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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE COMPLAINT OF BUREAU OF INDIAN AFFAIRS, UNITED STATES OF AMERICA, AGAINST MOHAVE ELECTRIC COOPERATIVE, INC. AS TO SERVICES TO THE HAVASUPAI AND HUALAPAI INDIAN RESERVATIONS.	DOCKET NO. E-01750A-05-0579 **MOHAVE ELECTRIC COOPERATIVE, INC.'S STATEMENT OF DISPUTED FACTS AND ADDITIONAL MATERIAL IN SUPPORT OF RESPONSE TO BIA'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Mohave Electric Cooperative, Inc. ("Mohave"), pursuant to Rule 56(c)(2), *Arizona Rules of Civil Procedure* ("ARCP") hereby disputes the incomplete, inaccurate and misleading Statement of Facts set forth by the Bureau of Indian Affairs' ("BIA") in support of its Motion for Partial Summary Judgment and sets forth additional facts relevant to the issues raised in the BIA's Motion.

FACTS SET FORTH IN BIA'S STATEMENT OF FACTS DISPUTED BY MOHAVE

1. Mohave disputes the accuracy and materiality of the BIA's characterization of Article V to Mohave's Articles of Conversion in BIA SOF, Exh 1. The Articles are the best evidence of their contents.

2. The Contract is the best evidence of its contents. BIA SOF, Exh. 2. Mohave disputes the contention in BIA SOF #2 that Mohave contracted directly with the BIA on October 1, 1981. The Contract was with the United States of America, acting through the

Administrator of the General Services Administration on behalf of the BIA. BIA SOF, Exh. 2 at 00001. The Contract was not assigned to and assumed by the BIA until later. **MEC SOF Exh. 1**, attached hereto. The BIA fails to present any admissible evidence supporting its assertion that the Contract was executed on the date of October 1, 1981. These assertions are not supported by a reference to the record as required by Rule 56(c)(2), ARCP.

3. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #3. The Contract is the best evidence of its contents. The BIA fails to present any admissible evidence supporting its assertion that the Long Mesa transformer is located at the "top of the Grand Canyon" or that a line runs to the "bottom of the Canyon." These statements require independent knowledge of the location of Long Mesa and the Havasupai Village not reflected in the Contract and, therefore, these "facts" are not supported by a reference to the record as required by Rule 56(c)(2), ARCP.

The BIA fails to inform the Commission that the BIA did not exercise its option to renew the Contract (**MEC SOF Exh. 2**, attached hereto) and that the Contract specifies that if the government does not exercise its renewal option or terminates the Contract that "the Government shall pay, in U.S. currency, in a single payment, an amount equal to Mohave's undepreciated value plus facility removal costs, less salvage value, of the facilities that Mohave constructs because of this contract." BIA SOF, Exh. 2 at 00014. The Contract has no requirement governing Mohave's provision, metering or billing for power in the event the Contract is not renewed or otherwise terminates. BIA SOF, Exh. 2.

4. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #4. The Contract is the best evidence of its contents. BIA SOF, Exh. 2. Mohave was required to seek a loan, not to obtain one. BIA SOF, Exh. 2 at 00017. The Monthly Facilities Charges included more than recovery of construction costs. BIA SOF, Exh. 2 at 00013-00015.

Mohave's billings to BIA reflect a cost of construction of $1,145,651.55. See, April 14, 1982 letter from Mohave to Mr. Geiagamah explaining the components of the billing

statement, attached hereto as **MEC SOF Exh. 3;** BIA SOF, Exh. 7. All issues related to the Facilities Charge were settled as part of a Settlement entered in the Federal Court of Claims action entitled *Mohave Electric Cooperative vs. The United States of America*, United States Federal Court of Claims, Case No. 99-242C. **MEC SOF Exh. 4** attached hereto.

The Affidavit of James C. Walker does not provide proper foundation for the statements contained therein and fails to meet the requirements of Rule 56(e), ARCP. Therefore, all facts set forth in the BIA's SOF supported by Mr. Walker's affidavit are disputed. Without proper foundation, the statements are not admissible evidence and must be disregarded.

5. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #5. All issues related to the Facilities Charge were settled as part of a Settlement entered in the Federal Court of Claims action entitled *Mohave Electric Cooperative vs. The United States of America*, United States Federal Court of Claims, Case No. 99-242C. **MEC SOF Exh. 4** attached hereto. The Contract is the best evidence of its contents. BIA SOF, Exh. 2.

BIA fails to present any admissible evidence supporting its assertion that "MEC has several large retail power customers" and this assertion is not otherwise supported by a reference to the record as required by Rule 56(c)(2), ARCP.

While the mathematical calculation is correct, the BIA fails to present any admissible evidence indicating that it actually "paid MEC $838,615.80 for depreciation (183 months at $4,5862.80 [sic] per month)" and this assertion is not otherwise supported by a reference to the record as required by Rule 56(c)(2), ARCP.

6. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #6. The Affidavit of James C. Walker does not provide proper foundation for the statements contained therein and fails to meet the requirements of Rule 56(e), ARCP. Therefore, Mr. Walker's Affidavit and all facts set forth in BIA SOF 4 must be disregarded.

7. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #7. The 13 connections listed in BIA SOF #7 are not "retail customers" of Mohave in any legal or traditional sense. In permitting and facilitating these 13 connections, Mohave was complying with the Contract and acting as agent for the BIA. BIA SOF, Exh. 2 at 00002, 00001, 00008 and 00016 (whereby the Government grants Mohave a revocable permit to enter the "Service Location" for any proper purpose under the Contract, which included the interconnects and line extension on the Hualapai Reservation and Mohave's election to serve the Hualapai Reservation upon its own arrangements).

8. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #8. Commission rules and practice mandated that the 70-mile transmission line and its associated expenses and revenues be included in Mohave's application for rate adjustment in its 1990 rate case. A.A.C. R14-2-103. While the Commission classified the 70-mile line as a "transmission line" in Decision No. 53174, this did not eliminate the requirement that the line be included in the filing. A.A.C. R14-2-103(B)(4). The plant, revenue and expenses related to the transmission line were included and then specifically allocated to the BIA. BIA SOF, Exh. 10.

The BIA fails to present any admissible evidence supporting its assertion that the proceeds from Note Numbers 14190 and 14191 were used to finance the construction of the transmission line or that interest from these loans were actually reflected in the rate filing beyond Mohave's position "that facilities used to serve the BIA were provided with special low cost financing which should be reflected in the [BIA's] rates." BIA SOF, Exh. 10 at 00057. The BIA's assertion is not otherwise supported by a reference to the record as required by Rule 56(c)(2), ARCP.

By specifically allocating plant and the associated revenues and expenses, and utilizing the low cost loan as a reason to hold rates steady, Mohave was following the Commission's directive in Decision No. 53174 (see, **MEC SOF Exh. 5** attached hereto) to treat the 70-mile

transmission line separately so as not to burden Mohave ratepayers with costs associated with this plant.

9. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #9. Decision No. 57172 is the best evidence of its contents. BIA SOF, Exh. 6. The BIA fails to present any admissible evidence supporting its assertion that "the ACC recognized that MEC was receiving substantial revenues from the BIA through the delivery of electricity over" the 70-mile transmission line. Attachments to Decision No. 57172 indicate that the $115,718 in revenues from power sales to the BIA represented only 0.43% of Mohave's revenues in the test year. This compares to 5.03% and 3.12% of Mohave's test year revenues coming from Chemstar and Cyprus Bagdad, respectively. Only the Lighting class of service generated less as a class (.38%).

Again, the BIA fails to inform the Commission that the BIA did not exercise its option to renew the Contract (**MEC SOF Exh. 2**, attached hereto) and that the Contract has no requirement governing Mohave's provision, metering or billing for power in the event the Contract is not renewed or otherwise terminates. BIA SOF, Exh. 2. When it became evident that the parties were not likely to reach agreement on a special contract rate, there was no basis to continue to apply the BIA Contract Rate. BIA SOF, Exh. 6 at 00024.

10. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #10. Unbundled rates were filed breaking down the Standard Rate into various components. BIA SOF, Exh.11, 00005 – 00008. By the time the unbundled tariffs were filed in February 1998, the meter had been relocated to the Nelson substation and BIA was being billed under Mohave's Schedule "L" (Large Commercial).

11. Mohave disputes the materiality of assertions made in BIA SOF #11. When it became evident that the parties were not likely to reach agreement on a special contract rate, Mohave stopped utilizing the BIA Contract Rate for billing purposes as the Contract Rate was no longer available as the Contract to which it applied had terminated. BIA SOF, Exh. 6 at

00024; **MEC SOF Exh. 2** attached hereto. Schedule L rates are used and have been used to bill BIA since the meter was relocated to the Nelson substation.

12. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #12. Mohave's Member Newsletter (BIA SOF, Exh. 13) was not part of the amendment and is not a legally binding document.

13. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #13. The documents are the best evidence of their contents. When the BIA exercised dominion and control over the line, (such as by serving the Bar Four area through a 13.6 mile line interconnected to the transmission line after Mohave's abandonment thereof) it accepted the tender of the Quit Claim Deed.

14. Mohave disputes the completeness of assertions made in BIA SOF #14. The meter was relocated in 1997.

15. Mohave disputes the materiality of assertions made in BIA SOF #15. The number and cause of interruptions in the flow of electricity since February 2006 is immaterial. Since the facilities were abandoned in July 2003, Mohave responds to service calls from the BIA on a "when available basis" provided the BIA agrees it is responsible for costs incurred in responding. Since 1997, Mohave has not been compensated in the rate charged to the BIA for the Operation & Maintenance associated with the line. See Billing Statement attached hereto as **MEC SOF Exh. 6.**

16. The letter is the best evidence of its contents. BIA SOF Exh. 18. The letter misstates facts and draws inaccurate legal conclusions. The Commission is not bound by and should disregard the letter.

12. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #12. Mohave's Member Newsletter (BIA SOF, Exh. 13) was not part of the amendment and is not a legally binding document.

13. Mohave disputes the accuracy and materiality of assertions made in BIA SOF #13. The documents are the best evidence of their contents. When the BIA exercised dominion and control over the line, (such as by serving the Bar Four area through a 13.6 mile line interconnected to the transmission line after Mohave's abandonment thereof) it accepted the tender of the Quit Claim Deed.

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15. Mohave disputes the materiality of assertions made in BIA SOF #15. The number and cause of interruptions in the flow of electricity since February 2006 is immaterial. Since the facilities were abandoned in July 2003, Mohave responds to service calls from the BIA on a "when available basis" provided the BIA agrees it is responsible for costs incurred in responding. Since 1997, Mohave has not been compensated in the rate charged to the BIA for the Operation & Maintenance associated with the line. See Billing Statement attached hereto as **MEC SOF Exh. 6.**

16. The letter is the best evidence of its contents. BIA SOF Exh. 18. The letter misstates facts and draws inaccurate legal conclusions. The Commission is not bound by and should disregard the letter.

SUPPLEMENTAL FACTS MATERIAL TO THE ISSUES RAISED BY THE BIA'S MOTION FOR PARTIAL SUMMARY JUDGMENT

THE BIA OPERATES AS AN ELECTRIC UTILITY AND, SINCE AT LEAST 1968, HAS BEEN THE SOLE PROVIDER OF ELECTRIC SERVICE TO THE HAVASUPAI NATION

1. The BIA commenced providing electric power to the Havasupai Reservation by 1968. **MEC SOF Exh. 7** attached hereto. (BIA response to MEC Data Request ("BIA Response") No. 1.0.) **MEC SOF Exh. 8** attached hereto.

2. By 1971, diesel driven generators on the rim of Long Mesa brought power to the village of Supai. **MEC SOF Exh. 9.** (BIA Response at Exhibit 2.)

3. By 1975, "the Havasupai ha[d] become increasingly dependent on electricity," with 50 new homes fully electric and dependent on the power for cooking, heating and refrigeration and an enlarged school, a new store and lodge intensifying the demand for power. **MEC SOF Exh. 9, p. IV-19.** (BIA Response at Exhibit 2.)

4. By 1976, at least two generators also existed on the Hualapai Reservation in the Frazier Wells area and a third generator existed at the end of Supai Road. **MEC SOF Exh. 10.** RFQ No. N-446 (BIA Response at Exhibit No. 7.)

5. By Memo dated April 10, 1972, the Area Director outlined various forms that should be used and directed charges should be made for electric energy. **MEC SOF Exh. 11.** (BIA Response at Exhibit No. 24)

6. The BIA, under the direction of the Superintendent of the Truxton Canon Agency, and as required by 25 C.F.R. Part 175 (**MEC SOF Exh. 12**), has promulgated rules and

regulations for the Supai Electric Power System Project. **MEC SOF Exh. 13.** (BIA Response at Exhibit 28.)

7. In order to become a consumer of the Supai Electric Power System Project, an application is completed which becomes a contract upon the approval of the Agency Superintendent or his authorized representative. The Agency Superintendent can reject such applications and the Agency Superintendent may suspend or cancel any contract upon the consumer's failure to comply with rules and regulations or make payment. The rules specifically indicate that the consumer is "receiving electric energy from the United States." **MEC SOF Exh. 13** (BIA Response at Exhibit 28.) The BIA has refused MEC's request to provide customer counts relating to this system.

8. The BIA performed a rate study and proposed rates to be charged by the BIA based upon the proposed contract with MEC. **MEC SOF Exh. 14.** (BIA Response at Exhibit 17.)

9. "The actions taken, to purchase, deliver and sell electricity, had the effect of creating a small electric power utility." **MEC SOF Exh. 15.** Briefing Memo dated September 27, 2002 for the Assistant Secretary Indian Affairs. (BIA Supplemental Response at Exhibit 6.)

10. The system serving the Supai Elementary School is owned by the BIA. **MEC SOF Exh. 16.** (BIA Response at 13.)

11. The BIA also owns and operates at least two additional electric systems within Arizona (the San Carlos Irrigation Project Power Division and the Colorado River Indian Irrigation Project Power Division), as well as the Flathead Irrigation Project Power Division

in Montana. (BIA Response to 1.7.) **MEC SOF Exh. 17.** (Operating statistics for the Colorado River Indian Irrigation Project Power Division).

12. The BIA owns and operates other electric systems throughout the United States, but has, to date, refused to identify all the electric systems it owns and/or operates within the United States. **MEC SOF Exh. 18.** (Excerpts from DOI, BIA Budget Justifications, Fiscal Year 2007 discussing Power Systems.) **MEC SOF Exh. 19**, page 2. (BIA Response to MEC Proposed Discovery Plan dated October 5, 2006.)

THE BIA CANNOT AND WILL NOT DISCONTINUE SERVICE ALONG THE 70-MILE LINE

13. "Shutting off the system is not viable since electricity is simply no longer a luxury but is a necessity in the 21st Century." **MEC SOF Exh. 20.** (10/9/02 Memo to Deputy Commissioner of Indian Affairs, BIA Supplemental Response at Exhibit 9.)

THE BIA CONTRACTED WITH MOHAVE TO SECURE A POWER SUPPLY BY WHICH THE BIA COULD MEET ITS RETAIL OBLIGATIONS TO THE HAVASUPAI AND THE HUALAPAI NATIONS

14. BIA has studied and evaluated alternatives for securing electricity to the Hualapai and Havasupai reservations since at least 1968. **MEC SOF Exhs. 7, 8, 9.** November 5, 1968 Memo from Victor Lund **MEC SOF Exh. 21** and **MEC SOF Exh. 22** Hualapai Tribal Utility Project.

15. The alternatives included direct funding to expand the generators that existed in the 1970s or to install the same 70-mile transmission line Mohave eventually installed. **MEC SOF Exh. 20, MEC SOF Exh. 23** (November 21, 1973 Memo from Area Director) (BIA Response at Exhibit 5) and **MEC SOF Exh. 24** (Environmental Statement to the Secretarial

Land Use Plan for the Addition to the Havasupai Indian Reservation) (BIA Response at Exhibit 3.) Early efforts included determining if a private utility was certificated to serve the area. **MEC SOF Exh. 25** and **MEC SOF 26** (communications with the Commission).

16. In the early 1990s, the BIA actively worked with the Havasupai Nation to create a tribal utility which would take over the BIA's utility function. **MEC SOF Exh. 27.**

17. In October 2002, the BIA was considering "setting up our Electric Company as a Business Utility, similar to the Colorado River Agency Electric Program." **MEC SOF Exh. 28.** October 16, 2002 e-mail. *Id.* *See also*, Memo dated Oct 24, 1988 from Raymond Albert to Superintendent, Colorado River Agency, stating: "The Truxton Canon Agency is reorganizing the Supai Power System as an independent utility." **MEC SOF Exh. 29**

18. By RFQ No. N-446 (**MEC SOF Exh. 10**), the BIA sought proposals from Citizens, APS and MEC to construct the line and provide power for the Hualapai and Havasupai Reservations, including sufficient power to meet the demands met by the generators on the rim at Long Mesa, on the Hualapai Reservation in the Frazier Wells area and at the end of Supai Road. The RFQ forecasts growing demand for the area for tourism and probable permanent housing projects for the Hualapai Tribe, in addition to an existing summer youth camp. RFQ No. N-446 ***Id.*** (BIA Response at Exhibit No. 7.)

IN RESPONDING TO THE BIA'S RFQ AND CONTRACTING WITH THE BIA, MOHAVE OFFERED ONLY LIMITED SERVICE

19. Citizens offered to provide power at retail, while both APS and MEC offered to provide power under a wholesale power agreement. **MEC SOF Exh. 30** (MEC), **MEC SOF**

Exh. 31 (APS), **MEC SOF Exh. 32** (Citizens initial), **MEC SOF Exh 33** (Citizens revised) and **MEC SOF Exh 34** (BIA summary thereof).

20. Both Citizens and MEC offered to secure all or part of the construction costs from sources other than BIA. **MEC SOF Exh. 30 and 33**.

21. APS insisted on BIA providing a 100% advance. **MEC SOF Exh. 31**.

22. Five years after receiving responses to RFQ No. N-446, General Services Administration Contract No. GS-00S-67021 was entered into with MEC. BIA SOF, Exh. 2.

23. By letter dated May 18, 1982, Contracting Officer notified MEC that the GSA contract had been withdrawn and replaced with BIA Contract No. H5oC14202782. **MEC SOF Exh. 1**

24. The Contract provided that the BIA would pay a wholesale rate for electricity, plus an annual amount as "FACILITIES CHARGES," which included, in part: (1) operation and maintenance expenses; (2) the cost of replacements less original book value of the replaced facilities; and (3) cost of system improvements that Mohave constructs as a result of this Contract. (BIA SOF Exh. 2 Addendum No. 1, pp 6-8, See also BIA SOF Exh 5-8.)

25. The Contract further provided that "the Government shall utilize the electric energy supplied under this Contract only in connection with the needs of the respective Indian tribes or their customers or for such other uses as may be required by diversification or expansion of the needs related thereto." (BIA SOF Exh. 2 Addendum No. 1, p. 8-9.)

26. Electric service over this Line commenced in February 1982. BIA was sent its first bill requesting payment for the wholesale energy provided by Mohave in March 1982 and billed in April. **MEC SOF Exh. 35**

27. In a letter dated March 8, 1993, the BIA Contracting Officer confirmed the Hualapai Tribe's imposition of a possessory tax on the Transmission Line, specifically finding that the Line was a "transmission" line rather than a "distribution" line. **MEC SOF Exh. 36**

28. As recently as October 9, 2002, the Western Regional Director of the BIA, in a briefing paper to the Deputy Commissioner on Indian Affairs recognized: "Mohave Electric Cooperative, the public electric power utility nearest to the Havasupai Reservation, declined the opportunity to provide retail electric service to individual customers on the reservation." **MEC SOF Exh. 20**

29. The 70-mile transmission line lies almost entirely outside of Mohave's Certificate of Convenience and Necessity. **MEC SOF Exh. 37** color coded map of certificated areas in Arizona and **MEC SOF Exh. 38** map of line as graph.

THE HAVASUPAI AND HUALAPAI NATIONS HAVE NEVER AUTHORIZED MOHAVE TO ENGAGE IN THE UTILITY BUSINESS ON THE RESERVATIONS

30. The BIA has presented nothing indicating that it required or that Mohave has sought or been granted authority to provide retail utility service in conjunction with the 70-mile transmission line. *See generally*, Draft Report to Congress on Indian Land Rights-of-Way Study (Dec. 21, 2006) **MEC SOF Exh. 39** and 25 C.F.R. Part 169.

THE BIA IS ESTOPPED FROM ARGUING IT WAS NOT ACTING IN ITS TRUST/FIDUCIARY CAPACITY IN CONTRACTING WITH MOHAVE

31. In securing the necessary rights-of-way from the Havasupai Tribe, the Acting Superintendent represented that neither the Havasupai nor the Hualapai Tribe has a compensable interest "since each is the primary beneficiary of the line across its own land." "[S]ince the Tribe and its members will be the primary beneficiaries, the Tribe is not giving

up any rights since the use of its own land is for its own benefit." **MEC SOF Exh. 40** (BIA Response at Exhibit H to Exhibit 67.)

32. As late as August 19, 1981, there was a real possibility that the 70-mile transmission line being constructed under the Contract would "terminate at the Hualapai Reservation boundary" and not continue to the Havasupai Reservation. ***Id.***

33. After suggesting that funds might not be available for repairing the existing generators or to purchase fuel to operate the generators, the BIA's Assistant Area Director for the Phoenix Office emphasized: "The Bureau has invested a large sum of money to provide a dependable power source to the Havasupai Reservation and we hope the Tribe will accept that source." ***Id.***

34. When the Hualapai Nation was slow in providing consent to locating the 70-mile transmission line on the Hualapai Reservation, the BIA recommended that the line be constructed entirely off the Hualapai Reservation. **MEC SOF Exh. 41.** In response, the Hualapai Tribe asserted such action would be contrary to the United States' trust responsibility to the Tribe. **MEC SOF Exh. 42.** (BIA Response at Exhibit 21.)

35. The BIA directed those seeking service from the BIA to contact Mohave to make arrangement for service. **MEC SOF Exh. 43.**

36. The BIA waived all or a portion of the KVA credit for some of the earliest connections. **MEC SOF Exh. 44.**

<u>THE CONTRACT TERMINATED MARCH 31, 1992</u>

37. Neither party renewed the Contract before the expiration of the Contract on March 31, 1992.

38. Over a year after the expiration of the Contract, in a letter dated April 19, 1993, BIA admitted the Contract had expired. (*See*, **MEC SOF Exh. 36.**)

39. Notwithstanding BIA's admission that "the term of this contract was for ten years and has since expired," BIA further informed Mohave that it was notifying Mohave Electric of its intent to exercise its option to renew the Contract, provided that:

> Prior to exercising this option, we need to re-negotiate and amend the existing contract. The contract makes reference to construction of overhead transmission and/or distribution lines. Construction was completed and the Government reimbursed Mohave all costs associated with the construction. Therefore, some of this language needs to be deleted.

Id.

40. Mohave advised the BIA, through correspondence dated June 15, 1995, that the Contract had expired in 1992. (*See*, **MEC SOF Exh. 2.**)

41. Mohave advised the BIA on June, 6, 1996 that it intended to quit-claim and abandon its interest in the Transmission Line. Mohave also informed BIA that it had relocated its metering equipment to Mohave's Nelson substation, which was within Mohave's certificated area. (*See*, **MEC SOF Exh. 45.**)

42. On March 6, 2002, BIA forwarded a letter to Mohave, purporting to "exercise its option to extend the [previously expired] contract for a ten year period from April 1, 2002 through March 31, 2012." Supporting documentation, including an "Amendment of Solicitation/Modification of Contract" form, described this purported renewal as a "Unilateral Modification IAW Contract Terms and Conditions." The Government unilaterally amended the Contract terms by:

> 1. [D]eleting the charge contained in the contract at Addendum No. 1, p. 6, paragraph "FACILITIES CHARGES," subparagraph "(1),"
>
> 2. No payment is owed by the Government to MEC for the charge described in the Contract at Addendum No. 1, p. 6, paragraph "FACILITIES CHARGES," subparagraph "(2)," until MEC provides the Government with properly supported invoice [sic] documenting those charges; and
>
> 3. No payment is owed by the Government to MEC for the charge described in the Contract at Addendum No. 1, p. 6, paragraph "FACILITIES CHARGES," subparagraph "(3)," until MEC provides the Government with properly supported invoice documenting those charges.

(***See*, MEC SOF Exh. 46.**)

43. While BIA unilaterally made its own changes to the Contract, it objected to what it characterized as Mohave's "unilateral change in the point of metering and billing from Nelson substation" and certain billing practices related to Mohave's monthly charges. ***Id.***

44. On March 20, 2002, Mohave responded to and rejected BIA's attempt to unilaterally resurrect and amend the long-expired Contract and offered to negotiate a new one. (*See*, **MEC SOF Exh. 47.**)

45. One of the reasons the BIA did not exercise its option was that it was negotiating with the Havasupai Nation to assume the utility responsibility for the area. (*See*, **MEC SOF Exh. 27.**)

BY CONNECTING A NEW 13.6 MILE LINE TO THE 70-MILE TRANSMISSION LINE, THE BIA AND THE HAVASUPAI NATION HAVE ACCEPTED MOHAVE'S QUIT CLAIM OF THE 70-MILE TRANSMISSION LINE

46. The Havasupai Tribe, in cooperation with the BIA, the Indian Health Services, the Bureau of Reclamation, the Western Power Administration, and the Rural Community

Assistance Corporation, prepared the Bar Four area of the Havasupai Reservation for development. The Bar Four area is being developed in recognition that the Supai Village has reached its housing capacity. "Key to implementation of development at Bar Four is the availability of electricity." **MEC SOF Exh. 48.** (Environmental Assessment) **and MEC SOF Exh. 49.** (Final Administrative Draft Environmental Assessment) (BIA Response at Exhibit 29.)

