bit further would provide a second power line to Grand Canyon West. Being part of the tribe's pending water rights settlement with the Bureau of Reclamation, the power line would be built as part of this federally funded infrastructure project. The three diesel generators that provide power to Grand Canyon West would become the back-up power supply once the power line is brought to Grand Canyon West.

How is the tribe progressing on obtaining its water rights to the Colorado River? Will the tribe's water rights be pushed aside by other water users (implied that others who have higher priority water rights will have those with lower priority rights curtailed first)? Mr. Davidson said he would make further inquiries into the tribe's time line on the water rights.

What is the time line to build the power line? Mr. Davidson replied that preliminary engineering has been performed. The Secretarial Election will take several months to complete. If the amendment is approved, then final design and environmental clearances can be completed, as well as the USDA loan applied for in 2016. Construction may start in 2017.

Does the tribe want to overbuild at Grand Canyon West? If tourists prefer this type of built-up environment they should travel to the South Rim. Mr. Smith said that very few tourists spend the night at Grand Canyon West. They are coming to see an open, undeveloped view of the Grand Canyon and not a view of a resort hotel. Mr. Montana said the discussion should focus more on the power line and less on GCRC's operations. Even though Mr. Montana does not entirely agree with the development style and philosophy of the GCRC Board, he does see the new power line as good thing for the tribe to invest in.

Mr. Smith asked if it is a good idea to be "married to" or rely upon a single utility company to provide power to Grand Canyon West. Can this electric service be bid out and not sole-sourced? Mr. Davidson noted that utility companies have county franchises and demarcated service areas which do not invite competition; however, a power line built as part of the water rights settlement would bring Mohave

Electric Cooperative's power from Peach Springs to Grand Canyon West. This power line could act as a second supply after UniSource and also allow the power line to loop to avoid the power outage problem common to radial or dead-end power lines.

Mr. Nish opined that the tribe should develop its own resources and set appropriate lease/purchase rates for the use of those resources. For example, a dam and reservoir could be built on the Reservation, possibly at the Diamond Creek delta, and water sold to downstream users. We need to have Hualapai recognized and taken seriously by the federal government. Can we develop these resources prior to paying to build a new power line?

Mr. Smith said the tribe should provide for the needs of the Elders with any cost saving benefits from the power line project. Mr. Nish said these benefits to the elderly should include land on the Reservation and homes as well.

Will the power line benefit Peach Springs or just Grand Canyon West? Mr. Vaughn said the tribe's economy is largely based on tourism. The power line will help reduce the operational costs at Grand Canyon West which in turn should benefit the tribe as a whole. The tribe signed a gaming-pact with other Arizona tribes which limit Hualapai participation in the gaming industry such as building a casino on the Hualapai Reservation. To help bring water to the reservation and support economic development, the tribe has been pursuing its water rights claim to the Colorado River by first settling its surface water claims in the Big Sandy Valley (along Highway 93).

Ms. Hunter asked about the time line for the Secretarial Vote on the proposed Constitutional amendment. Mr. Davidson reviewed presentation Slide No. 17 and said the vote must occur with 150-days of the Department of Interior authorizing the vote. The authorization is expected in early January. Ms. Hunter asked if the HTUA can invite GCRC Board members and members of Council to attend the next meeting at ITCA so attendees can hear their perspective and have them answer specific questions. Ms. Hunter also noted that the 2014 attempt to amend the Hualapai Constitution failed.

Was the referendum option under Article XVI, Section 2, explored prior to crafting the language for new Section 3? Mr. Vaughn said the proposal to add Section 3 was discussed with Council and then voted upon by Council at a later meeting. Mr. Vaughn also added that the main reason the 2014

Constitutional amendment failed was due to a lack of public outreach by the tribal leadership to explain and educate the voters about the sweeping changes requested in the 2014 Constitutional amendment proposal. Fond of quoting historical leaders, Mr. Vaughn recalled what Ernesto “Che” Guevara said when he led his revolutionary efforts to South America in the mid-1960s – The people’s vision of the future does not go beyond tomorrow’s sunrise. This limitation, not uncommon to other peoples as well, has to be overcome if the tribe wants to succeed in its endeavors which will benefit our children and grandchildren.

Ms. Vaughn asked for a cost comparison of the proposed power line to that of renewables such as solar and wind power. Mr. Davidson said he will ask his engineering team to produce a cost comparison. How will the power line project help the community? What is the benefit of the new power line to the average Hualapai person such as those living in Peach Springs? Mr. Malin said that the proposed power line could be paid for in less than eight years given the estimated savings of not having to run the diesel generators day and night. Once the power line is paid off, then these savings can be spent on other projects such as building housing or used by the tribe to support its social programs.

Can we read the new Grand Canyon West Master Plan and market study? Can it be placed on-line? Mr. Davidson said he would talk to GCRC management about releasing this document for public review.

Does the limited waiver lead to a giving away of Hualapai’s future?

Ms. Imus said she had a neutral opinion on the proposed amendment and requested a second meeting be held in Phoenix prior to the vote. Can we ensure that the ballots are distributed to 100% percent of the eligible voters? Ms. Imus said the membership of the HTUA seems trustworthy.

3) Set time and location for next meeting

The next meeting will be held on January 13, 2016, starting at 9:00 AM at the Hualapai Cultural Resources Department.

4) Meeting Conclusion at 8:40 PM