47. The Bar Four area never previously received electric service. **MEC SOF Exh. 48 and MEC SOF Exh. 49.**

48. The BIA actively participated in the development of a 13.6 mile 14.4/24.9 kV electric line that has been interconnected with the 70-mile transmission line. **MEC SOF Exh. 49.**

49. In September 2003, two months after Mohave's Board of Director's authorized quit claiming and abandoning the 70-mile line, and a month after the 70-mile line was tendered to the BIA (BIA SOF #13), construction began on a 13.6 mile line that runs from the "Long Mesa Turn" near mile marker 43 on IR 18 (just north of the boundary between the Hualapai Reservation and Boquillas Ranch) to the proposed location of the emergency services site at Bar Four on the Havasupai Reservation. **MEC SOF Exh. 49.** (BIA Response at Exhibit 30.)

50. Federal action included, but was not limited to, the granting of road rights-of-way and the granting of permits for utilities located within these rights-of-way under the authority of the BIA. ***Id.*** (BIA Response at Exhibit 30.)

51. The construction and interconnection of the 13.6 mile line occurred after Mohave's Board of Directors authorized quit claiming and abandoning the 70-mile line and a month after the 70-mile line was tendered to the BIA. BIA SOF #13.

SINCE 1968, THE BIA HAS TRIED TO SHIFT THE COSTS AND OBLIGATION TO MEET THE POWER NEEDS OF THE HAVASUPAI AND HUALAPAI NATIONS TO OTHERS.

52. By letter to the Arizona Corporation Commission dated March 14, 1968, the BIA's Area Director noted that "costs of construction for electric facilities on the Reservation can be borne by the Federal Government," but then expressed its reluctance to do so "when there are public utility companies who can provide the service required." **MEC SOF Exh. 25 and 26** (BIA Response at Exhibit 38.)

53. "The BIA has been undergoing a transformation to move itself from the utility business." **MEC SOF Exh. 50** (Draft Final Report "Tribal Authority Process Case Studies: The Conversion of On Reservation Electric Utilities To Tribal Ownership and Operation" dated January 1996).

54. After unsuccessfully attempting to have MEC to assume retail utility responsibility (**MEC SOF Exh. 47**), the BIA first negotiated with the Havasupai Nation to take over the utility function (**MEC SOF Exh. 15,** above) and more recently is assisting the Hualapai Nation in its evaluation of forming a Tribal Utility. **MEC SOF Exh. 51.**

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RESPECTFULLY SUBMITTED this 26th day of March, 2007.

CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

By: _____
Michael A. Curtis
William P. Sullivan
Larry K. Udall
Nancy A. Mangone
501 East Thomas Road
Phoenix, Arizona 85012-3205
Attorneys for Mohave Electric
Cooperative, Inc.

PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 26th day of March, 2007, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

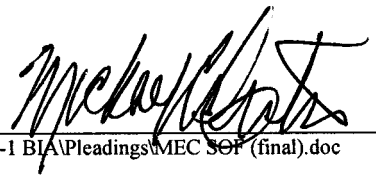
Docket Control Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing hand delivered/mailed
this 26th day of March, 2007 to:

Teena Wolfe, Esq.
Administrative Law Judge, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Paul K. Charlton
Mark J. Wenker
U.S. Attorney's Office
40 North Central, Suite 1200
Phoenix, AZ 85004-4408
Attorney for the BIA



1234\-7-19-1 BIA\Pleadings\MEC SOF (final).doc

MEC SOF EXH 1

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
P. O. Box 7007
Phoenix, Arizona 85011

(602) 241-2296
FTS 261-2296

IN REPLY REFER TO:
Property & Supply
Unit III

May 18, 1982

Mr. Douglas H. Swan
President, Mohave Electric
Cooperative, Inc.
P. O. Box 1045
Bull Head City, Arizona 86430

Dear Mr. Swan:

Enclosed is your copy of completed Modification No. 1 to Contract No. H50C14202782 providing Electric Energy to the Hualapai and Havasupai Reservation, Arizona.

This modification is issued to obligate funds to the contract for the period of October 1, 1981 through September 30, 1982. See attached Standard Form - 30 and Budget.

Please note the General Services Administration Contract Number GS-00S-67021 has been withdrawn and a Bureau of Indian Affairs, Department of Interior Contract No. has been assigned. On all future inquires and invoicing, please cite the Bureau of Indian Affairs Contract Number. Also, please provide this office with a Current Rate Schedule "L" (Large Power).

If you have any questions, please call this office.

Sincerely,

Contracting Officer

Enclosure

MEC SOF EXH 2

pc file copy

March 17, 1992

Assistant Area Director of Administration
Bureau of Indian Affairs
U. S. Department of Interior
P. O. Box 7007
Phoenix, Arizona 85011

RE: Contract GS-OOS-67021

Dear Sir:

The purpose of this letter is to request information regarding the renewal of the contract above referenced. The contract, between Mohave Electric Cooperative, Inc., hereinafter called Mohave, and the United States of America, hereinafter called Government, provides for the supply of electric energy to the Hualapai and Havasupai Indian Reservations.

According to our records, the contract will expire on April 1, 1992. The contract provisions indicate that Mohave did consent to the Government's right and option to renew this contract for two additional ten year periods. We now respectfully request you to provide Mohave with your intentions toward the renewal options. We are currently reviewing the monthly Facility Charge portion of the charges provided for in the contract, in anticipation of contract renewal.

We also again reference you to the fact that Mohave implemented new rates, as approved by the Arizona Corporation Commission, in January of 1991. Although the Large Power Rate, which was identified in the contract, did experience an increase to the approved rate established by the Commission, Mohave was successful in negotiating a separate, lower large power rate for this specific contract. While higher than the pervious rate, the contract rate is lower than it would have been had a separate rate not been established.

pc file copy

Assistant Area Director of Administration - continued

Due to the very limited time before the current contract expires, we would appreciate receiving a written response prior to March 31, 1992. If you have questions or require any additional information, please feel free to contact me.

Sincerely,

Stephen McArthur
Comptroller

cc: Mr. Robert Broz, General Manager
Mohave Electric Cooperative, Inc.

UNITED STATES GOVERNMENT

memorandum

DATE: OCT 05 1992

REPLY TO ATTN OF: Acting Phoenix Area Director
Facilities Management

SUBJECT: Reimbursement of Possessory Taxes

TO: Phoenix Field Solicitors Field Office,
Attention: Mr. Wayne Nordwall

This is a request for legal opinion concerning the charges imposed by Mohave Electric Cooperative in the attached letter dated September 8, 1992.

This office is in the process of making arrangements to discuss the renewal of this contract with Mohave Electric, however the monthly fee of $11,840 will continue to be paid under the terms of the contract to elevate any penalties for non-payment until a new settlement can be reached.

However, the issue at this time is the unsettled appeal of the cost referenced in the attached memorandum. Therefore, we would appreciate your urgent response as to our obligation to the payment demands imposed by Mohave Electric Cooperative.

If you have any questions, please contact Mr. Charles R. Tate at (602) 379-6755.

Attachments:

OCT 8 1992

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

memorandum

DATE: DEC 14 1994

REPLY TO ATTN OF: Area Facilities Management Officer

SUBJECT: Request for Action on GSA Contract No. GS-00S-67021

TO: Branch of Acquisitions and Federal Assistance

In reference to the attached letter dated October 5, 1994, Area Facility Management is requesting your assistance in an effort to resolve the Mohave Contract issue.

As of this date there have been no accomplishments in the effort of reaching a settlement on this issue. A meeting was held at the Area Office on September 20 and 22, 1994 with Messrs Ray Albert, Joe Bitsie, Wayne Nordwall, Linus J.Brown, Danny H. Breuninger, Sam Caves and Ms. Rose Velarde.

At the conclusion of the meeting, it was the understanding of all in attendance, that a written audit was to be requested through the Inspector General and Mr. Nordwall from the Solicitor's office was to prepare a memorandum to the State Corporation Commission, for a determination of Mohave Electric's obligation to provide power to Havasupai customers.

We are approaching a fourth year without a contract for the services as defined in the contract documents. We are submitting another wrtitten request to negotiate a new contract.

If you have any questions, please contact Mr. Joe Bitsie at (602) 379-6755.

Joseph Bitsie

RECEIVED
DEC 15 12 50 PM '94
PROC, FEI & SUPPLY

Attachment

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

MEC SOF EXH 3

MOHAVE ELECTRIC COOPERATIVE, INC.

April 14, 1982

APR 1982
RECEIVED
PHOENIX AREA OFFICE
FACILITY
MANAGEMENT

Mr. Curtis Geiagamah
Assistant Area Director
U. S. Department of Interior
Bureau of Indian Affairs
Phoenix Area Office
P. O. Box 7007
Phoenix, Arizona 85011

McConnell
Stein
Gardiner
Herrington
Miller
Cooper
Braun
Ruck
Goldsmith
Invocato
Olah
Kenimer

Re: Supai Power Bill

Dear Sir:

In response to your letter dated April 8, 1982, I offer the following explanation:

The total cost of construction was $1,145,651.55, as shown on the fill and you were charged 1/12 of that amount multiplied by .0444.

State and local taxes 1/12 of that amount multiplied by .05.

O & M costs, 1/12 of that amount multiplied by .02.

KW demand at $6.90 per metered KW.

Energy charge at $.029, which is the rate approved by the Arizona Corporation Commission after this contract was negotiated, old rate being the $.017.

The power factor being an adder is insignificant and therefore is not charged.

The sales tax is computed at 4% or $.04 of the total power and energy charge.

The fuel adjustment or wholesale power cost adjustment is presently $.013092 and charged to the total KWH consumption.

BUREAU OF INDIAN AFFAIRS
RECEIVED

APR 19 1982

PHOENIX AREA DIRECTOR

P.O. Box 1045 Bullhead City, Arizona 86430 754-4115

MOHAVE ELECTRIC COOPERATIVE, INC.

The bills rendered and adjusted to final cost is due and payable and must be paid. If there is a further misunderstanding it can be settled and any necessary adjustment will be made.

Yours very truly,

Mohave Electric Cooperative, Inc.

A. H. Carpenter
General Manager

cc: Truxton Canyon Agency
Vince LaPointe
Valentine, Arizona

P.O. Box 1045 Bullhead City, Arizona 86430 754-4115

3-5-82 - REALLOCATED [illegible]
FACILITY CHARGE

TOTAL COST OF JOB $1,145,051.55

FACILITY CHARGE
AS OFFERED

MONTHLY FACILITY CHARGE
16.2% x $1,145,051.55 = $186,053.21
$186,053.21 ÷ 12 = $15,504.42

BIA
P.O. Box 7007
Contracting office
C/O Alberta Havens
Phoenix, Az.
85011
Phone 241-2296

ADDITION
TO
ADDRESS

1,145,051.55

SUPAI 1-1-82

TOTAL COST of JOB $1,600,000

FACILITIES CHARGES

~~[illegible]~~ % COST of CONSTRUCTION 4.4%

OPERATION MAINTENANCE 2.0%

STATE & LOCAL PROPERTY TAXES 5.0%

DEPRECIATION 4.8%

TOTAL % 16.24%

MONTHLY FACILITY CHARGE

16.24% X $1,600,000.00 = $259,840.00

12 ÷ $259,840.00 = $21,653.00

MEC SOF EXH 4

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MOHAVE ELECTRIC COOPERATIVE, an Arizona Electric Cooperative, Nonprofit Membership Corporation,	)	NO. 99-242C (Judge Hodges)
Plaintiff,	)	
v.	)	
THE UNITED STATES,	)	
Defendant	)	

SETTLEMENT AGREEMENT

For the purpose of disposing of plaintiff's claims and defendant's counterclaim, without any further judicial proceedings and without there being any trial or adjudication of any issue of law or fact, and without constituting an admission of liability upon the part of either party, and for no other purpose, the parties stipulate and agree as follows:

1. Plaintiff, Mohave Electric Cooperative ("Mohave") stipulates to dismissal of its Complaint in Case No. 99-242C (Fed. Cl.) and Defendant, the United States, stipulates to dismissal of the counterclaim that it filed in Case No. 99-242C (Fed. Cl.), and each party stipulates it shall bear its own costs and fees incurred in connection with Case No. 99-242C (Fed. Cl.). Each of the respective dismissals is with prejudice.

2. Except as hereinafter provided in Paragraph 8, Mohave releases, waives, and abandons all monetary claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of or related to the following: (a) Case No. 99-242C (Fed. Cl.), (b) United States Department of the Interior, Office of Inspector General Audit Report 95-E-1045, (c) the Contracting Officer's May 4, 1998 decision or any supplement, (d) unpaid

invoices or other claims for payment pursuant to the provisions for "Facilities Charges" in Contract No. GS-OO2-67021, regardless of whether included in the complaint in Case No. 99-242C (Fed. Cl.), (e) costs, expenses, attorney fees, and for compensatory damages and exemplary damages and (f) claims pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

3. Except as hereinafter provided in Paragraph 8 and except for fraud and overpayment of Arizona Corporation Commission approved tariffs for sales of electricity, the United States waives and abandons all monetary claims actual and potential against Mohave, its officers, agents, and employees, arising out of or related to the following: (a) Case No. 99-242C (Fed. Cl.), (b) the United States Department of the Interior, Office of Inspector General Audit Report 95-E-1045 or any issues therein, (c) the Contracting Officer's May 4, 1998 decision or any supplement, including the claim for $387,343.00 and other claims by the Contracting Officer asserted in his May 4, 1998 Contracting Officer's Final Decision regarding monies owed prior to 1998, (d) payments to Mohave made for "Facilities Charges" regardless of whether included in the complaint in Case No. 99-242C (Fed. Cl.), and (e) its costs, expenses, attorney fees. This waiver does not apply to any claim relating to any payment made on or after January 15, 2003.

4. The United States agrees that the Bureau of Indian Affairs ("BIA") possessed the authority to pay for services received by the BIA from Mohave from 1992 through 2002.

5. Except as hereinabove provided in paragraph 3 and for claims for payments identified in the Office of Inspector General Audit Report 95-E-1045 and for any non-tariff related issues therein and or claims by the Contracting Officer's Final Decision on May 4,

1998 and non-tariff related issues therein, and except for payments to Mohave for "Facilities Charges", the United States and the BIA do not waive rights to claim and recover overpayments of Arizona Corporation Commission approved tariffs for sales of electricity services received from 1992 through 2002

6. This agreement is in no way related to or concerned with claims for income taxes or other taxes for which Mohave is now liable or may become liable in the future as a result of this agreement.

7. Mohave warrants and represents that no other action or suit with respect to the monetary claims advanced in Case No. 99-242C (Fed. Cl.) is pending or will be filed in or submitted to any other court, administrative agency, or legislative body. Mohave further warrants and represents that it has made no assignment or transfer of all or any part of its monetary rights arising out of or relating to its claims advanced in Case No. 99-242C (Fed. Cl.).

8. Except as hereinabove provided, this agreement does not preclude either party from filing a complaint before and seeking relief from the Arizona Corporation Commission regarding electric service subsequent to 1992 and this Agreement does not preclude either party from asserting any position or argument before the Arizona Corporation Commission regarding Contract No. GS-OOS-67021, or the computation of electric service charges pursuant to tariff.

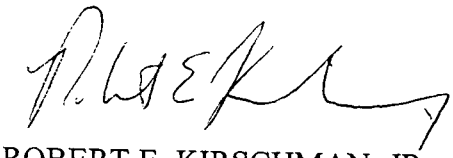
9. Except as is necessary to effect the intent and terms of this agreement, in any proceedings whether judicial or administrative in nature in which the parties or counsel for the parties have or may acquire an interest, this agreement shall not be cited or otherwise referred to or bind the parties.

10. This document constitutes a complete integration of the settlement agreement between the parties and supercedes any and all prior oral or written representations, understandings concerning settlement agreements among or between them.

Respectfully submitted,

ROBERT D. McCallum, JR.
Assistant Attorney General

DAVID M. COHEN
Director

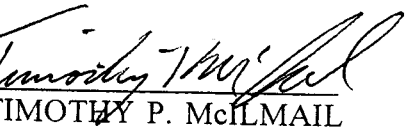


ROBERT E. KIRSCHMAN, JR.
Assistant Director
Authorized Representative of f
the Attorney General

MICHAEL A. CURTIS
Martinez & Curtis, P.C.
2712 North Seventh Street
Phoenix, AZ 85006-1090
Telephone: (602) 248-0372
Facsimile: (602) 266-9290

Attorney for Plaintiff

DATED: 01/17/03



TIMOTHY P. McILMAIL
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice
1100 L Street, N.W.
Attn: Classification Unit
8th Floor
Washington, D.C. 20530
Telephone: (202) 307-1011
Facsimile: (202) 514-8624

Attorneys for Defendant

DATED: 1-21-03

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MOHAVE ELECTRIC COOPERATIVE, an Arizona Electric Cooperative, Nonprofit Membership Corporation,	)	NO. 99-242C (Judge Hodges)
Plaintiff,	)	
v.	)	
THE UNITED STATES,	)	
Defendant	)	

STIPULATION OF VOLUNTARY DISMISSAL

The parties stipulate, pursuant to Rules 41(a)(1) and (c) of the Rules of United States Court of Federal Claims, to dismissal of this action, including the defendant's counterclaim with prejudice, with the parties to bear their own costs and fees.

Respectfully submitted,

ROBERT D. McCallum, JR.
Assistant Attorney General

DAVID M. COHEN
Director

ROBERT E. KIRSCHMAN, JR.
Assistant Director
Authorized Representative of
the Attorney General

. . .

. . .

MICHAEL A. CURTIS
Martinez & Curtis, P.C.
2712 North Seventh Street
Phoenix, AZ 85006-1090
Telephone: (602) 248-0372
Facsimile: (602) 266-9290

Attorney for Plaintiff

DATED: 9/17/03

TIMOTHY P. McILMAIL
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice
1100 L Street, N.W.
Attn: Classification Unit
8th Floor
Washington, D.C. 20530
Telephone: (202) 307-1011
Facsimile: (202) 514-8624

Attorneys for Defendant

DATED: 1-21-03

NOTE NO. 1234-7-19
XEROX ALL PLEADINGS ✓
COPIES TO MAC TH, DA, TMY

STAMPED _____ DATE _____
ROUTED TO MAC TH, DA, TMY
DO NOT FILE UNTIL ALL ITEMS CHECKED AND INITIALED _____

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MOHAVE ELECTRIC COOPERATIVE, an Arizona Electric Cooperative, Nonprofit Membership Corporation,	)	NO. 99-242C (Judge Hodges)
Plaintiff,	)	
v.	)	
THE UNITED STATES,	)	
Defendant	)	

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Respectfully submitted,

ROBERT D. McCallum, JR.
Assistant Attorney General

DAVID M. COHEN
Director

ROBERT E. KIRSCHMAN, JR.
Assistant Director
Authorized Representative of
the Attorney General

. . .

. . .

RECEIVED
JAN 27 2003
MARTINEZ & CURTIS

MICHAEL A. CURTIS
Martinez & Curtis, P.C.
2712 North Seventh Street
Phoenix, AZ 85006-1090
Telephone: (602) 248-0372
Facsimile: (602) 266-9290

Attorney for Plaintiff

DATED: 01/17/03

TIMOTHY P. McILMAIL
Trial Attorney
Commercial Litigation Branch
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Attn: Classification Unit
8th Floor
Washington, D.C. 20530
Telephone: (202) 307-1011
Facsimile: (202) 514-8624

Attorneys for Defendant

DATED: 1-21-03

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 21th day of January 2003, I caused to be served by United States mail (first class, postage prepaid) a copy of "Stipulation Of Voluntary Dismissal" to:

MICHAEL A. CURTIS
Martinez & Curtis, P.C.
2712 North Seventh Street
Phoenix, Arizona 85006-1090

Andrea R. Bach

MEC SOF EXH 5

tlm/lg

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
AUG 11 1982
DOCKETED BY CDI

BUD TIMS
Chairman
JIM WEEKS
Commissioner
DIANE B. McCARTHY
Commissioner

IN THE MATTER OF THE APPLICATION OF MOHAVE ELECTRIC COOPERATIVE, INC., AN ARIZONA NON-PROFIT CORPORATION, FOR A PERMANENT RATE INCREASE.	DOCKET NO. U-1750-82-002 DECISION NO. 53174 OPINION AND ORDER

DATE OF HEARING: May 26 and 27, 1982

PLACE OF HEARING: Phoenix, Arizona

HEARING OFFICER: Thomas L. Mumaw

APPEARANCES: Robert K. Corbin, The Attorney General, by Lynwood J. Evans, Assistant Attorney General, on behalf of the Arizona Corporation Commission Staff

Ronald L. Kozoman, Chief Rate Analyst, Utilities Division, on behalf of the Arizona Corporation Commission

James K. Dinger, Financial Analyst, Utilities Division, on behalf of the Arizona Corporation Commission

Charles D. Wahl, Attorney at Law, on behalf of the Applicant

Jennings, Strouss & Salmon, by Thomas J. Trimble, on behalf of Genstar Cement and Lime Company

Joseph B. Beckford, Business Manager, on behalf of Bullhead City School District No. 15

Rowland R. King, Ph.D., Superintendent, on behalf of Mohave Valley School District No. 16

BY THE COMMISSION

On January 7, 1982, Mohave Electric Cooperative, Inc. ("MEC"), filed an application with the Arizona Corporation Commission ("Commission") requesting a permanent increase in its rates and charges for electric service. MEC further requested that the Commission determine the "fair value" of its property devoted to public service and set a fair and reasonable return thereon.

MEC notified its customers of the application in accordance with ACC R14-2-105 by

First Class U.S. Mail and filed a certification of notice with the Commission. Applications requesting leave to intervene were thereafter filed by Mohave Valley Elementary School District No. 16 ("MVSD"), Genstar Cement & Lime Company ("Genstar"), and Bullhead City Elementary School District No. 15 ("BCSD"). These applications were granted by procedural entry prior to hearing.

Pursuant to the above notice, this matter came on for hearing before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona, on May 26 and 27, 1982. MEC, Genstar, and representatives of the Commission's Staff ("Staff") appeared and were represented by counsel. MVSD and BCSD appeared by duly authorized officials thereof. Oral and documentary evidence was adduced by MEC, Staff, Genstar, and MVSD. Public statements taken in Bullhead City, Arizona, on May 24, 1982, were also transcribed and made a part of the official record as were those written statements which had been submitted by consumers to the Commission.

NATURE OF MEC'S OPERATIONS

MEC is an Arizona nonprofit cooperative corporation engaged in providing electric service to some 14,000 customers in Mohave County, Arizona, pursuant to Certificates of Public Convenience and Necessity ("Certificates") granted by this Commission. MEC's service territory encompasses two separate portions of Mohave County. The larger of the service areas lies east of Kingman, Arizona, and is sparsely populated. The second area consists of a strip of land along the Colorado River, including the communities of Riviera and Bullhead City, Arizona. MEC has experienced very rapid growth in the past few years. Customer growth has been at a compound rate of 10% per year. While peak load and kWh sales growth have been less than the customer growth, they are still substantially above the national average.

MEC owns no generating facilities of its own. It buys all of its power from the Arizona Electric Power Cooperative ("AEPCO"), a "G & T" electric cooperative owned, in part, by MEC. The rates charged MEC by AEPCO are also regulated by this Commission and were recently established in Decision No. 53034 (May 21, 1982).

PROPOSED INCREASE

MEC has proposed tariffs which would increase revenues by some $1,839,473 (based on 1980-81 usage) or 14.3%. The increase would be non-uniform with residential, small commercial, and street lighting customers receiving higher percentage increases than would large commercial, large power, and the newly segregated large irrigation customers. Within these customer groups, the proposed increase is greatest for the smaller customers, although this result is somewhat ameliorated by MEC's proposed "small user" residential rate.

In addition to overall general rate level increases, MEC proposes to institute explicit charges for various items such as service establishment, meter rereading, shop meter testing, "NSF" checks, deferred payment plans, and "service availability." Increases in existing miscellaneous tariffs such as service re-establishment and reconnection, and certain meter tests are also being sought by MEC. On the other hand, MEC has proposed to begin paying 6% interest on customer deposits.

MEC's proposed tariffs contain several changes in rate design. As was noted previously, MEC has suggested a "small user" rate for those residential customers who use less than 700 kWh during each of four designated summer months. MEC has also filed tariffs for an experimental demand metered rate for large residential customers. Both tariffs would remove any kWh allowance from the increased customer charge. As proposed, this tariff would be limited to 500 customers. MEC has separated its largest irrigation customers from the present Large Power rate and has created a Large Irrigation schedule. This schedule would contain both seasonal and diurnal time-of-use features.

MEC's last rate proceeding was in 1980 (Decision No. 50900). That Docket merely restructured the existing rates and did not provide any additional base revenue to MEC. Previous to the instant application, MEC received an increase in base rates in Decision No. 47419 (October 25, 1976). Any increase in the rates charged by MEC since 1976 has been the direct result of purchased power pass-throughs and has not inured to the benefit of MEC.

. . .

TEST YEAR

The selection of a test year, usually fairly straightforward, was complicated by the desire of both Staff and MEC to set permanent rates which would take into consideration MEC's ambitious 1982-84 construction plans. Although the year ending September 30, 1981, was initially selected by MEC as its test year, MEC included in its revenue requirements the interest and interest coverage associated with financing for property additions throughout 1982. Staff adjusted MEC's operating results and rate base to be consistent with the use of 1982 debt. The practical effect of these adjustments was the creation by Staff of a 1982 test year and a December 31, 1982, rate base. Though common elsewhere, the use of non-historical test year data marks somewhat of a departure from Arizona precedent. In this instance, there is little alternative but to accept the Staff's analysis. To utilize 1982 interest in deriving revenue requirements while ignoring 1982 operating results and investment would create a clear mismatch in data sets. On the other hand, eliminating any consideration of the prospective financing requirements for MEC in this proceeding would virtually guarantee that MEC would have to seek additional rate relief before the end of 1982. Consequently, the Commission will find 1982 to be a reasonable test year for purposes of evaluating MEC's application herein.

OPERATING INCOME

The adoption of the Staff position with regard to the selection of 1982 as the appropriate test year also requires that we accept Staff's calculation of operating income for the test period as set forth in Schedule FM-4 of Staff Ex. 6 (Revised).* In addition to using MEC's 1982 data (both actual and projected), Staff has incorporated wholesale power rates recently approved for AEPCO in Decision No. 53034. In summary, MEC's test year operating income is as follows:

. . .

---

*The only difference between Staff Ex. 6 as presented at hearing and the late-filed Staff Ex. 6 (Revised) is the latter's use of actual AEPCO rates rather than Staff's proposed AEPCO rates.

Mohave Electric Cooperative, Inc.

Operating Income Statement for the Test Year
(000's)

Operating Revenue:	$14,142
Operating Expense:	
Purchased Power	$11,327
O & M	1,645
Property Taxes	542
Other Taxes	60
Depreciation	481
Total Operating Expense	$14,055
Operating Income	87
Non-Operating Income	7
TOTAL INCOME	$ 94

RATE BASE

Both Staff and MEC offered exhibits on the original cost of MEC's property devoted to public service. Moreover, for purposes of this proceeding, MEC agreed that its original cost rate base is a reasonable proxy for "fair value." No party herein has suggested that the "fair value" of MEC's property devoted to public service would be less than original cost.

As presented in Schedule FM-2 of Staff Ex. 6 (Revised), the positions of MEC and Staff relative to the determination of rate base are:

...

...

...

...

...

...

Mohave Electric Cooperative, Inc.

Summary of Fair Value Rate Base
(000's)

	MEC Requested	Staff Adjustments	Staff Recommendations
Gross Utility Plant in Service	$14,014	$3,402	$17,417
Less: Accum Dep.	3,583	569	4,152
Net Utility Plant in Service	10,431	2,834	13,265
Plus:			
CWIP	1,688	(1,688)	0
Capital Term Certificates	0	530	530
Working Capital	1,292	(1,162)	130
Less:			
Customer Advances for Construction	798	0	798
TOTAL RATE BASE	$12,613	$ 514	$13,127

The difference between Staff's net plant figures and that of MEC is attributable to the former's incorporation of 1982 net property additions. Since this adjustment included most if not all of the dollars contained in MEC's CWIP account as of September 30, 1981, Staff properly eliminated CWIP from its rate base computation.

Staff further adjusted rate base by adding MEC's investment in Capital Term Certificates. These Certificates are analogous to compensating bank balances and could be accounted for either by inclusion in rate base or by increasing the effective cost of long-term debt. There has been no objection to Staff's proposed treatment of these Certificates, and it will be adopted for purposes of this proceeding.

The most significant rate base issue between Staff and MEC involves working capital. MEC has utilized the "formula" method previously accepted by this Commission. This formula, like many other such "formulas" in use throughout the country, is a variation of the old "45 day" cash working capital formula developed over 40 years ago by the Federal

Power Commission. Staff conducted an analysis of MEC's balance sheet as well as the actual "leads" and "lags" in the receipt of revenues and the payment of expenses. The "balance sheet" method and lead-lag study are generally considered to be more accurate than the "formula" method, although problems in their uniform application from case to case often mitigate against use of these methods and in favor of the simpler "formula." In this instance, the Commission is satisfied that Staff has properly determined working capital.

RATE OF RETURN

A fair and reasonable rate of return for a cooperative such as MEC does not involve the same considerations as would a similar determination involving an investor owned utility. All the expert witnesses agreed that return on equity (also referred to as "margins") and even the nominal rate of return on rate base have little independent significance. MEC requires access to the credit markets on a regular basis. This is necessary to finance both projected system expansion and to refinance prior obligations as they mature. MEC's two most economical sources of capital are the Rural Electrification Administration ("REA") and the National Rural Utility Finance Corporation ("CFC"). REA and CFC condition these loans on the attainment by the borrower of specified interest coverage ratios or TIERs. The present minimum TIER requirement of REA and CFC is 1.5. However, the rate of return witnesses of MEC and Staff testified that MEC should achieve more than the minimum necessary level of TIER. Staff recommended that a TIER of 2.0 would be sufficient at the present time, although it conceded that MEC's long-run TIER should be improved from that level. MEC presented testimony that a fast-growing company such as MEC should set rates based on a TIER of 3.0. A representative from CFC concluded that cooperatives would face increasing competition for funds in the private market, and that their financial fitness would be judged by the same criteria as investor owned utilities. In the case of MEC, this would require a TIER of 2.5 to 3.0. The witness also noted that in the future, members of CFC (which will be the major source of new credit for cooperative utilities) could be ranked by their relative contribution to the collective TIER of CFC, and the interest rate

on member loans determined accordingly. At present, CFC's financial condition is such that it can no longer be lenient to those members in default of their TIER requirements.

MEC's TIER is the lowest of the six major cooperatives in Arizona. Its TIER for 1981 was 1.2, and in 1980 it was only .857. Although the restructuring of rates in 1980 appeared to temporarily improve MEC's financial situation, TIER for 1982 will, in the absence of rate relief, be less than 1.0. Since MEC's relatively strong 1979 year could no longer be considered in REA's and CFC's calculations (the average of the best two out of the three most recent fiscal years), MEC would no longer be eligible for these loans. With funds barely able to cover its current interest charges, any other financing would be out of the question. System expansion would come to a halt and lawful obligations could not be paid when due. Notably, even should MEC receive the full amount of the requested increase, TIER will not sufficiently improve in 1982 to prevent a technical default by MEC with REA and CFC.

Under the circumstances set forth above, it is clear that MEC is in critical need of rate relief. Staff has recommended rates which, in our opinion, would result in MEC keeping its head barely above water for a few months before filing for the additional relief which will be required. Since MEC will also be in technical default of its REA and CFC obligations by the end of this year, it is necessary for MEC to convince these organizations that it is on the path to long-term financial solvency. The minimum long-term TIER recommended by any witness herein was 2.3. The Commission believes that this minimum long-term goal can be achieved without placing an excessive burden on MEC's ratepayers.

One further point is relevant in this regard. MEC has included $32,000 in interest associated with a transmission line dedicated to serving the Hualapai Indian Reservation, a line which presently produces no revenue. Staff has likewise included this interest in its calculations of TIER. The Commission believes that both parties erred in effectively asking MEC's ratepayers to pay for plant which is not used and useful, will not be used and useful, and was never intended to be used and useful in the provision of electric service to such ratepayers. MEC has recognized this inequity by excluding the transmission line from rate base and proposing to segregate all expenses and revenues associated with the line.

These gestures are meaningless if ratepayers must still provide TIER coverage for this investment. Therefore, the Commission will eliminate the $32,000 interest expense from the calculation of TIER and rate of return.

With the above adjustments, the fair and reasonable rate of return on the "fair value" of MEC's property is 9.6%. This return will permit MEC to achieve a TIER slightly above 2.3 for the remainder of 1982 (although probably not 1.5 for the entire year) and close to 2.3 for 1983, based on current projections of sales, expenses, and interest. As MEC's construction outlays lessen in the mid 1980's, TIER should improve further or at least not significantly deteriorate. Thus, MEC would achieve some stability in base rates while increasing its TIER and margins to acceptable levels consistent with projected long-term growth within its service territory.

RATE DESIGN

MEC has proposed several innovative rate changes in the instant proceeding. The "small user" residential rate and separate large irrigation schedule are opposed by Staff. Likewise, Staff has taken exception to certain aspects of MEC's commercial and large power tariffs. On the other hand, Staff supports the increase in the residential customer charge to $12.00 and the elimination of all kWh from that charge. Staff also agreed with the experimental demand rate for large residential customers. However, Staff did include the higher customer related metering costs in the customer charge for that experimental rate.

Both Staff and MEC based their respective rate designs on the results of a cost of service ("COS") study. While these analyses differed on various details, the differences were not significaant. Costs are functionalized and attributed to customer (weighted and unweighted), demand (coincident and non-coincident), and energy components. The translation of the resulting figures into electric rates is yet another matter.

MEC did no separate analysis to cost justify its "small user" rate. The 700 kWh limitation applied only to summer usage even though there was no significant seasonal variation in COS. MEC assumed that such small customers had higher load factors than residential

customers as a whole but based that assumption on data developed by Arizona Public Service Company ("APS"). There is little comparison between MEC and APS. Their seasonal cost variations, differing service territories, and customer demography are greatly different. Under MEC's proposal, the summer weekend resident of Bullhead City or Riviera would receive a discount on his usage even though he might well be contributing to the system or class peak and evidence a low load factor. In the absence of a more detailed study of this subgroup, the Commission will not adopt the proposed "small user" rate.

The same conclusion applies to the proposed large irrigation rate. The seasonal differential does not appear to be cost justified. Moreover, the Commission is hesitant to create yet another category of end use pricing. The introduction of an incentive for shifting demand to off-peak periods on a diurnal basis is more properly grounded in COS principles. Although MEC believes that the greatest potential for shifting is in the agricultural sector, the testimony of the intervenors herein would appear to indicate the opposite. Consequently, the Commission will reject the proposal to create a separate irrigation rate. However, the Commission will require that MEC develop and propose an off-peak rate applicable to all its large power customers within twelve months of the effective date of this Decision.

Staff's rate design is superior to that proposed by MEC in three major respects. Staff has proposed a customer charge for every rate schedule. Staff has translated its COS study directly into its rate design without significant subjective modification. Staff has utilized voltage level variations while avoiding seasonal distinctions. For these reasons, the Commission will accept Staff's rates except as necessarily modified to reflect the greater revenue requirement found appropriate herein. Staff's rates generally favor high load factor customers because Staff has included all margin requirements in the customer and demand charges. While this does tend to promote earnings stability, MEC has warned that some margin should also be included in the energy charge. Since most of MEC's customers are not demand metered, the point is somewhat academic. However, the Commission will adjust the Staff proposed rates by placing the incremental margin (above that recommended by Staff) in the energy charge.

Although Staff did not particularly indorse MEC's miscellaneous charges (both new and increased), Staff did agree that these items had a cost to MEC and should be charged to those customers creating that cost. The implementation of these charges is consistent with the Commission's policy of unbundling utility rates and will be approved herein.

Staff has also advocated a new method of calculating MEC's purchased power adjustment charge. Rather than charging the same amount month after month and accumulating the overcollections (undercollections) in a suspense account, Staff's recommendation would institute a monthly adjustment formula which would be self-correcting in the succeeding month. Staff's proposed adjustment clause would also tract actual purchased power costs better than MEC's present procedure. The Commission has previously approved a similar monthly adjustment for AEPCO, and so it is logical to adopt such a mechanism at the retail distribution level. In recognition that this new type of purchased power adjuster may require some careful rewording of MEC's present tariff language and the development of necessary monthly estimation procedures, implementation of the Staff recommendation will be delayed until MEC's January, 1983 billing cycles. At that time, any balance (deficit) in MEC's purchased power "bank" will be amortized through the new purchased power adjustment clause over the succeeding twelve month period.

AUTHORIZED INCREASE

The application of a 9.6% rate of return to MEC's "fair value" rate base produces operating income of $1,260,000. This is $1,166,000 more than MEC's test year income. Multiplying this deficiency by the agreed upon conversion factor of 1.042 results in a required increase of $1,215,000 or approximately 8.6%. Since both the requested dollar and percentage increase previously described were based on a different data set than the revenue increase authorized herein, direct comparisons can be misleading. However, on an adjusted per kWh basis, the authorized increase is approximately 60% of MEC's request.

The Commission, having considered the entire record herein and being fully advised in the premises, finds, concludes and orders that:

FINDINGS OF FACT

1. MEC is an Arizona non-profit corporation engaged in providing electric service to the public within portions of Mohave County, Arizona, pursuant to Certificates granted by this Commission.

2. On January 7, 1982, MEC filed an application with the Commission requesting a permanent increase in its rates and charges for electric service, and that the Commission determine the "fair value" of its property devoted to public service and set a fair and reasonable rate of return thereon.

3. Pursuant to notice, a public hearing on the application was held at the Commission's offices in Phoenix, Arizona, on May 26 and 27, 1982.

4. For 1982, MEC's adjusted operating revenue is $14,142,000; its adjusted operating expense is $14,055,000; and its net income before interest expense is $94,000.

5. The "fair value" of MEC's property devoted to public service as of December 31, 1982, is $13,127,000.

6. A fair and reasonable rate of return on the "fair value" of MEC's property devoted to public service is 9.6%.

7. An increase in operating revenue of $1,215,000 (based on projected 1982 sales) is necessary in order to permit MEC the opportunity to earn a 9.6% rate of return on the "fair value" of its property devoted to public service.

8. The rates and charges for electric service proposed by MEC would produce a rate of return on the "fair value" of MEC's property devoted to public service in excess of 9.6%.

9. The rates and charges for electric service proposed by Staff and as modified herein are properly based on the cost of providing such service.

10. The rates and charges proposed by MEC for establishment of service, re-establishment of service, reconnection of service, meter rereads, meter tests, NSF checks, deferred payment balances, and service availability (as set forth in Schedule H-3 of MEC Ex. 2) and the proposal to pay 6% interest on customer deposits will properly attribute cost (savings) responsibility (benefits) to those customers who cause such costs (savings).

11. The purchased power adjustment mechanism proposed by Staff will better track costs and will prevent the accumulation of overcharges (undercharges) for purchased power.

CONCLUSIONS OF LAW

1. MEC is a public service corporation within the meaning of Article XV, Section 2 of the Arizona Constitution.

2. The Commission has jurisdiction over MEC and of the subject matter of this proceeding.

3. The rates and charges for electric service proposed by MEC are unjust and unreasonable.

4. The rates and charges proposed by Staff as modified herein are just and reasonable.

5. The rates and charges proposed by MEC as set forth in Finding of Fact No. 10, hereinabove, are just and reasonable.

6. The purchase power adjustment mechanism proposed by Staff is just and reasonable.

ORDER

IT IS THEREFORE ORDERED that Mohave Electric Cooperative, Inc., be, and the same is hereby, authorized and directed to file with the Commission rates and charges in conformance with Findings of Fact Nos. 9 and 10 and Conclusions of Law Nos. 4 and 5, hereinabove.

IT IS FURTHER ORDERED that the rates and charges authorized herein shall be effective for all service provided on or after September 1, 1982, except as hereinafter set forth.

IT IS FURTHER ORDERED that the purchased power adjustment mechanism proposed by Staff and approved herein shall become effective January 1, 1983.

IT IS FURTHER ORDERED that Mohave Electric Cooperative, Inc., notify each of its customers of the increased rates and charges authorized herein by First Class U.S. Mail on or before September 1, 1982.

...

...

IT IS FURTHER ORDERED that Mohave Electric Cooperative, Inc., shall file an "off-peak" tariff schedule applicable to all customers served under the Large Power rate within twelve months of the effective date of this Opinion and Order.

IT IS FURTHER ORDERED that this Opinion and Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, TIMOTHY A. BARROW, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 19th day of August, 1982.

TIMOTHY A. BARROW
Executive Secretary

MEC SOF EXH 6

MOHAVE electric cooperative

P.O. Box 2000
Bullhead City, Arizona 86430
(520) 763-1100

DEPARTMANT OF INTERIOR
BIS-DSBRSMNT ATTN:UT PMT
PO BOX 2042
ALBUQUERQUE NM 87103-2042

ACCOUNT NUMBER	29740
INVOICE DATE	4/01/97
PAGE NUMBER	1

SUB CCT	SERVICE LOCATION		DESCRIPTION		AMOUNT
000	LONG MESA END OF SUPAI		PRIOR BALANCE		0.00
	RATE-605 MULTIPLIER	1200	KWH USED	154800	7055.78
	METER 86153321		KW DEMAND	528.00	5148.00
	READ 02/25	10716	CUSTOMER CHARGE		70.00
	READ 03/26	10837	REFUND		-1315.80
			STATE TAX		547.90
	METER CHANGE		COUNTY TAX		54.79
			TOTAL		11560.67

DK 7094903 0
$11,560.67

BALANCE FORWARD	CURRENT AMOUNT	CURRENT DUE DATE	TOTAL AMOUNT DUE
0.00	11560.67	04/10/97	11560.67

GET ON TOP OF ENERGY COSTS THIS SPRING. BE AN ENERGY SMART SHOPPER FOR NEW APPLIANCES. THEN BE A WISE ENERGY USER AROUND THE HOUSE. SEE THE ENCLOSED CARD FOR SOME MONEY SAVING TIPS AND CALL US AT 763-1100 FOR MORE INFORMATION.

ease mail stub with payment or bring entire bill with payment to:

CCOUNT DEPARTMENT O	29740-000
oice Date	3/31/97
tal Amt Due	11560.67

Mohave Electric Cooperative, Inc.
P.O. Box 2000
928 Hancock Road
Bullhead City, AZ 86430

PLEASE DO NOT FOLD

MEC SOF EXH 7

File Ha supai

FEASIBILITY REPORT
On
FREIGHT & PASSENGER
AERIAL TRAMWAY
And
COMMERCIAL ELECTRICAL POWER
For
HAVASUPAI RESERVATION
Supai, Arizona

Proj. No. LH51-038
May 13, 1965

By: John H. Giddings
Chief, Civil Engineering Unit
Branch of Plant Design
and Construction
Albuquerque, New Mexico

Feasibility Report On A Freight & Passenger Aerial Tramway And Commercial Electrical Power For Supai, Arizona

In accordance with a request from the Phoenix Area Office for a feasibility study for constructing an aerial tramway and a power line for the Havasupai Reservation, two field trips were made to the Havasupai Reservation to obtain data. Although not the basic subject of this study, consideration was also given to the feasibility of constructing a jeep trail and a water pumping system for delivering water to the rim of the canyon for stock watering purposes.

On November 12, 1964, Mr. Dan Richards, Communications Engineer, Phoenix Area Office, and Mr. John H. Giddings, Chief, Civil Engineering Unit, Branch of Plant Design and Construction, Albuquerque, New Mexico, made a three-hour reconnaissance flight by helicopter over the entire area. From December 8th to the 13th, 1965, the same representatives and a Branch of Plant Design & Construction survey party made a preliminary survey in Havasu Canyon and on the canyon rim pertaining to the aerial tramway and power line location.

Before proceeding with the feasibility report it is deemed necessary to review conditions now existing to present a picture as to needs and requirements of the Havasupai tribe.

The Havasupai Reservation is very small consisting of 3,058 acres located within the confines of the Grand Canyon of Arizona, on Havasu Creek. Supai Village is the only village on the reservation and is situated along the creek in the bottom of the canyon about 65 miles due north of Crookton, Arizona. The only way to reach the village is by helicopter, or by auto, over a partly graveled road from Peach Springs, Arizona, northeasterly approximately 60 miles to the rim of the canyon known as Hualapai Hilltop. Beyond this point travel is by horseback or on foot over a steep and sometimes impassable trail about eight miles long. At the present time there is no source of electric power available to the non-government inhabitants of the village. Government facilities are served by a 5 KW gasoline engine driven generator that is operated only part time.

For convenience the report will be divided into four parts.

- PART I - Feasibility for Bringing in Electrical Power.
- PART II - Feasibility Report on a Freight and Passenger Aerial Tramway.
- PART III - Feasibility of Constructing a Jeep-Truck Trail.
- PART IV - Water Pumping System.

PART I

From a study of all available maps and from aerial reconnaissance it appears that there are five feasible routes to bring power from commercial sources to the canyon. These routes vary in length from 37 to 62 miles. Exhibit "A".

Power is available to serve each route at 69 K.V. which is adequate and which will not have to be stepped up at the source. For comparison all estimates are based on a single phase line of 69 K.V. on single pole construction, using 45 foot, class 2, treated poles spaced 500 feet set six and one-half feet deep. Each pole would have two pole insulators and two #2 ACSR or equal conductors.

Regardless of whether the power is brought in from the south or the east, the 69 K.V. should be stepped down to 2.4 K.V. on the rim and taken into Havasu Canyon at 2,400 volts. By doing this the large step-down transformer and voltage regulator would not have to be transported into the canyon and would be easily accessible for maintenance. The 2.4 K.V. will be the primary voltage for power distribution in the canyon.

Due to differences in terrain and width of the rock plateau approximately 600 feet above the floor of the canyon, the 2.4 K.V. line into the canyon from the east will be approximately a mile and a half longer than the line in from the west. It is estimated the line in from the west will be about one mile and the line from the east about two and one-half miles.

The estimate for equipment and installation of the step-down transformer, voltage regulator and transmission line into the canyon are contained in Exhibit "B".

Line "A"

Line "A", as shown on Exhibit "A", is the shortest way possible to bring in power to the Havasupai Reservation and is about 37 miles long. The line would be energized by power from the Arizona Public Service Company at Grand Canyon, Arizona. The Arizona Public Service Company has estimated the cost of this line at $201,500.00 which includes transformers, services and meters in the village. This line would be entirely within the Grand Canyon National Park and would undoubtedly create many right-of-way problems. Approximately 30 miles of the line would be in heavy timber which would have to be cleared and disposed of. It is probable the Park Service would object to this. At this time there is only a trail along part of the line and the trail would have to be improved. This line would cross an uninhabited area and would serve only the

Havasupai Reservation. It would be most difficult to maintain during the winter months.

Line "B"

Line "B", as shown on Exhibit "A", would be about 45 miles long and would be energized by power from the Arizona Public Service Company, 69 K.V. line east of Anita, Arizona. The Arizona Public Service Company estimated the cost of this line at $250,000.00 which includes transformers, services and meters in the village. Approximately 15 miles of this line would be over private property and approximately 20 miles would be through the Kaibab National Forest. The remaining 10 miles would be through the Grand Canyon National Park. About eight miles of this line would be in heavy timber and require clearing. The line would cross an isolated area where no roads exist and would present a maintenance problem, especially in winter. It would serve only one ranch house along the route.

Line "C"

Line "C", Exhibit "A", would be about 58 miles long, 15 miles of which would be on the Kaibab National Forest land. The remaining 43 miles would be on private property. This line would leave the Arizona Public Service Company line at the same point as Line "B" and run west. It would enter Supai Canyon from the west. There would not be much timber to clear, but the route would require setting more poles in solid rock. The line would cross three rather large canyons as shown on Exhibit "A". It would be able to serve a few ranch houses. Because of rock construction and the canyons crossed, it is estimated this line would cost $5,000.00 per mile for a total cost of $290,000.00. An addition of $15,000.00 should be added to this figure for the step-down transformer and the 2.4 K.V. line into the Canyon which would make the total cost of this line $305,000.00.

Line "D"

Line "D", would be approximately 62 miles long. Starting at Pica, Arizona, it would run directly to Rose Well and then practically straight to the canyon rim where it would drop into Supai from the west, (Exhibit "A"). It would have very few angle points and would follow a waterline and dirt road except for approximately 10 miles, which is accessible at this time by a usable car trail. The line would involve very little clearing if any and very little rock would be encountered except in the last few miles at the Canyon rim. All of the line would be on private property except the last eight miles which is in the Kaibab National Forest. This

line would run close to several ranch homes and small pumping stations on a waterline that might use power. Most of the private property, the waterlines, and ranch quarters belong to a private cattle company which might be interested in participating in the construction of the line.

I have received a construction estimate on the line in the amount of $235,000.00 from a firm that specializes in power line construction. To this cost another $15,000.00 would have to be added to cover the step-down transformer station at the end of the line and the 2.4 K.V. line into the Canyon, Exhibit "B". This would bring the cost of the line up to $250,000.00.

Line "E"

Line "E", as shown on Exhibit "A", would be approximately 62 miles long. The line would leave U. S. Highway 66 approximately one and one-half miles west of Hyde Park, Arizona, and run north-northeast about eight miles where it would intersect the present road to Frazers Well. The line would then generally follow the road through Frazers Well for approximately 37 miles to Ranch #16, (Exhibit "A") and then follow the same route as Line "D". This line would have more clearing than Line "D", but all except 20 miles would be on a well graded, all weather road. The entire line would be accessible the year round. It is believed considerable rock would be encountered, but it would be along the road where equipment required can be brought in with no trouble. This line would go through the Hualapai Reservation and furnish them power.

It is estimated the rock would increase the cost of constructing this line about $15,000.00 over that of Line "D", for a total cost of $265,000.00.

COST ESTIMATES

Line	Length Miles	Estimated Cost
A	37	$ 201,500.00
B	45	250,000.00
C	58	305,000.00
D	62	250,000.00
E	62	265,000.00

Although it is probable that line "A" would be the most economical to construct, it is recommended that this line not be built. The line would be very difficult to build and maintain without constructing a road. As the line would be built on National Park land it is most probable that no development will take place that could

increase the load to where it would be economically feasible.

Line "E" is considered the most practical one to construct. This line crosses the Hualapai Indian Reservation and would serve the community of Frazer Well. Several ranch homes would also be within reasonable distance for service.

The estimates quoted herein are based on current cost being paid by this office in our Contract Construction. It is possible that by using shorter poles and going to a class four or five pole, construction cost might be reduced. However, we do not recommend running a 69 K.V. line on anything but A-1 construction with ample ground clearance. It could be that during the design it would prove economical to go to heavier equipment and taller poles with 750-foot spans.

In estimating the cost it was assumed the supply would be obtained from a three-wire delta system which would necessitate running two insulated lines instead of one hot line and a ground. As the estimates are based on two insulated conductors, three-phase power could be obtained by adding the third conductor and necessary cross arms. This would provide ample power for the tramway and other uses that might develop if power was available.

PART II

Feasibility Report On a Freight and Passenger Aerial Tramway

In order to make a feasibility study of an Aerial Tramway into Havasupai, an aerial reconnaissance of the area was made on November 13, 1964, to locate a site where the proposed tramway could be installed. As a result of this reconnaissance flight a site was selected that would utilize a side canyon entering Havasupai Canyon from the southwest. The side canyon comes directly into the main canyon at a point approximately 800 feet down the canyon from the BIA School, Exhibits "C" and "D". This site was selected for the tramway as it would permit the use of one intermediate support which would simplify construction, and because of the ease with which the top terminal could be reached by constructing only about 19 miles of road along an existing trail.

The required entrance road would leave the present Peach Springs-Hualapai Hilltop road at a point approximately 44 miles north of U. S. Highway 66 and follow an existing car trail to the rim. It would be built over a comparatively flat terrain and would require no bridges. Equipment and material could be hauled into the site with little or no improvement of the existing trail. No allowance has been made in this report for the cost of constructing the road.

After the site for the tramway was selected a preliminary field survey was made from December 8th to December 13, 1964, and a profile of the route plotted, Exhibit "E".

The following criteria was established for a basis of comparison of construction cost:

A. Tramway to be used for transporting supplies, building material, and passengers into Havasupai Reservation.

1. Minimum desired capacity:
   2000 lbs. going down
   750 lbs. coming out

2. Maximum trip time in or out:
   Twenty (20) minutes

The different designed capacities of 2,000 lbs. going down and only 750 lbs. coming out was stipulated to reduce the electric power requirements.

TRAMWAY PLAN PROFILE

Exhibit "E" and pictures, Exhibit "C" and "D", were sent to Heron Engineering, 2000 S. Acoma St., Denver 23, Colorado, builders of aerial tramways, and the following information was received:

1. For our requirements the installation of a single reversible bi-cable type aerial tramway with one carriage traveling back and forth between the two terminals was recommended.
2. The drive for the tramway would be located at the lower terminal and would be a Ward Leonard type D.C. electric drive powered by a gasoline or diesel generator plant. A smaller gasoline engine should also be provided for connection to the tramway in event of failure of the main power unit. This smaller engine could also act as a drive for auxiliary haulage rope system with a rescue carriage that could be used to evacuate passengers in event the main carriage might stop over an inaccessible spot.
3. The carriage would be an open wire mesh covered cage with a bench in each end for seating four passengers. The cage would measure 4-feet wide by 6-feet long and the deck would be suspended about ten feet below the track rope.
4. The design capacity would be 750 lbs. uphill and 2,000 lbs. downhill. Rope speed of 300 feet per minute would provide a travel time of about 19 minutes in either direction.
5. Preliminary design figures indicate a track rope of 1¼ inch diameter under a tension of about 25 tons would be necessary. The haul rope would be 3/4 inch diameter.

6. Estimated Cost -
   a. Design, wire rope, structural steel, mechanical and electrical equipment $87,000.00.
   b. Installation of the tramway including excavation, concrete foundations, backfill, steel erection, mechanical and electrical equipment installation, transportation and supervision $58,000.00.
   c. Total Estimated Cost - $145,000.00.

Design criteria, the tramway Plan-Profile Exhibit "E" and pictures, Exhibits "C" and "D", were also sent to the following:

Mr. L. A. Jump
Telecar Corporation
3419 S. Lincoln St.
Denver, Colorado

Mr. Hans Sarbach
Box 171
Zephyr Cove, Neveda

Mr. L. A. Jump is representative for a firm at 11rue Rene Camphin, Fontaine, Isere, France, and has sent the information to them for an estimate. As yet no reply has been received.

Mr. Hans Sarbach represents the Bell Engineering Works Ltd., Lucerne, Switzerland, and has forwarded the information to them for an estimate and will forward the estimate to us as soon as it is received. From all information available at this time it would appear that an estimated cost of $150,000.00 would be reasonable for constructing a tramway into Havasupai Canyon.

PART III

Jeep-Truck Trail Study

Consideration of the overall possibilities seem also to include the need to give serious thought to the possibility of constructing a jeep-truck trail into the Canyon. Such a project would provide employment for the local Indian people, while at the same time providing a better means of entering and leaving the Canyon for both tourists and supplies. The trail would be a minimum of 12 feet wide and could have grades up to 25% for short stretches.

The existing trail should not be considered as the lower end of the trail goes through narrow canyons that would make it impossible to make a year round trail due to flooding during heavy rains. However, the canyon through which the tramway would come, might make a

feasible route for coming out of the canyon to the rock plateau approximately 600 feet above the floor of the Canyon, Exhibit "C".

It is noted that in the estimate of $145,000.00 for a tramway into the Canyon, $87,000.00 is for design, wire rope, structural steel, and mechanical and electrical equipment, and that $58,000.00 is for installation which includes excavation, concrete foundations, back-fill, steel, mechanical and electrical equipment erection, transportation, and supervision. All of the above represents equipment or labor performed by skilled labor and craftsmen. The Havasupai Indians would realize very little of the estimated $145,000.00. In addition, a tramway would have to have periodic maintenance, inspection and repair which would have to be done by outside professional personnel.

On the other hand, the jeep-truck trail could be constructed and most of the work performed by the Indians. Following construction, trail maintenance would be by the Indians. This would mean that most of the money would be paid to them, except for that necessary for supervision, equipment and supplies.

PART IV

Water Pumping System

I would also like to take this opportunity to suggest the possibility of pumping water from Havasu Creek to the rim for the purpose of watering cattle.

The land area between Route U.S. 66 and Havasu Canyon is used by the Bacaiba Cattle Company, as range land for large herds of cattle. At the present time the cattle company ships water by rail to Pica, Arizona, and then pumps it over 60 miles north to water their cattle. This is a very costly operation.

In this connection it is possible that water could be pumped from Havasu Creek to the canyon rim in sufficient quantities to serve the large cattle company and also develop grazing land on the rim for the Havasupai and Hualapai Indians.

No costs have been estimated, but it is believed this possibility should be explored further. Thought should be given to the use of a hydraulic ram or other similar method to utilize the falls in Havasu Canyon.

SUMMARY

From an engineering standpoint, it is believed feasible, to construct a power line along one of several routes to serve the

Indians living in Havasu Canyon. The cost of construction is estimated to vary from $201,500.00 to $305,000.00, depending on the route. Of the routes studied, Route "E", crossing the Hualapai Reservation, seems to offer the most advantages. This route is estimated to cost $265,000.00.

It also appears feasible from an engineering standpoint to construct an aerial tramway to serve the Canyon both as a tourist attraction and to carry supplies to the village. The cost of such an enterprise would probably be less than $150,000.00.

Preliminary reconnaissance indicates it may be economically feasible to construct a jeep-truck road into the Canyon.

A means of supplying water to the Canyon rim may also offer possibilities that would prove advantageous to the Havasupai Indians.

EXHIBIT 1A

[redacted]

RESOLUTION NO. 14-71
OF THE GOVERNING BODY OF THE
HAVASUPAI TRIBE OF THE HAVASUPAI RESERVATION
(A FEDERALLY CHARTERED INDIAN ORGANIZATION)
SUPAI, ARIZONA 86435

WHEREAS, the Havasupai Tribe has constructed the major portion of a power plant building and service lines on Long Mesa to serve the Havasupai people, and

WHEREAS, the Bureau of Indian Affairs has provided the diesel generator for this system, and

WHEREAS, the system will begin operating very soon, and

WHEREAS, the Havasupai Tribe at this time does not have the technical ability to operate and manage the system.

NOW, THEREFORE, BE IT RESOLVED that the Havasupai Tribal Council requests the Truxton Canon Agency to operate the system in accordance with CFR Title 25, Part 231 (Colorado River).

BE IT FURTHER RESOLVED that the rate will be governed by the Tribe and may be increased or decreased to meet the cost of operation.

C E R T I F I C A T I O N

I, the undersigned as Chairman of the Havasupai Tribal Council do hereby certify that the Tribal Council of the Havasupai Tribe is composed of seven (7) members, of whom 5 constituting a quorum were present at a meeting thereof held this 11 day of Sept 1971: and that the foregoing resolution was duly adopted by the affirmative vote of 5 members for to 0 against; pursuant to the Constitution & Bylaws approved March 27, 1939 and amended July 22, 1967 and June 18, 1968.

Lee Marshall
Lee Marshall, Chairman

ATTEST:

Ted Shaffer
Ted Shaffer, Secretary

RECEIVED
SEP 20 1971
TRIBAL OPERATIONS

SEP 1971
RECEIVED
TRUXTON CANYON
AGENCY
VALENTINE
ARIZ.

MEC SOF EXH 8

file
proposed
elec. energy
Supai area

Area Director

June 26, 1968

Plant Management, PAO

Status Report Electric Power - Havasupai Reservation

The following is a report of the progress to date on providing electric power to the Supai Canyon.

Electric Energy by overhead electric power lines can be supplied from either of two adjacent areas. The area in the vicinity of Seligman, Arizona, is served by Arizona Public Service Company. The area on the Hualapai reservation (Peach Springs) is served by Mohave Electric Cooperative.

The Arizona Corporation Commission indicated initially that the Bureau would have to make application to Arizona Public Service since the Hualapai Supai was included in the APS franchise area by a "Grandfather's Rights" clause.

A formal letter to the Arizona Corporation Commission resulted in a reply which rescinded the above and stated that application could be made to the Mohave Electric Cooperative for supply of electric service.

Prior to receipt of the Couporation Commission's letter we had made a request to APS to submit proposals for extension of electric power to the Canyon. A copy of their proposals and a map showing the proposed route is attached for reference.

On June 4th 1968, we made a request to Mohave Electric Cooperative to supply electric power from Pica (Route 66 east of Peach Springs) to the Supai. They stated that they would study the engineering feasibility since the load is 120 miles from their source of supply (Kingman, Arizona). They stated that their study would take approximately three weeks. The proposed route is shown in red on the attached map.

Another alternative which is being considered is the use of diesel generators at the Hilltop overlooking the Supai Village. This would allow the delivery of fuel by truck to the generator site. A separate sheet is attached indicating an estimate of the costs involved. Initially this would be the least cost and the fastest way of providing electric power to the Supai. However, it would not provide power to the Hualapai Reservation at Frazier's well. At present there is a surplus electric generator at Keams Canyon rated 150 KW which could be utilized for this purpose.

A summary of the three alternates is listed below:

1. Arizona Public Service Co.	Construction Advance $	Guaranteed Min.* $/yr.
Maximum Cost to Supai	0	71,400
" " " "	449,275	15,200
Maximum Cost to Supai & Frazier's Well	0	106,800
" " " " "	656,320	20,800

*Credit would be allotted for usage by Boquiva Cattle Company and other users on the new line.

2. Mohave Electric Cooperative

Est. Construction Costs 60 miles approx. $4000/mi	$240,000
BIA to supply poles & anchors	100,000
Costs to Mohave Electric Cooperative	$140,000
Approximate guaranteed annual minimum	$23,000/yr.

3. Diesel Generation

First Cost	$50,000
Annual Cost	$23,000/yr.

Alternate #3 is the least expensive, however, it will put the BIA in the power business and additional load growth will have to be supplied by purchasing and operating additional generating units. For a reliable supply an additional 100 KW unit should be purchased as a stand by and for peak loads. This will make available, 250 KW, three phase, electric power at the Supai.

In each instance $20,000 must be provided for a distribution line from hilltop into the canyon. This has been included in Alternate #3 but not in Alternates 1 & 2.

Funding: There are no MA&I funds allocated for power supply to the Supai in the 1968 & 1969 programs. They could be included in the 1970 program or by special allotment. An item has been placed in the Long Range Construction projects by Plant Design and Construction, however, it has very little priority in relation to other construction projects.

Costs for the guaranteed annual minimum or annual operating costs should be allocated amongst the various users in the canyon. They should be prorated according to the amount of electric energy used. Potential customers are listed below:

BIA
Tribal Facilities
U.S.P.H.S.
Mission
Arizona Telephone Company
Dept of Parks
Forest Service

Conclusion: Electric power can be supplied to the Supai Canyon in six months by diesel generation at a first cost of $50,000 with an operation and maintenance cost of $23,000/year.

Electric power can be supplied to the Hualapai and Supai at a cost of $120,000 plus a guaranteed annual minimum of $23,000. Construction time would be 1 to 2 years.

Funds are not available at the present time and would have to be furnished by special allocation. MA&I funds may be available in FY 1970.

Victor E. Lund
General Engineer

Noted:

Edward E. Dale
Area Plant Management Officer

/S/ ALBERT LASSITER

Assistant Area Director (Adm.)

cc: Supt., Truxton Canon Agency
W. Newton, Social Services
Tribal Chairman, Supai thru Supt. Truxton Canon Agy.

Estimate of First and Annual Costs for Diesel Electric Generation at Supai Canyon

First Costs

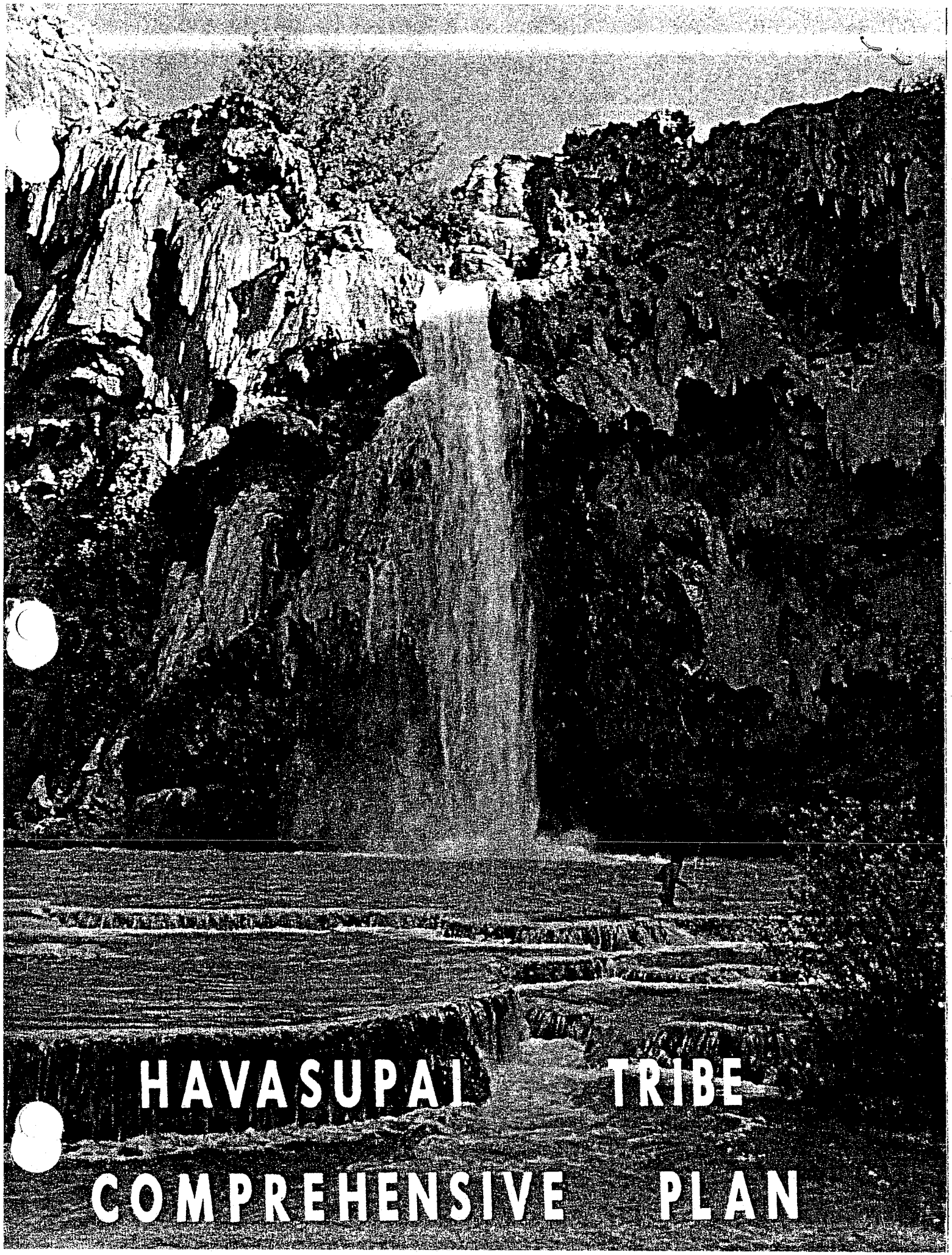
Keams Canyon 150 KW generator overhaul & repair	$4,000.00
Generator House Hilltop	6,000.00
Fuel & Water Storage Facilities	5,000.00
House for Caretaker	10,000.00
Electric Distribution Facilities Hilltop into Village	20,000.00
	45,000.00
Contingencies	5,000.00
Total First Cost	$50,000.00*

Operating & Maintenance Costs/year

Operator & Maintenance Man (1)	8,000.00
Fuel Consumption	10,000.00
Maintenance & Repair Misc.	5,000.00
Annual Cost	23,000.00

*Additional 100 KW unit can be provided for peak loads and as a spare for $10,000.00.

MEC SOF EXH 9



HAVASUPAI TRIBE COMPREHENSIVE PLAN

ELECTRIC POWER

In November 1971 diesel driven generators on the rim of Long Mesa brought electric power to the village of Supai for the first time. In the past three years the Havasupai have become increasingly dependent on electricity. The fifty new homes are fully electric and dependent on the power for cooking, heating and refrigeration. The construction of an enlarged school, a new store and lodge will intensify the power demand. The generating plant is difficult and costly to maintain, service and refuel when the dirt road is in bad condition (FIGURE IV-11).

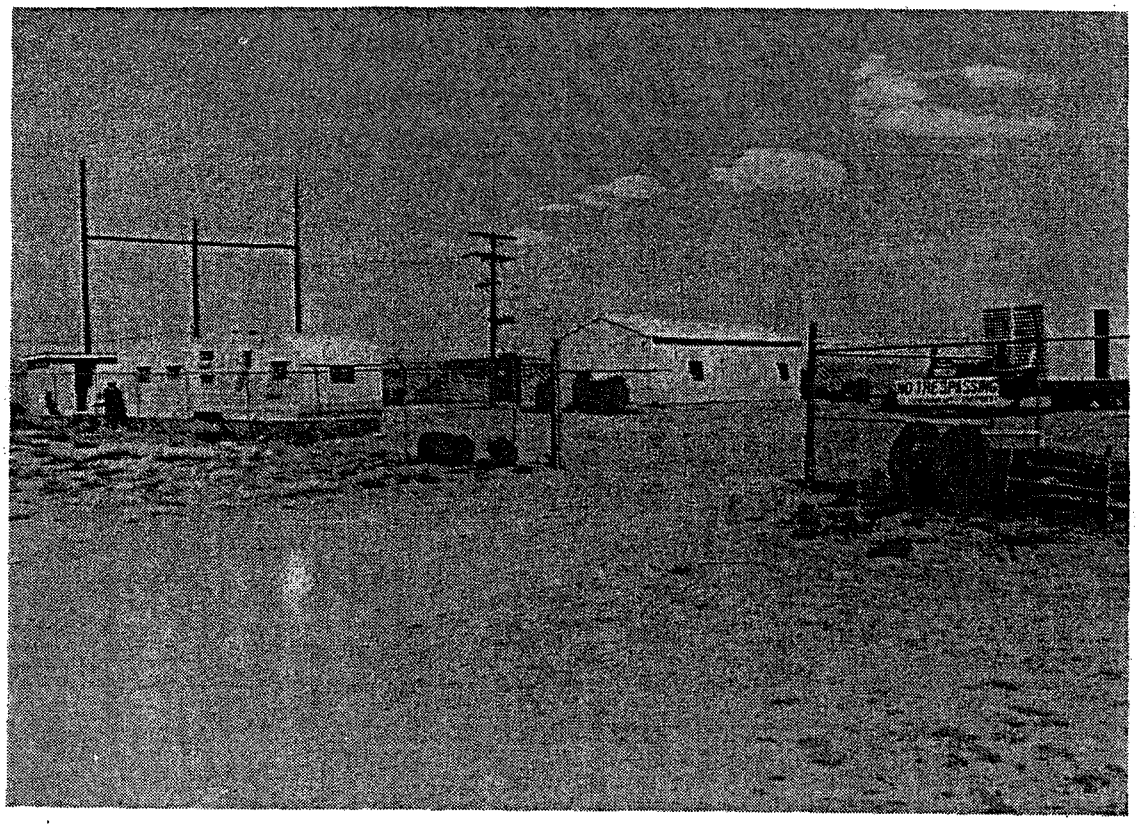


FIGURE IV-11: Long Mesa Generating Plant

Electric power at Supai is provided by four 100 KW diesel powered generators located on Long Mesa. It is a primary 2400 volt system with each of the units producing 30 amps. The load varies considerably between the spring, when only two units are operated, and the winter, when the four generators produce up to 170 amps. The new homes are heated by electricity and it has been difficult to develop an energy conservation program with the people of Supai.

One of the problems noted by BIA plant management is that when three engines are operating at capacity, and a small problem results in one generator, the load will switch to the other two and the system breaks down. Unfortunately, when this happens the people of Supai do not turn off their electric appliances and heater...and when the system starts up again, it may blow again because of the initial high demand.

The limited output of the four small generators will be temporarily solved by the installation of two recently acquired generators. The new 300 KW units can deliver 95 amps each. A new generator building will be built to house these units which are expected to be operational before winter.

Plant management has attempted to avoid three-phase power for two basic reasons:

1. a step-down transformer is needed.

2. the Havasupai electrician is not a journeyman and might not be able to handle the maintenance.

However, three-phase power will soon be necessary in Supai with the culmination of the plans for a new school. The primary electric lines have recently been extended in order to serve the school, which is expected to be built by September 1975.

The tribe and BIA are attempting to negotiate with Mohave Electric Co. (MEC) to provide electric power to Supai. The original system (electric lines) was designed in cooperation with MEC in anticipation of the eventual takeover of the system by the company.

The cost of providing electricity to Supai has escalated with the recent energy crisis since diesel fuel powers the generators on Long Mesa. In July 1973 the cost of diesel fuel was 15.2¢ per gallon. By December it was 29.74¢ per gallon and by May of 1974 the price was 36¢ per gallon. Plant management of BIA expects to use 200,000 gallons of diesel fuel to provide electricity for Supai in the coming year. The change in fuel costs is indicated in TABLE IV-1.

TABLE IV-1
FUEL COSTS FOR SUPAI

YEAR	GALLONS OF DIESEL	FUEL PRICE/GAL.	TOTAL COST
1973 (July)	200,000	.1521¢	$30,420
1974 (May)	200,000	.3600¢	$72,000

In addition to the cost of fuel, there is a transportation cost of $144.00 for each load of 5,000 gallons from Kingman to Long Mesa. Forty loads per year are delivered resulting in a cost of $5,760. Operating costs, such as operator's salary, routine operations in the canyon, repair and maintenance are not available. The plant is operated by two men. Each man works 15-day 24-hour shifts. Currently a back-up man is being trained for relief and emergencies. In the past, someone had to be brought in from Phoenix for back-up.

The entire Supai village is metered with the exception of the Public Health Service building which pays a flat rate. In terms of operating costs, revenues received are "a drop in the bucket."

EDUCATION

Historical

Although the reservation for the Havasupai was established in the 1880's, it was not until 1890 that the tribe was placed under the jurisdiction of the Fort Mojave School. The people were not interested in sending their children to the institution and by 1895 school teachers arrived in Cataract Canyon. In 1898 a red sandstone school building was nearly completed and the average daily attendance was 57 children. Although the schoolhouse had a rated capacity of only 46 students, by 1901 there were 71 students (FIGURE IV-12).

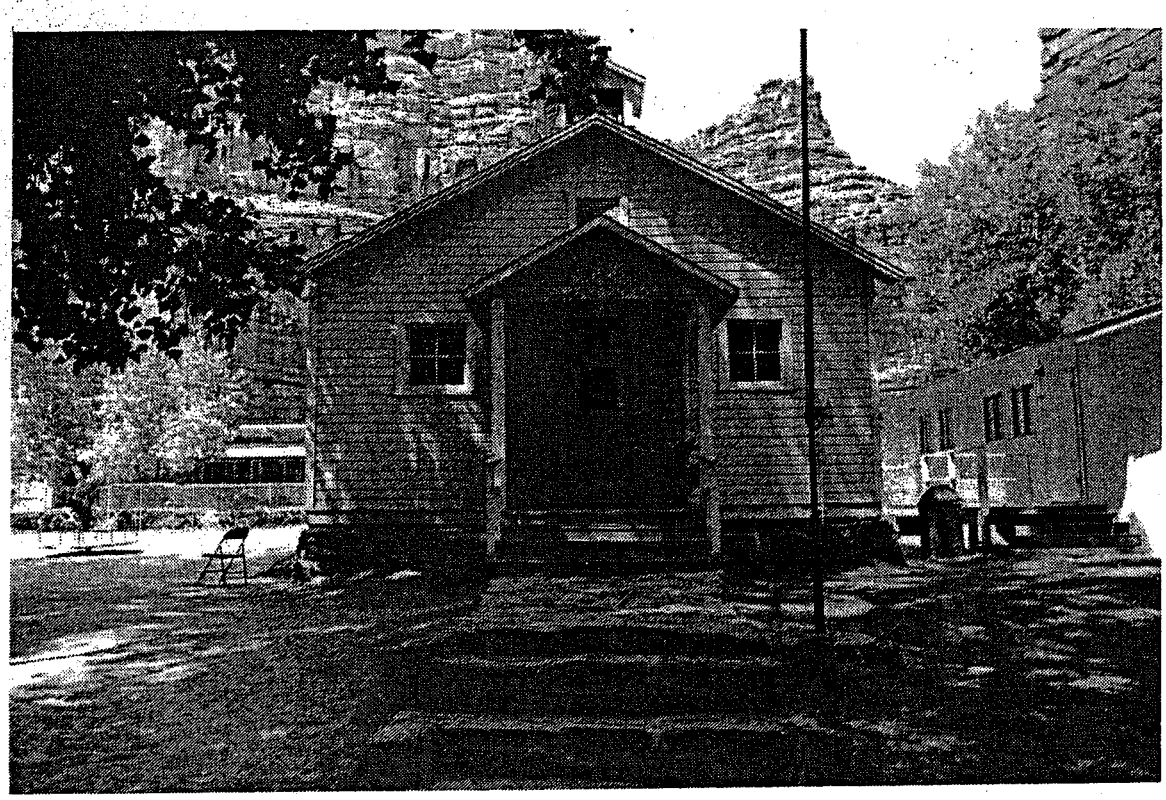


FIGURE IV-12: Supai Day School

Present

Presently, the school at Supai conducts classes for the first through the fourth grades. There are three teachers and two teachers' aides to serve 37 children. After the fourth grade children are sent to boarding schools or foster homes. There are an estimated 70 children who attend school outside the canyon. In addition to the grade school, the Headstart program serves approximately 25 children (FIGURE IV-13).

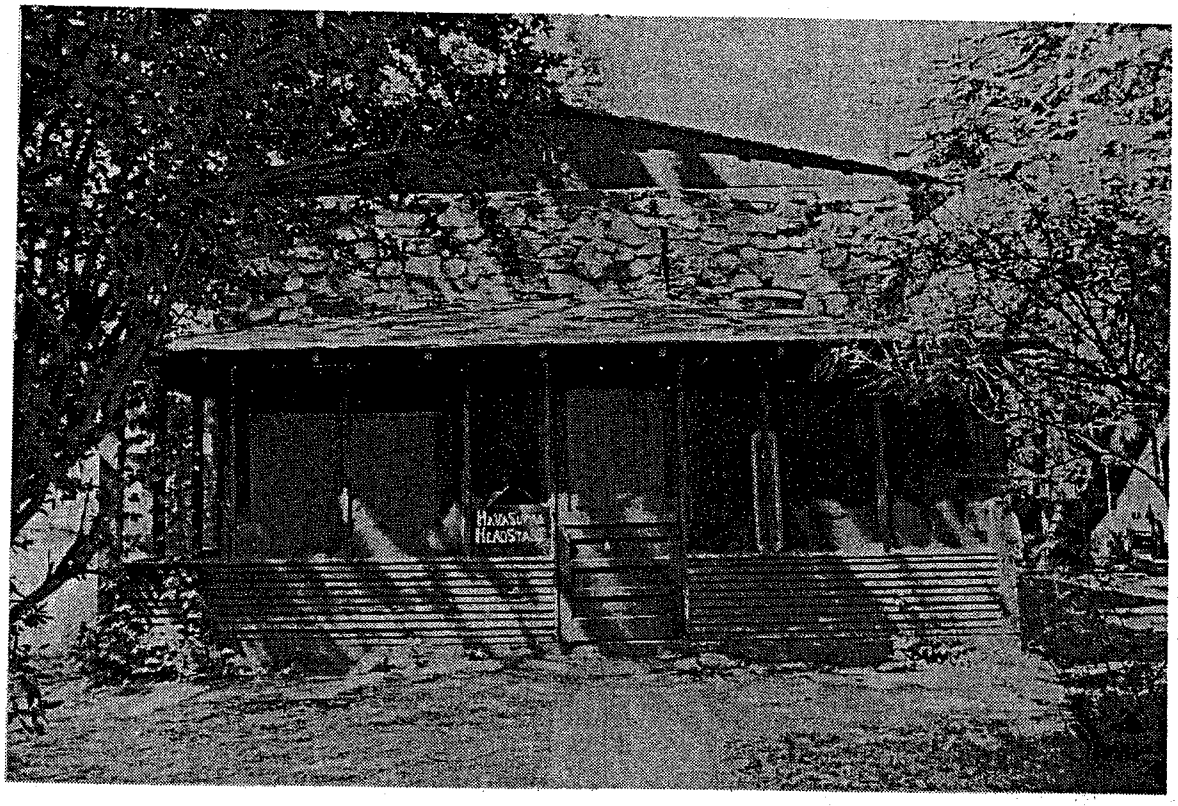


FIGURE IV-13: Headstart School

Unfortunately, nine year old children must leave their families to continue their education past the fourth grade. Quite often the children do not see their parents from the time they leave in September until they return in June. Those attending boarding schools go to Whiteriver or Phoenix and those in foster homes may go as far as California.

Two additional grades will be available upon completion of the new school scheduled for the fall of 1976.

Alternative

An alternative to sending the children so far away would be to have them attend the public schools at Grand Canyon Village. In March 1974 a survey was taken of the Supai residents regarding the desirability of having Havasupai children attending the Grand Canyon Public School. The overwhelming response was that Havasupai children should go to Grand Canyon after completing as many grades as available in Havasu Canyon. The feelings expressed indicated that unlike other boarding schools, Grand Canyon is close and accessible to parent visits. In general, the respondents indicated that the most desirable means of housing students at Grand Canyon would be a dormitory arrangement. A number of respondents expressed a preference for placing the children with foster parents.

Although obviously in favor of having the children attend school at the Grand Canyon, parents expressed a number of concerns. They were concerned about students drinking and getting into trouble at Grand Canyon. They want assurance of good supervision, family presence, counseling and whatever help is necessary to prevent these problems.

It should be noted that the National Park Service has been against any use of land in the Grand Canyon complex to accommodate the Indians. Another possibility would be for the tribe to acquire private land near the national park. Money of course is an important factor in any decision.

Another alternative to the children leaving the canyon after the completion of a number of grades is the development of an unstructured grade system. The purpose of the unstructured grade system would be to allow education up to the equivalent of eight grades. A special grant to establish this system might be obtained from the Bureau of Indian Affairs or the Department of Health, Education and Welfare.

Analysis

The people of Havasupai have been asked to express their opinions and have spoken quite clearly. Upon completion of school in Supai they want their children to go to school at Grand Canyon. They also want their children to be well supervised.

The Bureau of Indian Affairs should see that these desires are achieved. The children should reside in dormitories staffed by Havasupai. This will provide the children with supervision by individuals who are familiar with the families of the children and can provide them with understanding and guidance. EFFORTS TO IMPLEMENT THIS POLICY SHOULD BEGIN IMMEDIATELY.

CHAPTER V

TOURISM

Tourism is a significant element in the economic base of the Havasupai Tribe. Tourism provides necessary jobs and income for tribal members. Through the tribes' tourism program, citizens from all over the country and foreign visitors are able to visit one of the most scenic areas of the southwestern United States.

This chapter reviews the present tourism program, analyzes its income producing potentials and examines alternatives for upgrading and enlarging the program.

PRESENT CONDITIONS AND FACILITIES

The eight mile trip from Hualapai Hilltop to Supai, either by hiking or horseback, is physically demanding. Upon arriving in Supai, tourist activities are restricted to hiking and sightseeing primarily at Navajo, Havasu and Mooney Falls. At present, there are no organized tours or activities to entertain visitors to Supai.

The accommodations for tourists in Supai are minimal at best. Sleeping facilities are located in two buildings, the "new lodge" and the "old lodge." The "new lodge" is constructed of native stone, and is located behind the community center. The interior, which has recently been painted, has four rooms and a kitchen. Rentals are made by the bed and there are a total of nine in this lodge. Despite the new paint, the interior needs further improvements. The bathroom sinks are scarred by the heavily mineralized water from the leaky faucet. The rusty composition of the boxy shower stall is indicative of its age. The rooms have been "comfortized" with new air conditioning units for the summer and electric heaters for winter months. (FIGURE V-1)

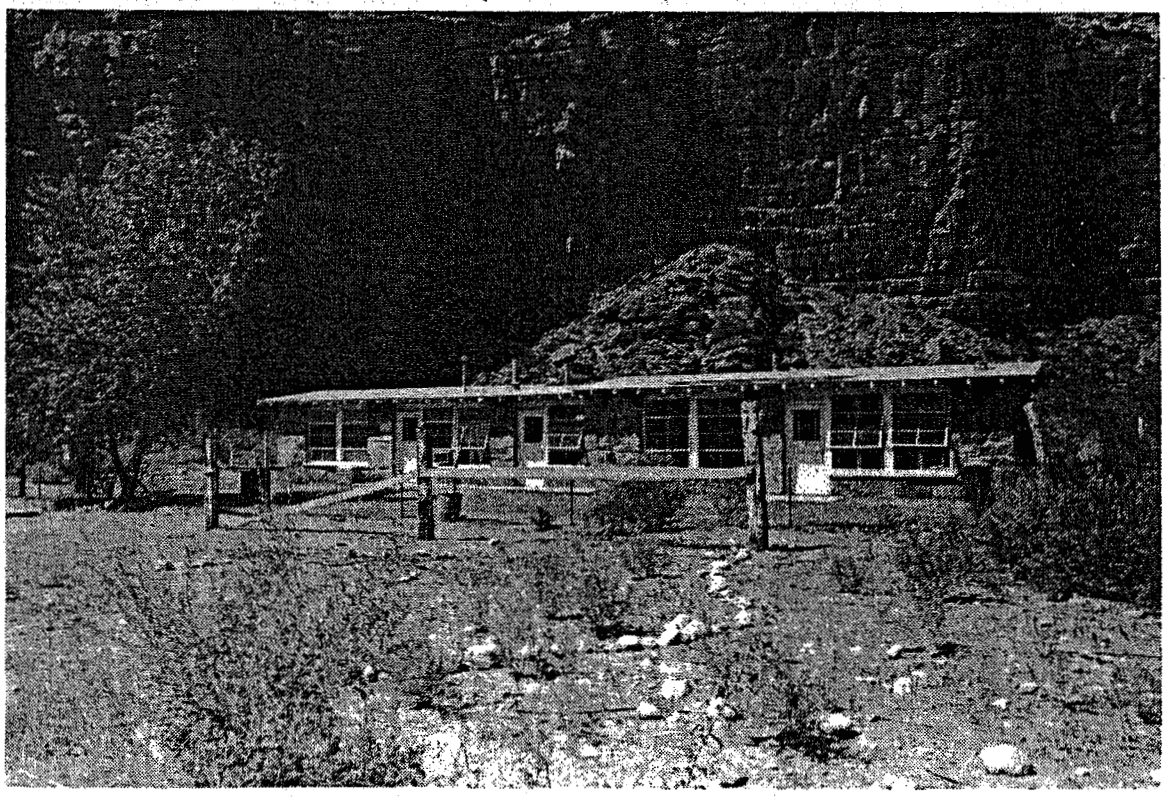


FIGURE V-1: The "new lodge"

The "old lodge," located in the center of the village, is in poor condition. It has seven beds in two rooms, a kitchen and two bathrooms. Bed rentals at the new lodge cost $8.00 and at the old lodge $6.00. (FIGURE V-2)

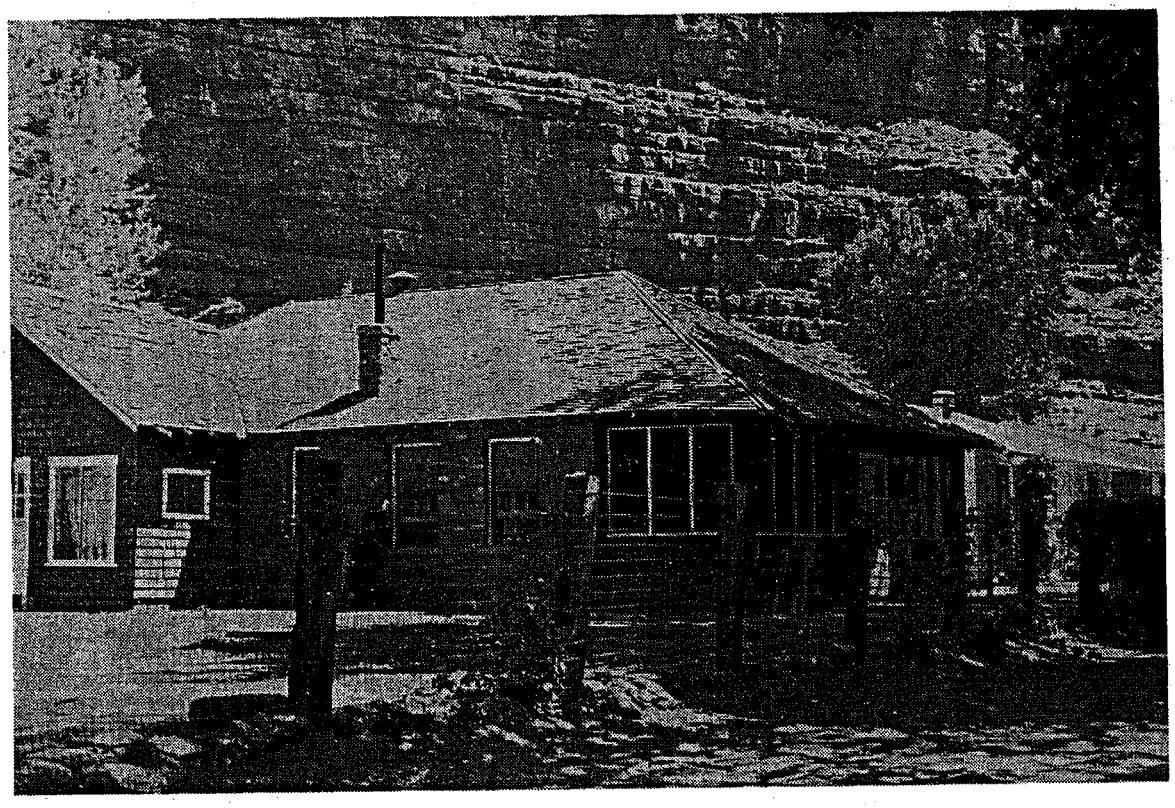


FIGURE V-2: The "old lodge"

Camping facilities consist of three areas: National Park Service, Navajo Falls and Uqualla Campground. Two years ago the Park Service placed a limit of 100 occupants in this campground. The demand for camping facilities resulted in the development of the Navajo Falls (20 campsites) and Uqualla Campgrounds (25 campsites) both of which are operated and maintained by the tourist enterprises. Upon reaching Supai, hikers pay a five dollar entry fee. The fee allows the visitor to camp at one of the three campgrounds. (FIGURES V-3, 4, 5, 6). TABLE V-1 shows overnight facilities available at Supai.

TABLE V-1
OVERNIGHT FACILITIES AT SUPAI

Old Lodge	2 rooms, 7 beds
New Lodge	4 rooms, 9 beds
Navajo Falls Campground	20 visitors capacity
Uqualla Campground	25 visitors capacity
National Park Service Campground	100 visitors capacity

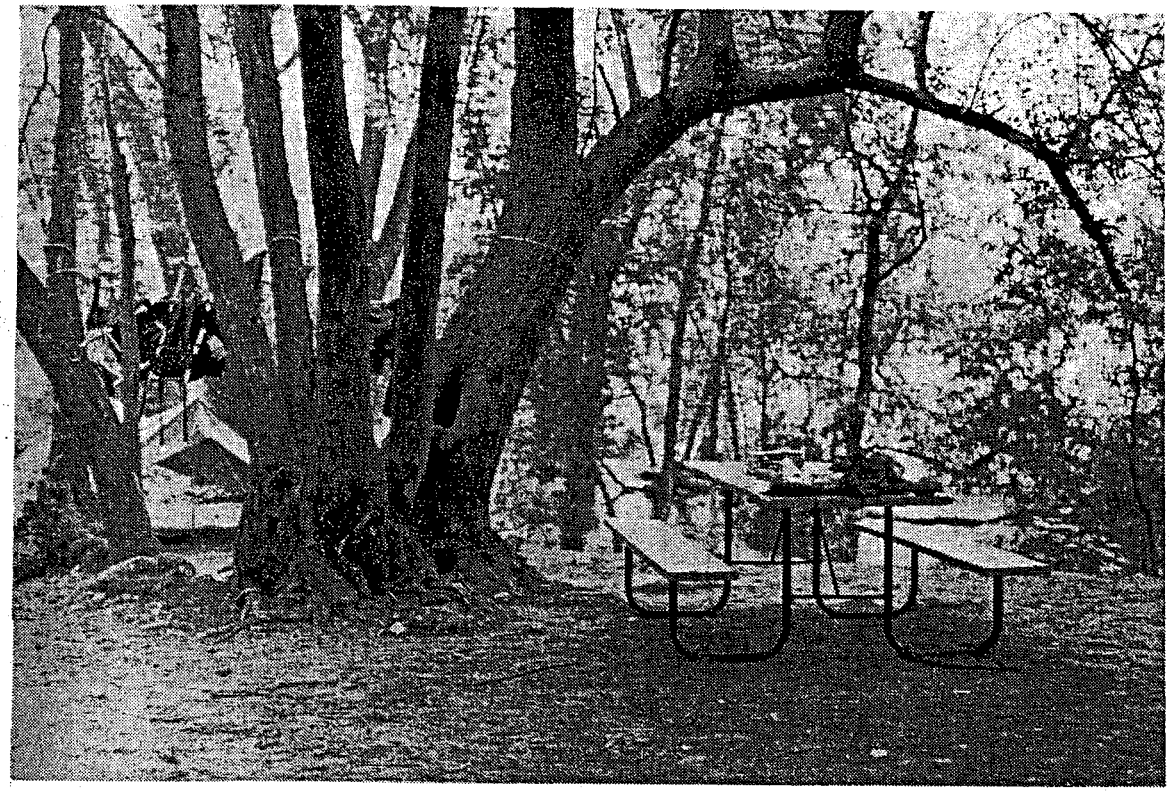


FIGURE V-3: A camp at the National Park Service Campground.

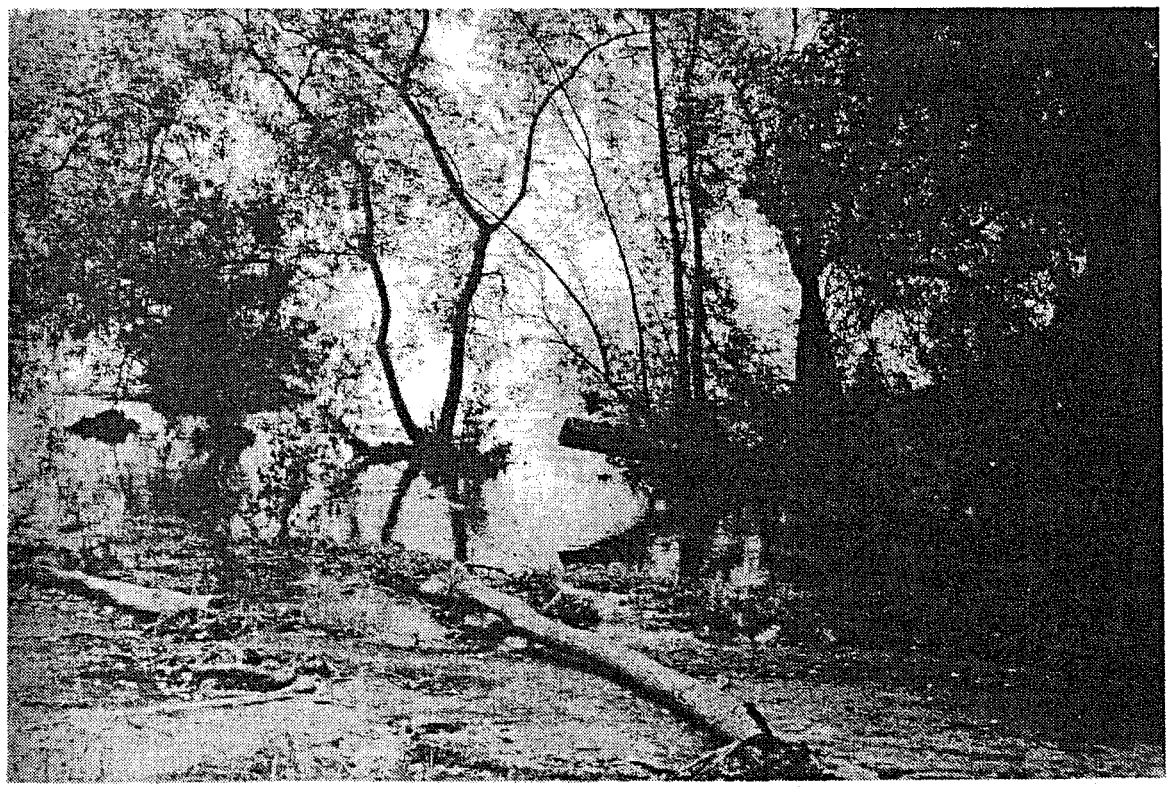


FIGURE V-4: The scenic Havasu Creek flowing through the Park Service Campground.

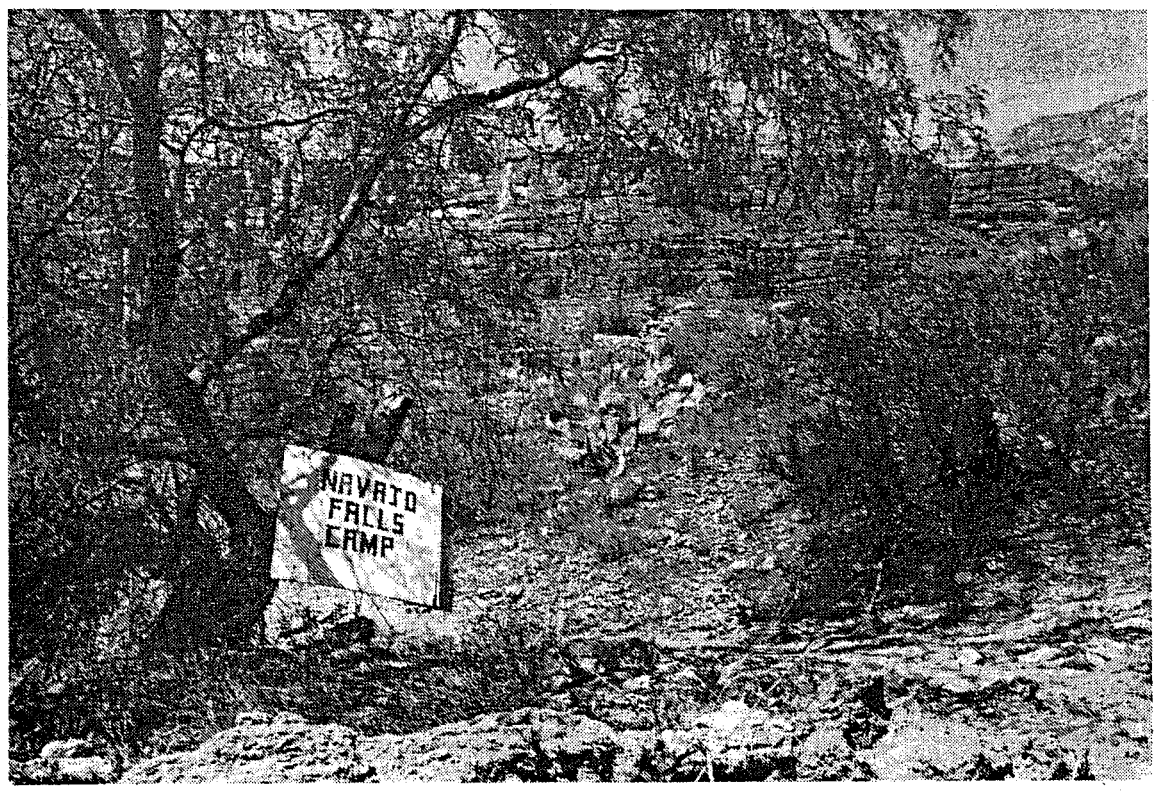


FIGURE V-5: Navajo Falls Campground operated by the Havasupai Tourist Enterprises.

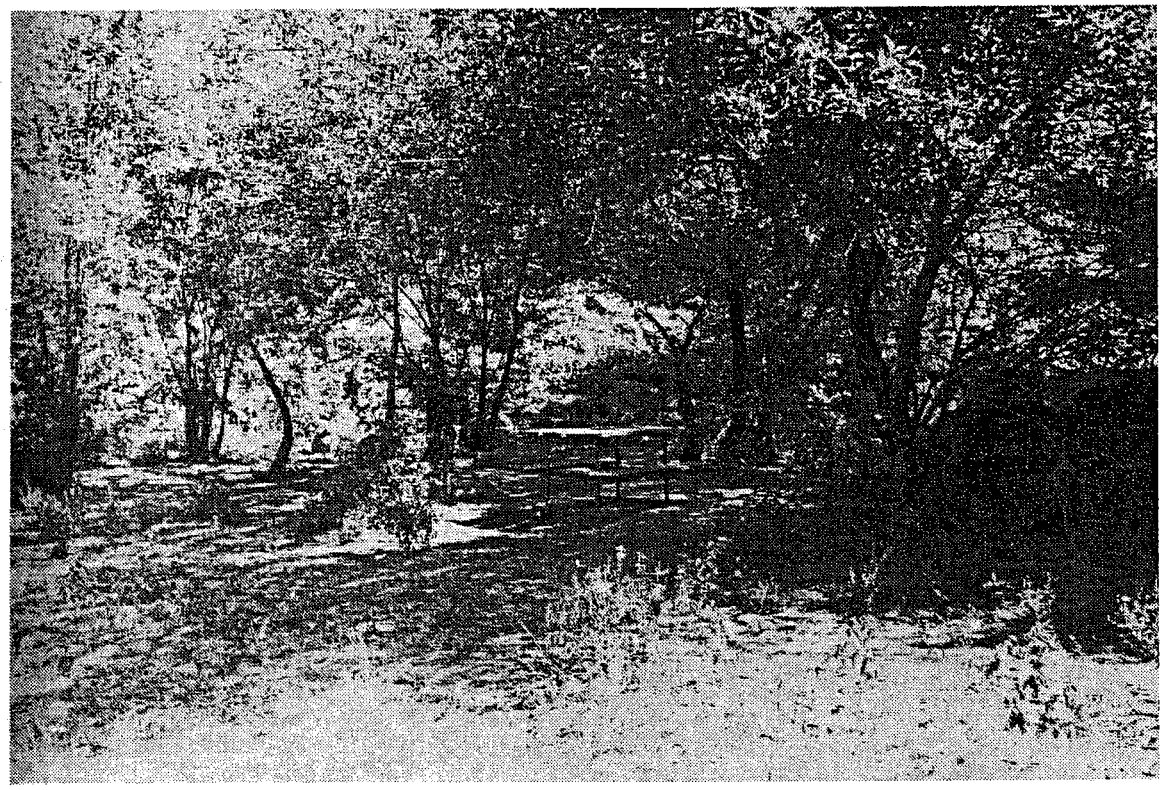


FIGURE V-6: The Uqualla Campground also operated by the tribe.

ANALYSIS OF TOURISM 1965-1973

In order to discuss the future of tourism, the past must be considered. The figures analyzed are from 1965-1973, although there is a gap in the information in 1971 when the fiscal year was changed.

Lodge Rentals

From 1965 to 1973 income from lodge rentals increased from $4,656 to $9,149, close to a 100 percent change (FIGURE V-7)

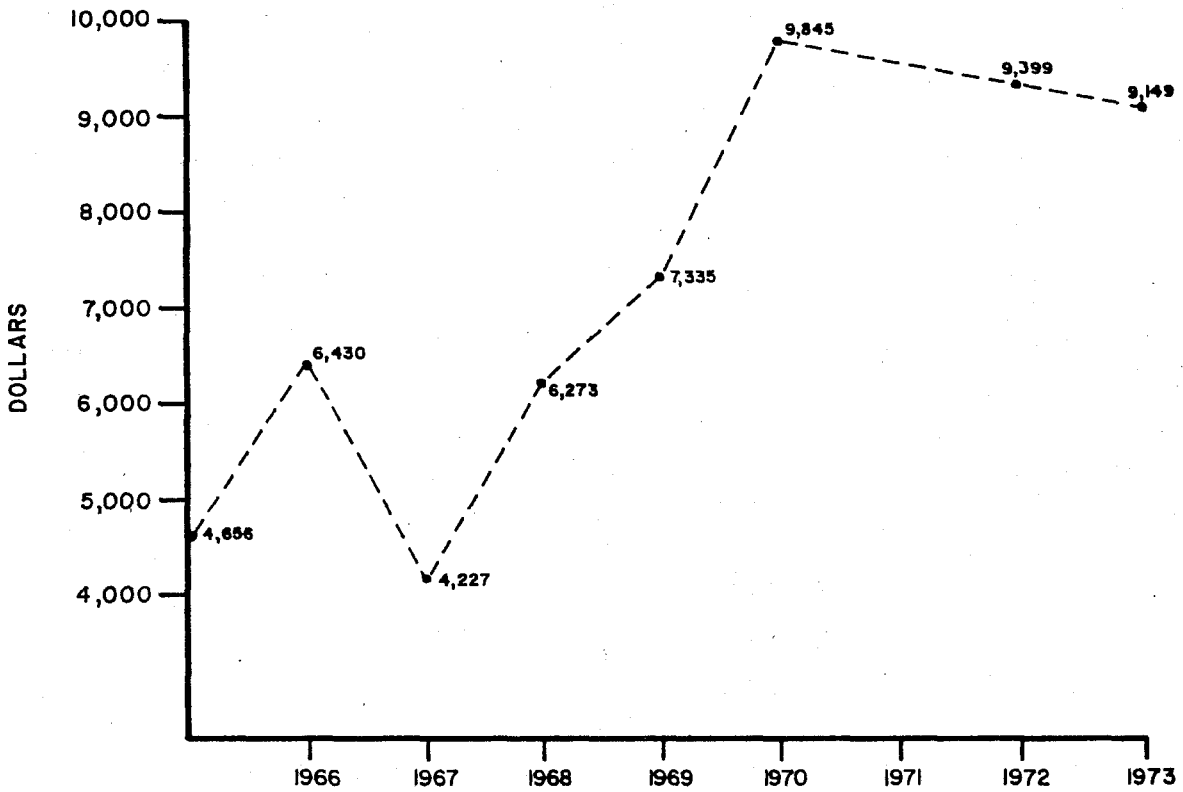


FIGURE V-7: Lodge Rentals Total Dollars 1965-1973

The total dollar increase has not been a smooth ascension as indicated by the 38 percent increase in 1966 followed by a sharp drop of 34 percent in 1967. From 1968-70 the rentals rebounded and substantial increases occurred at the rate of 48 percent (1968), 17 percent (1969) and 34 percent (1970). The peak year of revenues was 1970 when income reached $9,845. There were slight declines in revenue in 1972 and 1973 of five percent and three percent respectively.

Tourist enterprises rents by the bed rather than by the room. FIGURE V-8 was derived by dividing the number of beds available into the total annual amount of lodge rentals. At the low point 603 beds (1969) were rented and the peak was 1,640 (1970).

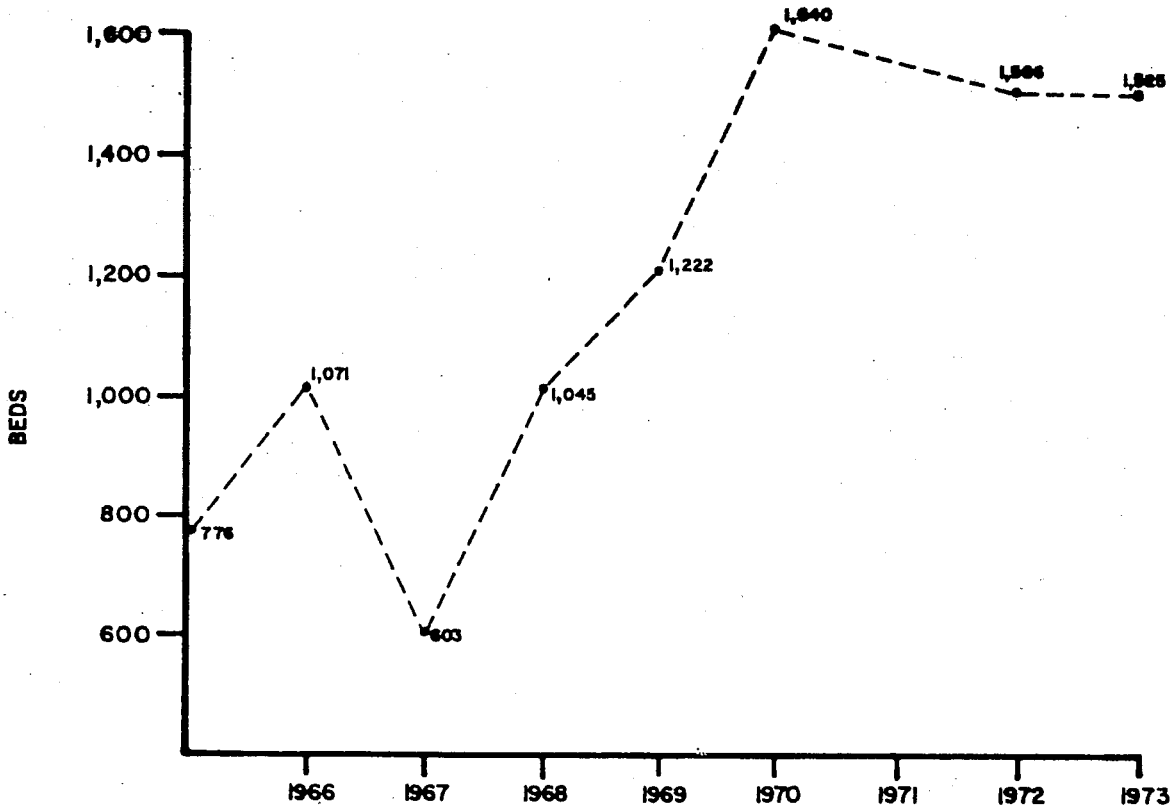


FIGURE V-8: Lodge Rentals Number of Beds

TABLES V-2 and V-3 have been designed to relate the number of rentals to capacity. Capacity is defined in TABLE V-2 as the number of beds (9) times the number of days in a year (365) = 3,204. The percentage of capacity was determined by relating the number of beds rented.

TABLE V-2

PERCENTAGE OF BED RENTALS TO CAPACITY

Year	Dollars	Beds Rented	356 x 9 Capacity	Percentage of Capacity
1965	4,646	776	3,204	24%
1966	6,430	1,071	3,204	33%
1967	4,227	603	3,204	19%
1968	6,273	1,045	3,204	33%
1969	7,335	1,222	3,204	38%
1970	9,845	1,640	3,204	51%
1971	N/A	N/A		N/A
1972	9,399	1,566	3,204	49%
1973	9,149	1,525	3,204	48%

TABLE V-3

SEASONALLY ADJUSTED PERCENTAGE BED RENTALS TO CAPACITY*

Year	Beds Rented	Capacity	Percentage Capacity
1965	621	1,782	35%
1966	857	1,782	48%
1967	482	1,782	27%
1968	836	1,782	47%
1969	978	1,782	55%
1970	1,314	1,782	74%
1971	N/A	1,782	N/A
1972	1,252	1,782	70%
1973	1,220	1,782	70%

*80 percent of room rentals. Seasonal capacity 1,782 (April - Oct. 15)

Because of the seasonal nature of the tourism business, the percentages derived on an annual basis were not considered to be an accurate assessment of usage. It was determined that approximately 80 percent of the room rentals occur during the tourist season, which runs from April 1 - October 15. Therefore, the capacity was changed to 1,782 (9 rooms X 198 days in the season). The annual beds rented were reduced to 80 percent for the season and on this basis the percent of capacity was determined.

The result, as is shown in TABLE V-3, is that seasonal occupancy in 1970 was at 74 percent, in 1972 it was 70 percent and in 1973 it was 70 percent. These figures show a marked contrast to the annual occupancy rate in TABLE V-2 of 51 percent, 49 percent and 48 percent for the corresponding years of 1970, 1972, and 1973.

Analysis

Room rental appears to have leveled off at the 70 percent capacity. Although this figure may appear low in comparison to seasonal levels outside of Supai, actually the occupancy rate is acceptable. The only minimally acceptable facilities are in the "new lodge," which until this year did not have air conditioning. The "new lodge," exposed to the hot sun and temperatures in the high 90's, was very uncomfortable during the summer months.

As a result of these conditions it appears that a modern lodge would show a higher occupancy rate even with a larger capacity.

Hikers

Each hiker to Supai pays a five dollar fee that entitles the individual to camp at one of the three campgrounds. The rate of the fee for hikers to Supai has increased in the eight year period from one dollar in 1965 to two dollars in 1969 to five dollars in the middle of the 1973 season. Despite the increase in price, hikers continue to flock to Supai and the falls.

The increased prices plus the continued increase in the number of tourists has resulted in a substantial rise in income to the tribe. In 1965 tribal income from hikers was $2,799. By 1973 it had reached $19,938. The five dollar fee, an increase from two dollars in midseason, is expected to bring in $40,000 in 1974 (FIGURE V-9).

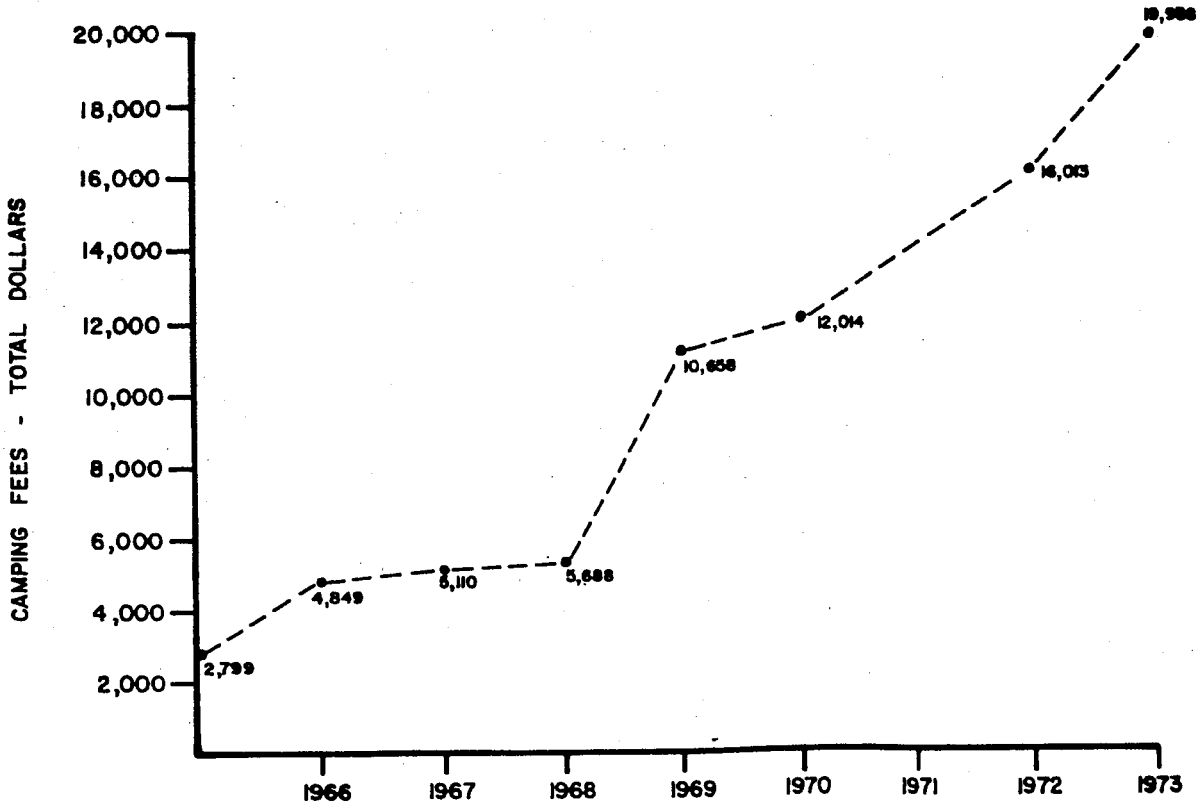


FIGURE V-9: Hiking Fees Collected by the Tribe

From 1965 to 1973 the number of hikers to Supai increased by 360 percent (FIGURE V-10). In 1973 the number of hikers reached 8,312.

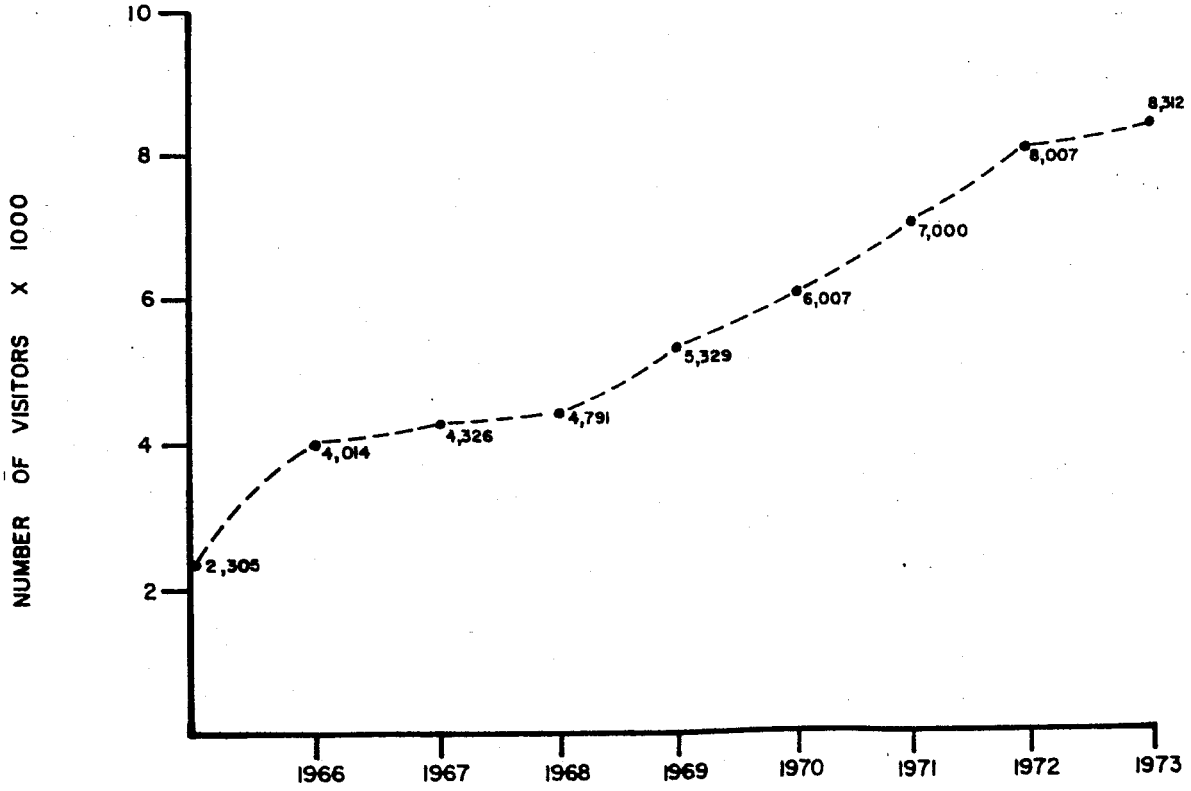


FIGURE V-10: Number of Hikers 1965-1973

Analysis

Despite, or perhaps because of, an eight mile hike with no facilities or water along the way, hiking to Supai flourishes. Individuals, pairs, groups and families make the trek to one of the most beautiful areas in the world.

At present, facilities for campers are primitive. An improvement of facilities, particularly the Navajo Falls and Uqualla Campground, will encourage an increase in the number of campers and their length of stay.

Revenues from Horse Rentals

The tribal enterprises receipt of commissions on horses has risen substantially from $1,997 in 1965 to $8,282 in 1973. The increase is over 400 percent (FIGURE V-11).

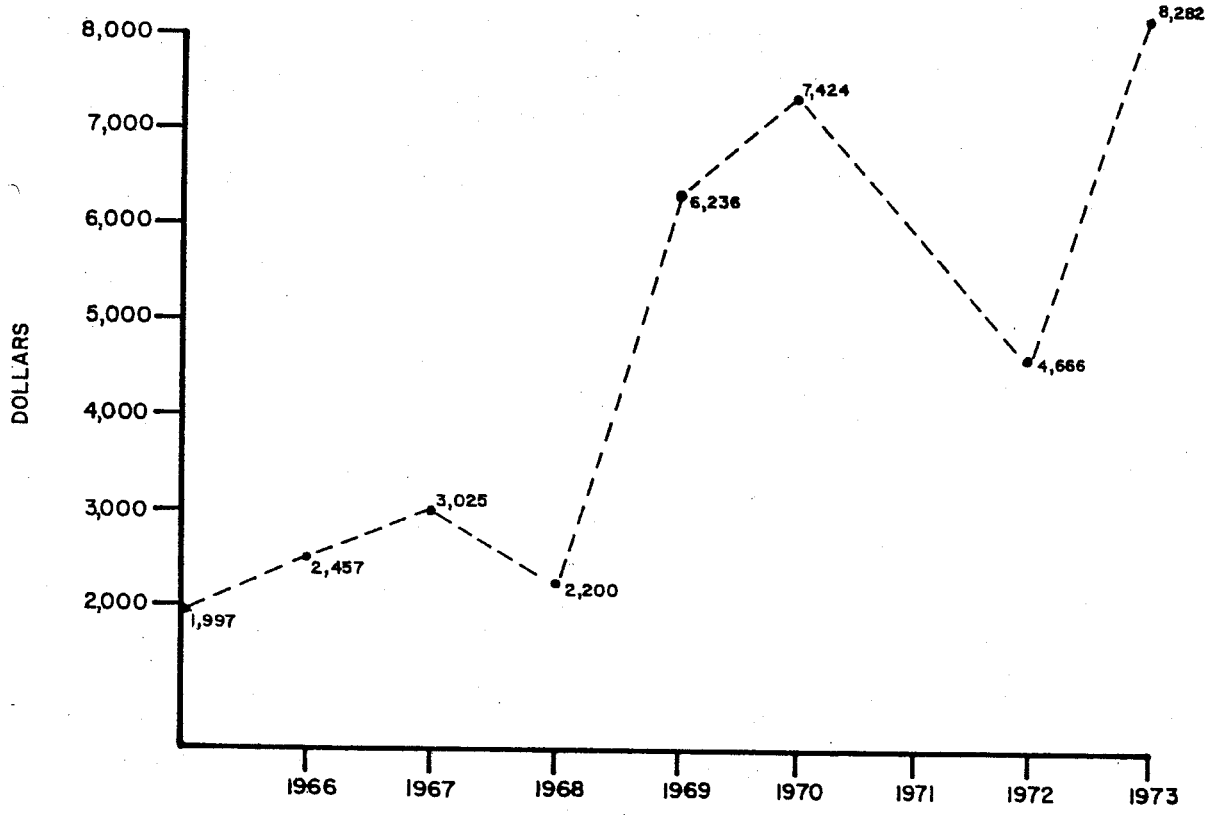


FIGURE V-11: Revenues from Horse Rentals 1965-1973

The cost of traveling by horse is $20 one way from Hualapai Hilltop to Suapi, $25 for the round trip and $30 if the ride culminates at the National Park Service Campground. The owner/guide of the horses receives all but five dollars of the fee. The five dollars is turned over to the tourist enterprises and distributed to three funds; three dollars to the tourist office, one dollar to the trail fund, and one dollar to the maintenance of Hilltop.

Until 1973, riding and horse fees were $18 for the round trip and $16 one way. Because the accounting office does not consider one way pack trips, and round trips as separate categories, it is difficult to determine the specific manner in which horses are rented. The tourist manager. estimates that in 1973 there were approximately 8,000 hikers and 2,000 horse trips.

Although the increase in revenue from 1965 to 1973 was over 400 percent, the increase was not a smooth progression. For example, from 1967 to 1968, revenues declined from $3,025 to $2,200 and from 1968 to 1970 there was a sharp increase to $7,412. Data is not available for 1971, however, in 1972 revenue declined to $4,666 and by 1973 receipts increased to the high of $8,282.

Analysis

The overall trend of revenue received has shown a marked increase since 1965. A portion of the revenue is in increased charges for rental of horses. The $8,282 income to the tribe is only one-fifth of the dollars that flowed into Supai as a result of the rental. The remaining four-fifths went to the owner of the horses. The portion of dollars to tribal members who own the horses can be estimated at $33,128. This figure is the gross and does not consider the costs incurred in maintaining the horses.

Sales of Postcards and Publications

FIGURE V-12 depicts the total dollars the tribe has received from the sale of postcards and guidebooks. In 1967 the tribe received $124 and by 1973 the amount collected was $4,059.

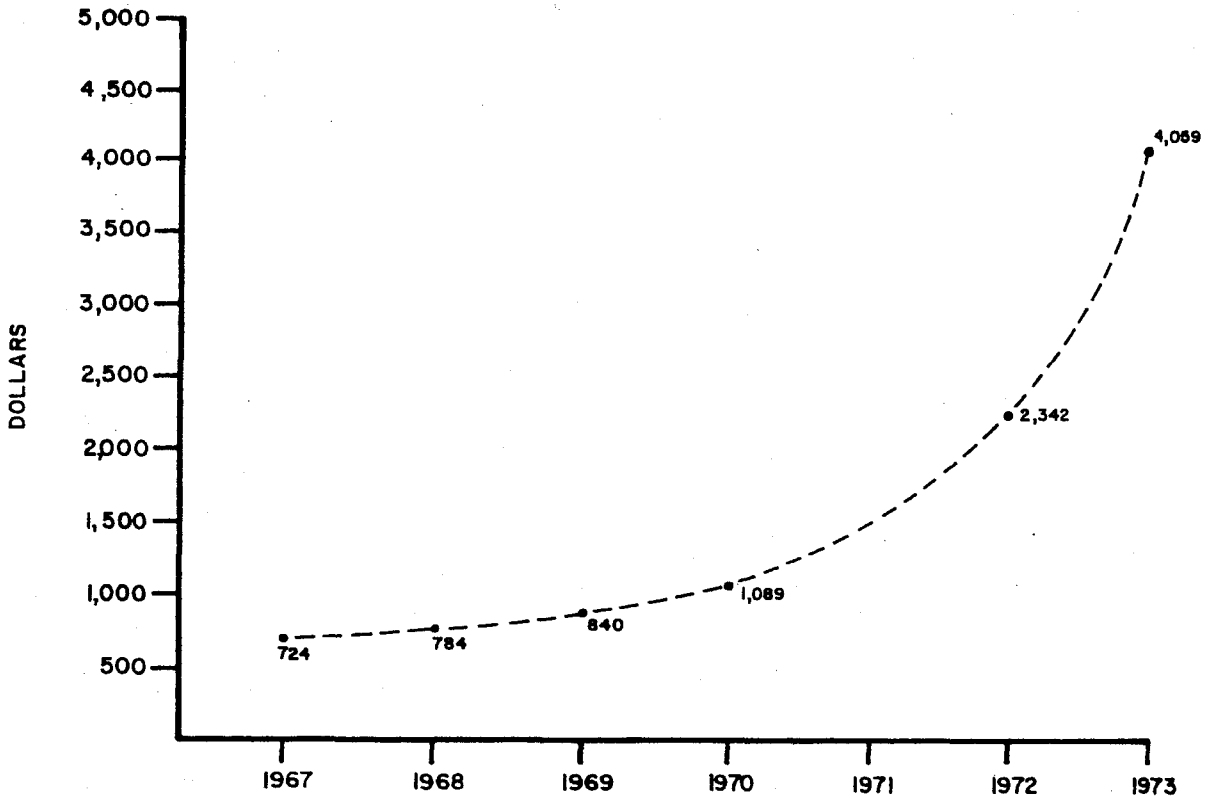


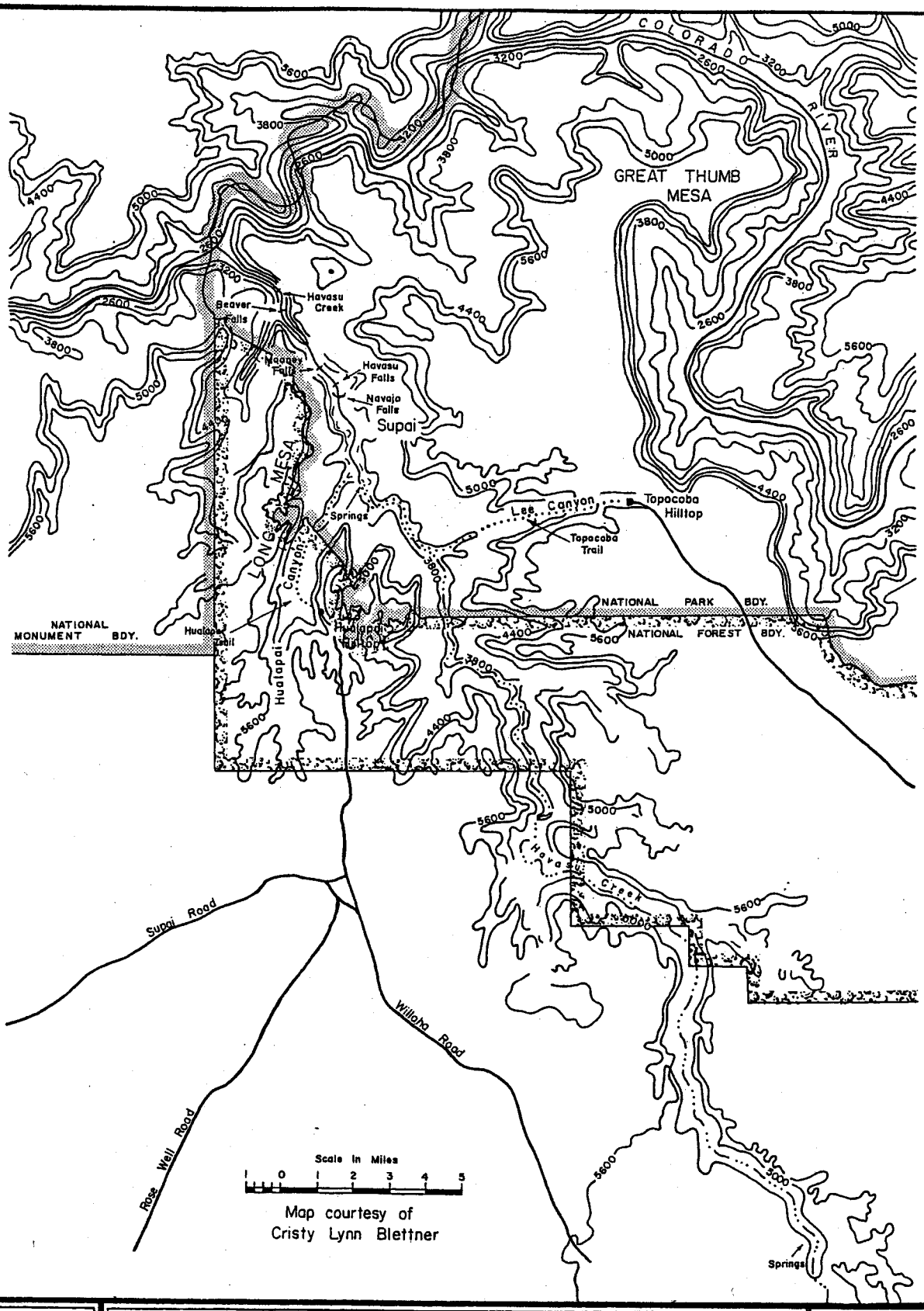
FIGURE V-12: Sale of postcards and publications 1967-1973

A major reason for the increased sales was the introduction of a new picturesque publication, Today Havasupai, produced as part of the Indian Tribal Series. In addition, postcards and the publication Havasu Canyon by Joseph Wampler are also available for purchase.

Analysis

The popularity of picturesque publications and the resultant increase in sales in recent years is indicative of the potential for expansion of this market. There should be a widening of items available for purchase by tourists.

The mark-up on standard tourist fare, nic-naks, ash trays, key chains, etc., would indeed be very profitable for the tribe.



Map courtesy of
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THE
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ECONOMIC PLANNING
AND DEVELOPMENT

HAVASUPAI COMPREHENSIVE PLAN

HAVASU CANYON AND VICINITY

N

FIGURE II-13

HUALAPAI HILLTOP

The Hualapai Hilltop, Long Mesa and Topocoba Hilltop are discussed in this chapter on tourism because of their unique characteristics and potential for tourism. Although all three areas are currently under the jurisdiction of various federal agencies they are located in areas proposed to be returned to the Havasupai Tribe (FIGURE V-13).

Seven miles east of Peach Springs on U.S. Highway 66 is the Supai Road turn-off. Supai Road heads north through the Hualapai Indian Reservation, some private and state lands, and into the Kaibab National Forest. The road terminates 64 miles north of U.S. 66 at a point known as Hualapai Hilltop.

Hualapai Hilltop is the departure point for tourists and supplies going into Supai. Many helicopter airlifts and pack trips originate here. A dumpsite operated by the Forest Service was located nearby until federal regulations closed it on June 30, 1974.

The Hilltop is under the jurisdiction of the U.S. Forest Service, but the tribe has a use permit to operate on this land. The facilities located on Hilltop include a corral, warehouse, outdoor privies, and parking facilities. Unfortunately, because of the permit status of this land, tribal funds are not available to provide police protection or public safety improvements. Vandalism and at times, harassment of the tourists, becomes a problem (FIGURE V-14).

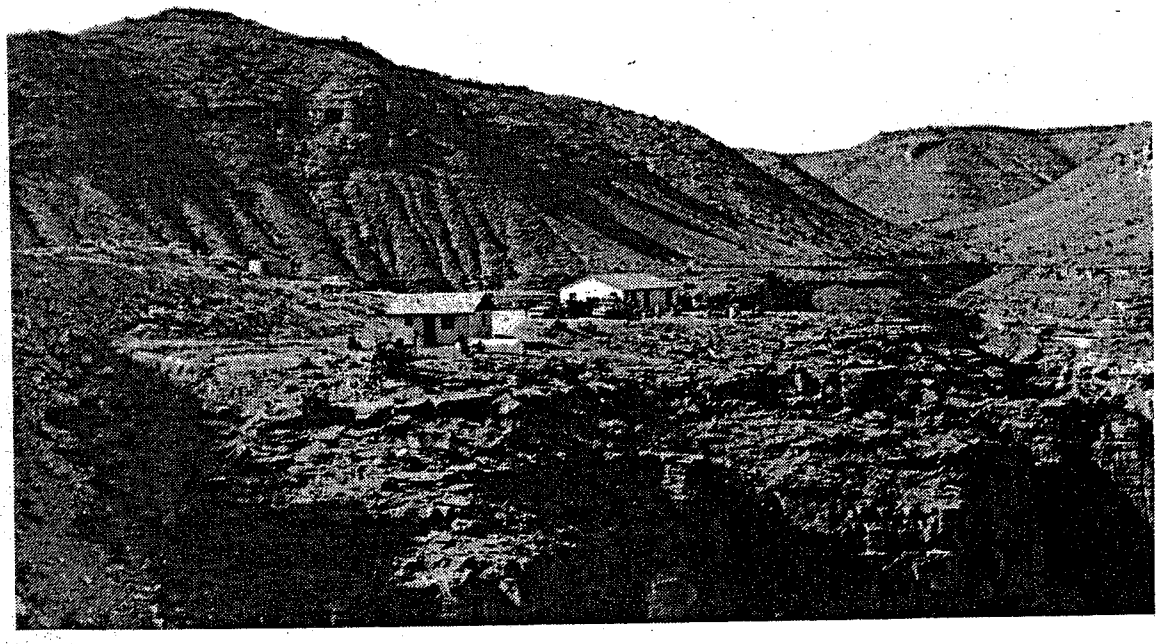


FIGURE V-14: Facilities on Hualapai Hilltop

The following improvements for Hilltop have been considered and will be discussed in this section:

1. Police protection
2. Paved parking lot
3. Overnight facilities
4. Campground
5. Lodge

Police Protection. The current problems of vandalism and harassment of the tourists can be expected to become more acute in the future unless police protection is provided. Police protection or regulation by a ranger is necessary and advisable as soon as possible. As long as Hilltop remains under use permit status, tribal funds will not be available to provide this service. However, this should have high priority once the land is returned to the Havasupai.

Due to the remoteness of the area the Forest Service rangers do not patrol it on a routine basis. The Coconino County Sheriff also has jurisdiction on Hilltop but no routine patrols. An immediate solution to this problem would be to have the Coconino Sheriff deputize a tribal policeman so he can assume jurisdiction of police matters on Hilltop. Before being deputized, the tribal policeman would have to attend the sheriff's academy for training.

Paved Parking Lot. The Bureau of Indian Affairs has paved 27 miles of Supai Road. The remaining 37 miles are expected to be paved by the end of fiscal year 1975. With the completion of paving of Supai Road, the parking lot on Hilltop should also be paved. Parking stalls should be delineated with stripes to provide uniform parking and improved circulation. Large, easily accessible stalls should also be provided for busses and large campers.

Security lighting should also be considered for the parking area. With the installation of security lighting, vandalism should decline. Lighting will also make it easier to patrol the area at night.

The costs of paving the lot and installing security lighting can be defrayed by charging a parking fee. The Havasupai Tourist Enterprise can also collect their hiking and camera fees along with the parking fees. This would enable the tourists to pay all their fees at one location.

Overnight Facilities. Simple overnight facilities should be considered for the use of tribal members only. Packers could utilize the facilities whenever a late trip is made out of the canyon. The trail at night can be dangerous and packers do not like to use it after dark. By spending the night on Hilltop, the packers would then be able to begin packing early the next day. Tribal members employed at Hilltop could use a rotation system whereby two nights are spent on Hilltop and two nights are spent in Supai. It should be noted that these facilities will be used more during the tourist season and they should be planned and designed for such usage.

Campground. Hualapai Hilltop is not a desirable site for a campground. A cliff on one side and a steep canyon on the other discourages development on the Hilltop. However, a site located approximately two miles southeast of the Hilltop, next to Tunnel Canyon could be utilized for a campground.

A campground with strict controls has been recommended by the planning team for Long Mesa. When the Long Mesa campground is filled, however, the Hualapai campground could handle the overflow. Since this campground would be more or less on a "standby" basis, the planning team is not recommending that it be developed very extensively. Only minimal

facilities, if any, should be provided. This campground will probably also handle the overflow from the parking lot. Therefore, a nominal fee should be considered. The size of the fee should depend on the type of facilities available.

Lodge. Construction of a lodge on Hualapai Hilltop would not be compatible with the environment or the lifestyle of the Havasupai. As mentioned before, the Hilltop is not very desirable for any extensive development. There is no justifiable reason for turning the Hilltop into a commercial area. Too many areas of the Grand Canyon have already been commercialized. This type of development might be fine for the white man, but it is not the Indian way.

LONG MESA

Long Mesa is located northwest of Hualapai Hilltop on the opposite side of Hualapai Canyon. The turnoff to Long Mesa is about 14 miles south of Hualapai Hilltop on Supai Road. From this turnoff, a dirt road heads north a distance of 18 miles to a point on Long Mesa overlooking the village of Supai. The mesa is under the jurisdiction of the United States Forest Service and is part of the land being considered by Congress for return to the Havasupai (FIGURE V-13).

The Bureau of Indian Affairs has obtained a permit from the Forest Service to operate a diesel-powered generating station on the mesa. The electric lines from the generators drop off the mesa, past the white rock, down onto the red rock and into the green of the village nearly 2,200 feet below (FIGURE V-15).

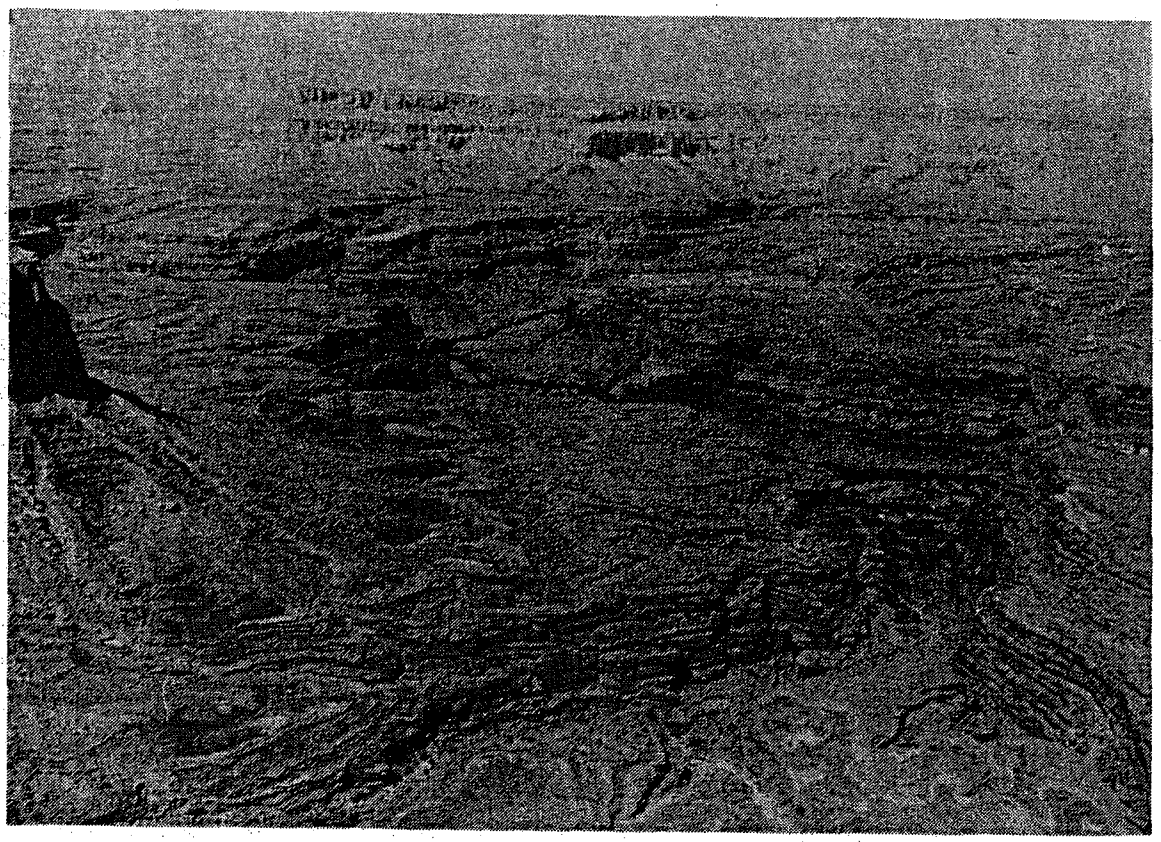


FIGURE V-15: Breathtaking view of Havasu Canyon from Long Mesa. Note Supai in lower right hand corner.

Long Mesa has great potential for tourism development. The view from Long Mesa is breathtaking and in many ways superior to the better known and more popular South and North Rims of the Grand Canyon. From the mesa the village of Supai appears as an oasis nestled between the captivating and imposing canyon walls (FIGURES V-16, V-17).

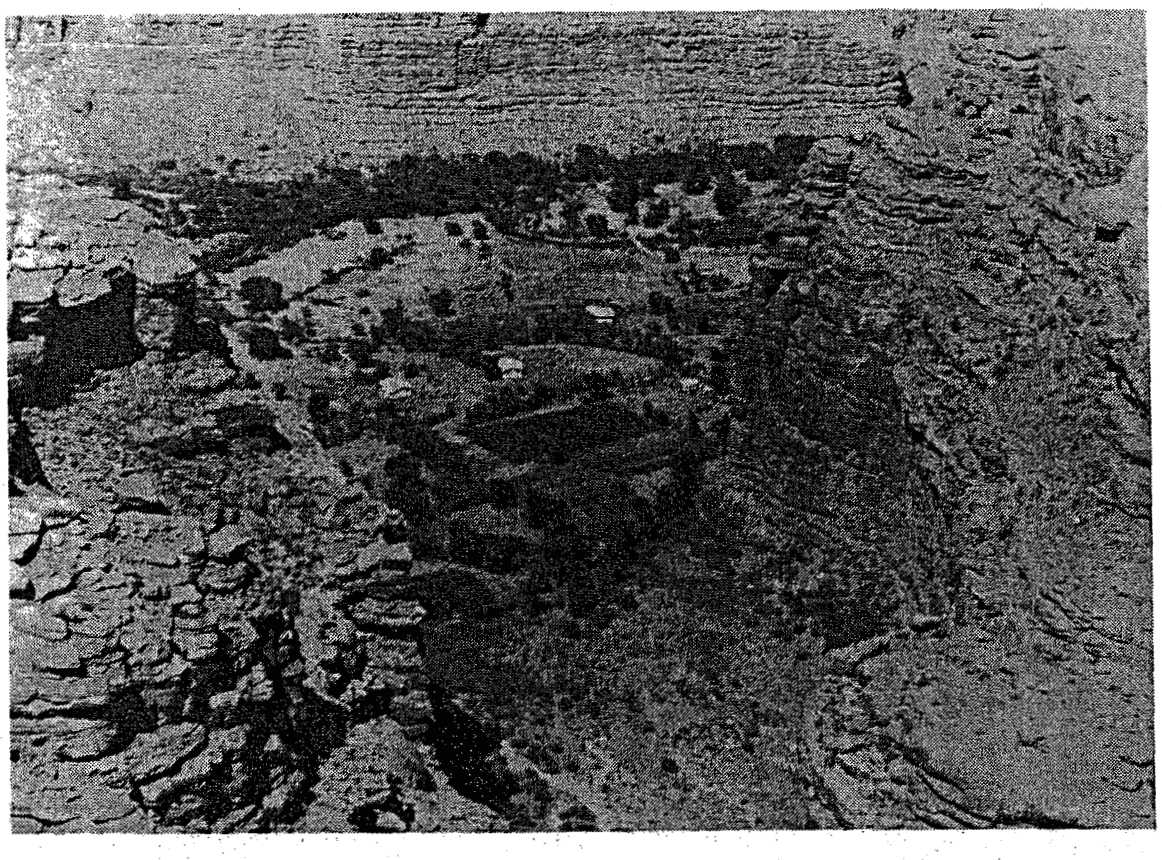


FIGURE V-16: Supai from Long Mesa.

Environmental considerations for this area must be stressed at all times. Whenever any specific development proposals are considered, an environmental analysis of the area will be necessary. Indians have been traditionally, culturally and religiously close to and considerate of their land. Therefore, proposals for the development of Long Mesa should be under the strict control of the tribe. Professional planning and engineering assistance will be necessary but the tribal officials must make the final decisions on any development.

Proposals for development in any area under the control or influence of the tribe will, in all probability, draw opposition from some environmentalists and the National Park Service. While their concern for the environment is laudable, those criticizing development by the Indians often ignore an important facet of the total environment..people. Also ignored is the unrefuted fact of Indian compatibility with their land.

Development should not occur solely on the basis of economic maximization of the land. A balanced integration of Indian cultural, environmental and economic considerations is necessary. This method of development will undoubtedly be more expensive but will also ensure quality development and enhance the beauty of the area.

On the basis that rigidly controlled development is feasible in terms of the environment, the following items have been considered and will be discussed:

1. Lodges
2. Campgrounds
3. A trail into the village
4. Recreation activities

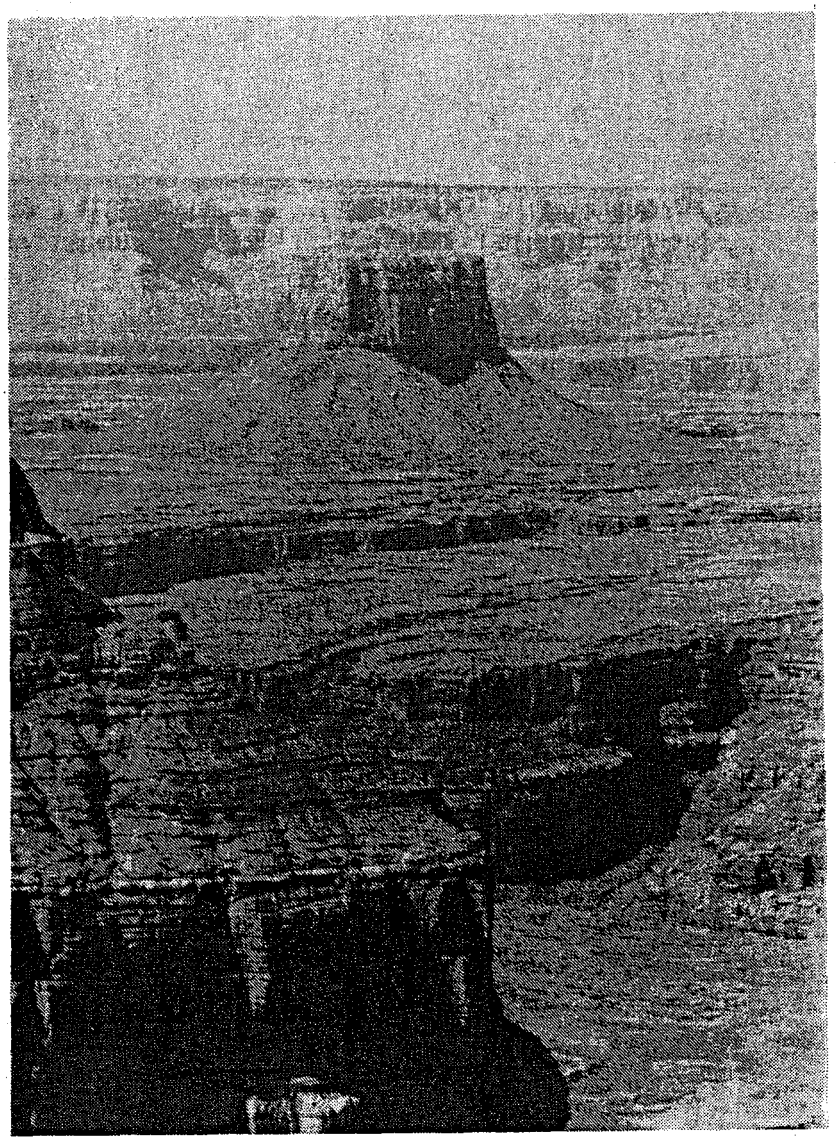


FIGURE V-17: Sinyella Point from Long Mesa.

Lodges. The development of a lodge or motel on Long Mesa would certainly contribute to the economy of the tribe. Tourists would be able to spend the night in comfortable accommodations and some may decide to stay longer if lodging is available. A lodge would create jobs such as desk clerks, maids and groundskeepers.

The influx of tourists created by a lodge, however, would tend to destroy rather than enhance the area. In addition to the environmental drawbacks, there are also economic hurdles to overcome. It is not feasible to pump water from Supai to the top of Long Mesa. Although it is not impossible, the costs would be prohibitive. A well could be drilled on Long Mesa but it is very doubtful that it would be able to produce the amount of water required for a lodge and the cost would be exhorbitant. Water could be delivered by truck, but a storage tank would have to be constructed along with a water distribution system. A separate sewage disposal system would also be needed. Due to the fact that

the tribe has already been committed to a new lodge within the village, the planning team does not feel that further expenditures for a lodge on Long Mesa would be justified. In view of the ENVIRONMENTAL AND ECONOMIC CONSIDERATIONS THE PLANNING TEAM RECOMMENDS AGAINST THE DEVELOPMENT OF A LODGE ON TOP OF LONG MESA.

Campgrounds. The development of a campground with minimal facilities, better known as a "primitive" campground, is the most feasible alternative for Long Mesa. The tourist would be provided a parking space within an established campground and thereby be encouraged to spend the night or leave his camper and walk or ride down to the village. This would be an improvement over the present setup whereby one must leave his car unattended at Hualapai Hilltop. Although water is not available, it can be delivered by truck in sufficient quantities to maintain the minimal facilities. Since self-contained campers and trailers are increasingly common, sewage disposal facilities would not have to be constructed. However, chemical toilets, such as those used in the Park Service campground should be provided. The campground should be designed to provide easily-accessible parking spaces and prevent overcrowding. A system to control the number of campers using the campground should also be instituted.

By charging a nominal fee for the use of the campground the tribe would derive some economic benefits from the development. In addition, there would be a need for caretakers and attendants at the campground which would mean more jobs for the Havasupai.

A Trail into the Village. It was pointed out by several members of the tribe that a trail exists from Long Mesa into the village. The trail is not used and is in need of repair. A trial fee could be incorporated into the campground fee and be used to maintain the trail. With the improvement of this trail, the tourist would be able to walk or ride into Supai and be encouraged to stay longer. Tribal members who are employed at the campground would be in a better position to "commute" to work instead of being forced to live on the mesa.

Chapter IV of this document presents a section on education. Some of the problems discussed concern the need and desire for students to attend school at Grand Canyon. The improvement of this trail, along with the improvement of Willaha Road, would enable the children to be bussed from Long Mesa to Grand Canyon.

Recreational Activities. A previous section within this chapter points out the need for activities for tourists. Once the tourist has seen the magnificent waterfalls, he has nothing else to do. Long Mesa could be a starting point for trail rides or packing trips. The Havasupai Tourism Development Committee (Chapter VI) could organize these trips with the help of the horse owners in Supai. Many packers prefer to "pack" tourists instead of supplies. With the efficient organization of these trips many jobs can be created to take up the slack when construction work is nonexistent.

TOPOCOBA HILLTOP

One of the trails leading into Supai originates on Topocoba Hilltop (FIGURE V-18). A 37-mile long dirt road heads west from Grand Canyon Village to Topocoba (FIGURE V-19). A tourist program could be established in conjunction with the National Park Service, whereby a trip to Supai would originate at the Grand Canyon. Due to the delicate environment of the Canyon, however, this tour should be strictly controlled with major input from the Park Service.

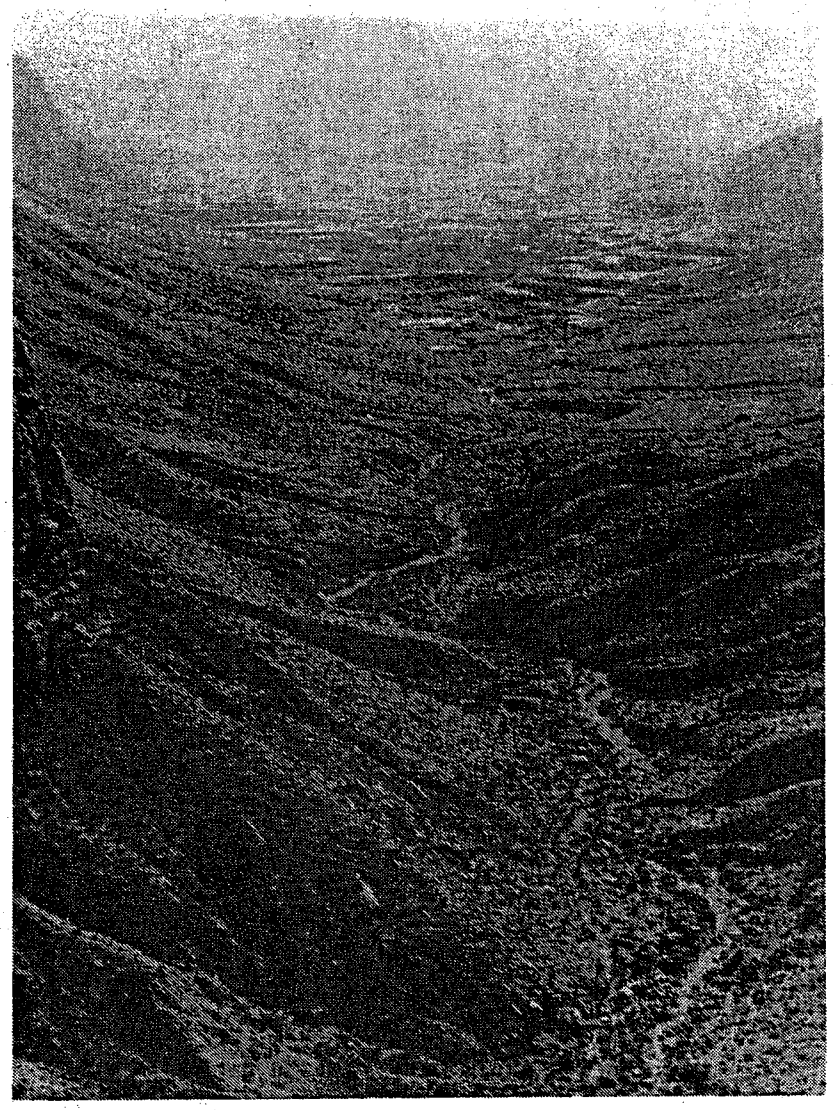
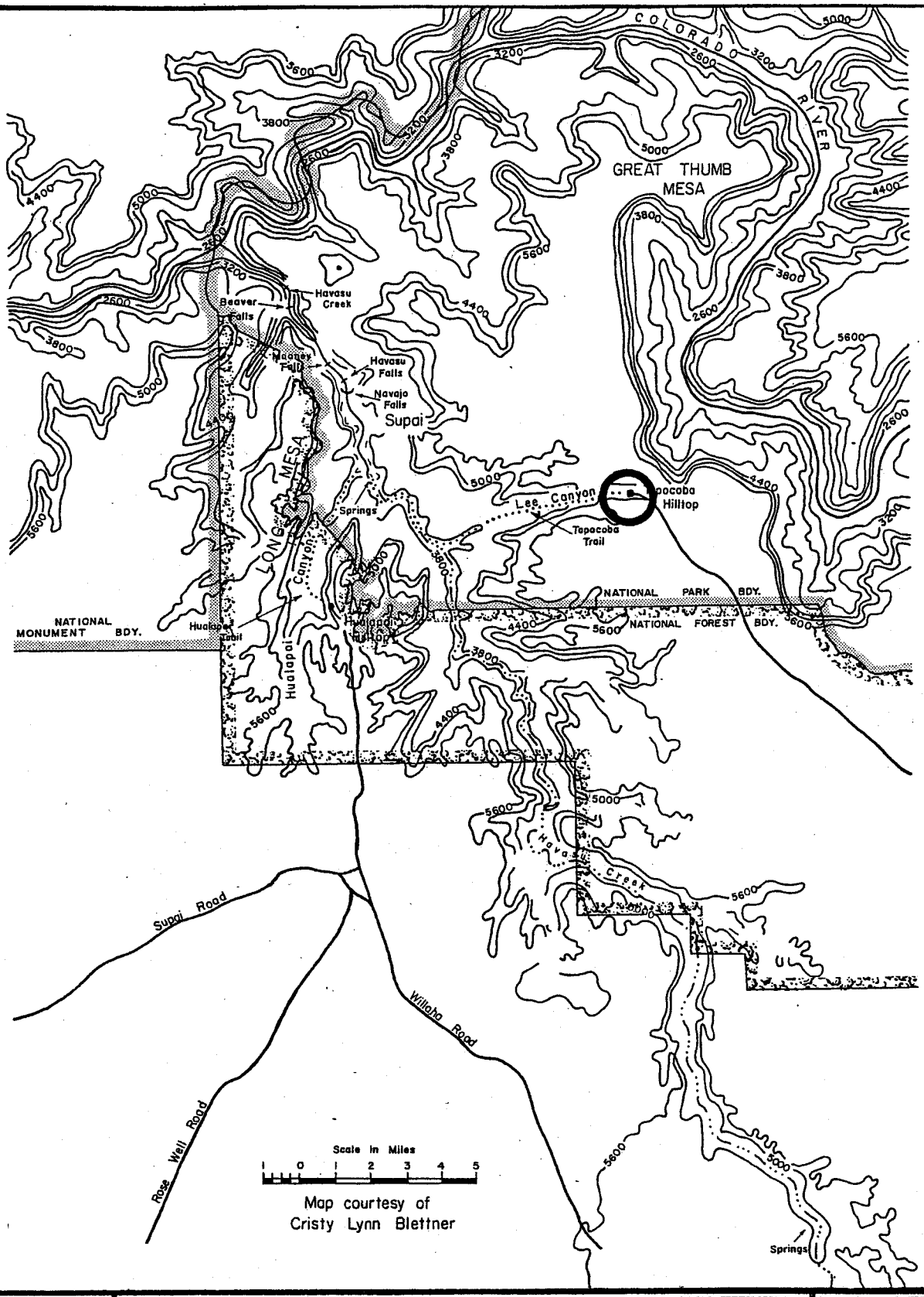


FIGURE V-18: The beginning of the 14 mile Topocoba Trail.



Map courtesy of
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AND DEVELOPMENT

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LOCATION OF TOPOCOBA HILLTOP

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The 37-mile drive from Grand Canyon Village takes approximately one and one-half hours. In rainy weather it would take longer or the road might be impassable. All but the last two miles of this road can be easily negotiated in a conventional automobile. The last two miles are in a dry creek bed and would require a four-wheel drive vehicle. A pack station could be set up at the edge of the dry creek and tourists could be transferred to horses at this point (FIGURE V-20). This would eliminate the need for a four-wheel drive vehicle and also locate the pack station in an area other than the Hilltop. At the end of the dirt road and the start of the horse trail, the Hilltop is confined by canyon walls and the area is too small to support a pack station (FIGURE V-21).

The horse trail to Supai is 14 miles long, and it would be impossible to make the round trip from Grand Canyon to Supai in one day. Therefore, overnight accommodations would have to be available at Supai.

It should be noted any development on the Topocoba Trail would be almost entirely on Park land and should be coordinated with the superintendent of Grand Canyon National Park. The National Park Service has published a draft of the Grand Canyon Complex Master Plan and it excludes any further development of Park lands. The tribe has also stated they do not want the Park Service to help them improve trails on "their" land. Consequently, the Park Service is reluctant to assist if the tribe rejects their assistance. The Grand Canyon National Park Bill in Congress proposes to transfer ownership of 185,000 acres of what is now Park and National Forest land to the Havasupai. The tribe will then be able to develop the trail on their own, always realizing strict controls regulating number of tourists and hours of operation must be implemented.

Development of Topocoba Trail could create the following employment: drivers to bring the tourists from Grand Canyon Village to Topocoba Hilltop, additional guides for the tourists on the trail to Supai, and attendants at the pack station.

This tour should be a part of the total tourism program developed by the Tourism Development Committee. It should be undertaken with the strictest environmental controls in mind.

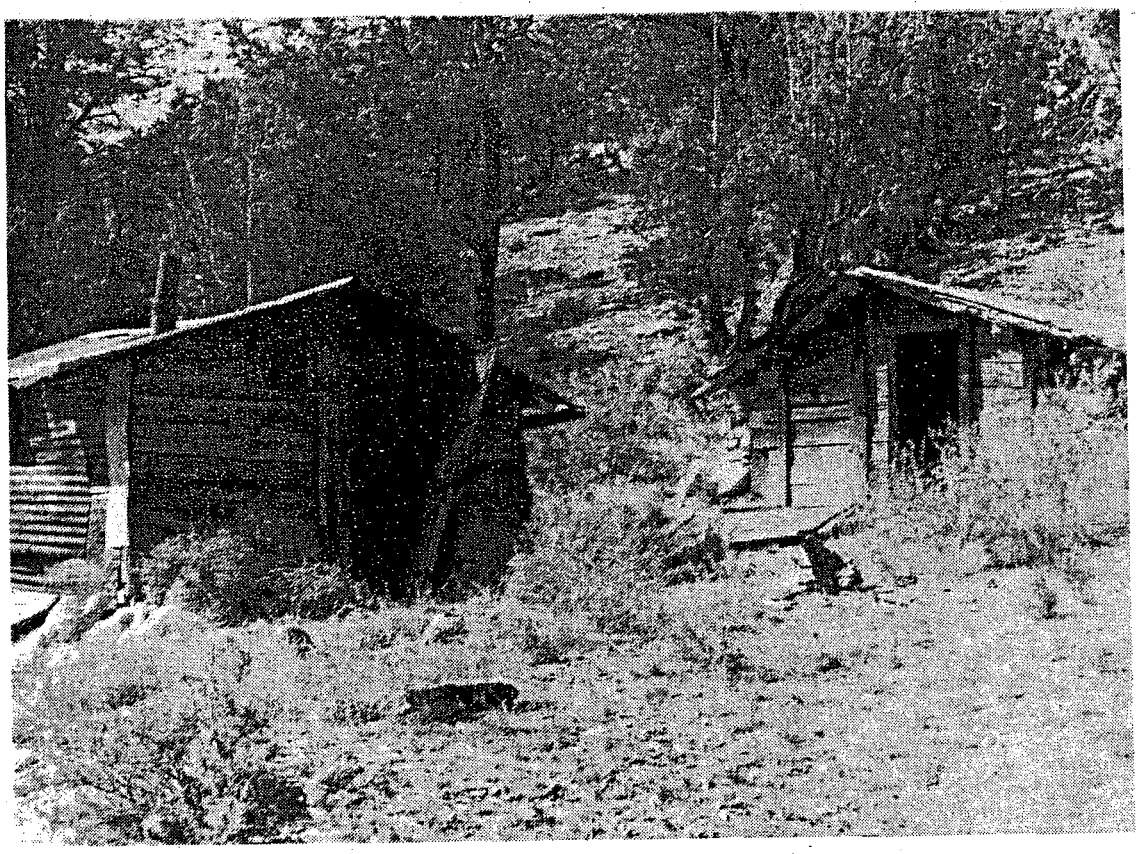

FIGURE V-20: Possible location for a pack station at the head of the Topocoba Trail.

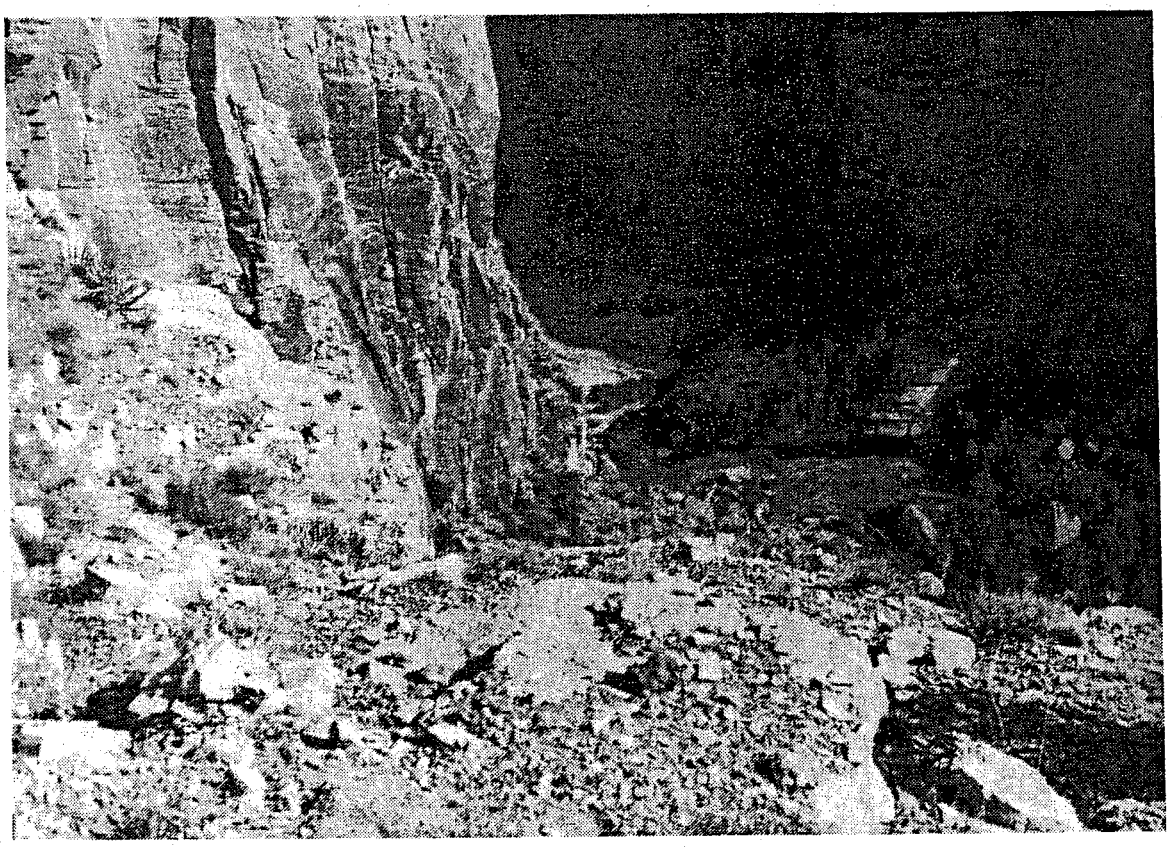

FIGURE V-21: Canyon walls surrounding Topocoba Spring.

RECOMMENDATIONS ON TOURISM

The economy of Supai is not strong. Unemployment is high. Construction work, although high paying, is expected to last only until July 1975. The only foreseeable potential for strengthening the economic base of Supai is the reacquisition of disputed land and the improved development of tourism.

Tourism over the past ten years has become an increasingly important factor in the economy of Supai. The impact of tourism has increased despite the eight mile trek to Supai, poor lodging facilities, and lack of activity beyond sightseeing.

Based on the fact that more tourists mean more money and more potential for jobs, the tribe should encourage the development of a good tourism program.

There are a number of basic approaches to increasing the revenues from tourists. One method is to increase the number of tourists coming into Supai. The other approach is to have tourists stay longer once they are there. A third approach is a combination of the first two, that is to increase the number of tourists and encourage a longer stay in Supai. Whichever approach is stressed, the following steps should be taken to upgrade the tourism program.

ADVERTISING

THE TRIBE SHOULD INCREASE TOURISM ADVERTISING

Basic advertising should be upgraded through the use of colored brochures which should be distributed to Chambers of Commerce and travel agencies throughout the state (FIGURE V-22). The Office of Economic Planning and Development can assist in the layout photography and distribution of the brochure. *THE BROCHURE CAN BE PRINTED AND DISTRIBUTED IN TIME FOR THE 1975 SEASON.*

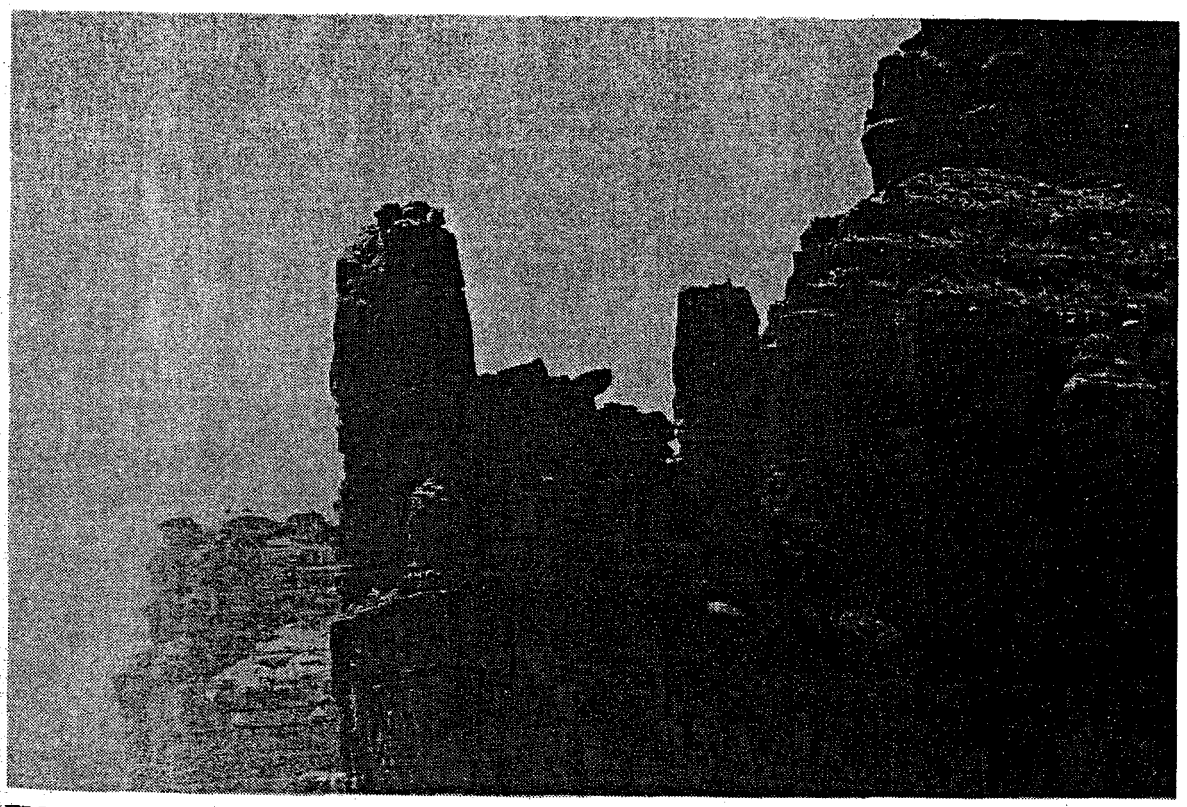

FIGURE V-22: The sacred Wigleeva rocks part of the scenic beauty of Supai.

ACTIVITIES FOR TOURISTS

THE TRIBE SHOULD ORGANIZE ACTIVITIES FOR TOURISTS

Horseback tours can be organized on an hourly, daily and overnight basis as an activity for tourists. The Havasupai enjoy riding their horses and traveling through the canyon. This activity can be converted into a job opportunity for Supai men. The tours, whether hourly, daily, or overnight should be organized and supervised by the tourist enterprises. (FIGURE V-23).

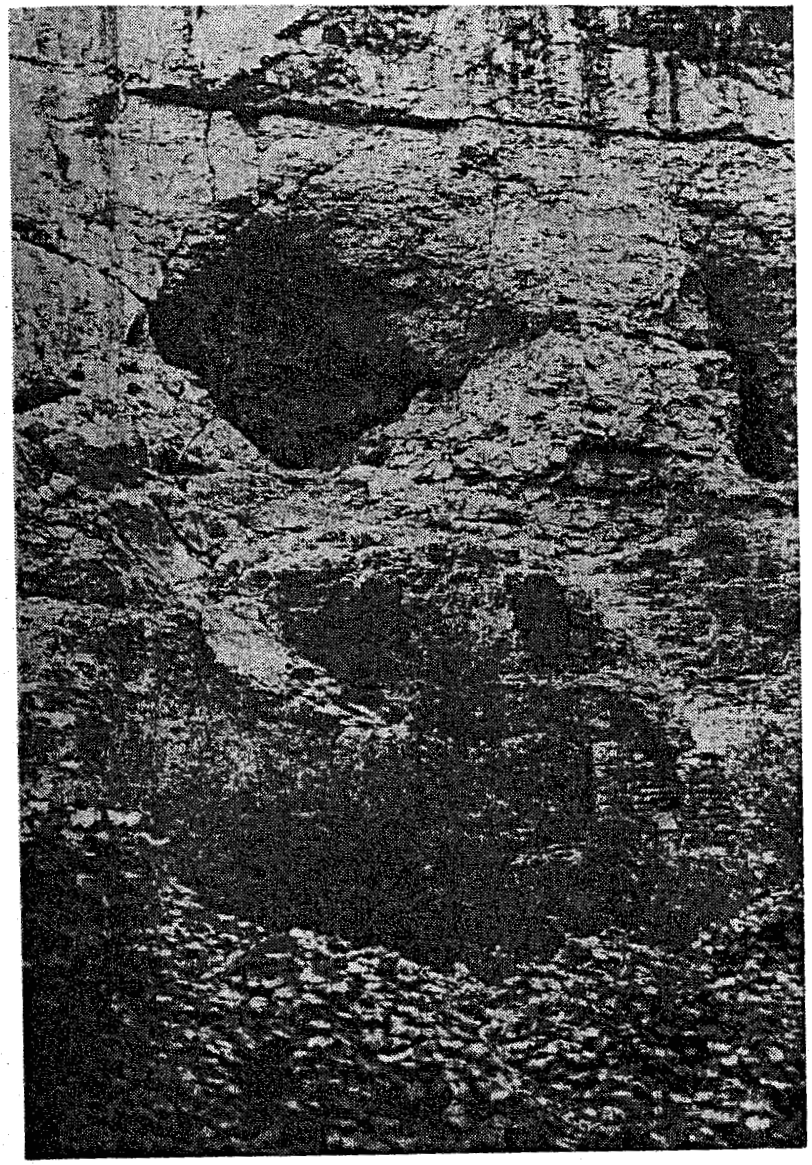

FIGURE V-23: A cave and former structure . . . a potential tourist attraction.

The tours should be offered every day, leaving and returning at a set time with specific destinations. The guides should point out and discuss areas of interest. *TOURIST ENTERPRISES SHOULD BE ABLE TO ORGANIZE THIS ACTIVITY FOR THE 1975 SEASON.*

A NEW LODGE

A NEW LODGE IS NECESSARY IMMEDIATELY

The present tourist facilities are inadequate. Despite recent attempts to refurbish the "new lodge" it is at best only a temporary facility. A new lodge is necessary.

LOCATION

While a new lodge is necessary within the canyon to serve tourists, the location of the lodge has been a controversial issue since its proposal. The discussion of the location of the lodge has centered in these areas (FIGURE V-24):

1. On The Site Of The "Old" Lodge.
2. Near Navajo Falls.
3. Near Fifty Foot Falls.
4. On The "New" Lodge Site.

Old Lodge Site

Pro: The location of a new lodge on the old lodge site would place tourists right in the center of activity of Supai. It would also remove the deteriorating old lodge.

Con: The afternoon meetings of the Supai people might be disrupted if a large number of tourists were situated in their midst. The social gathering in the afternoon appears to be an important social function of the tribe.

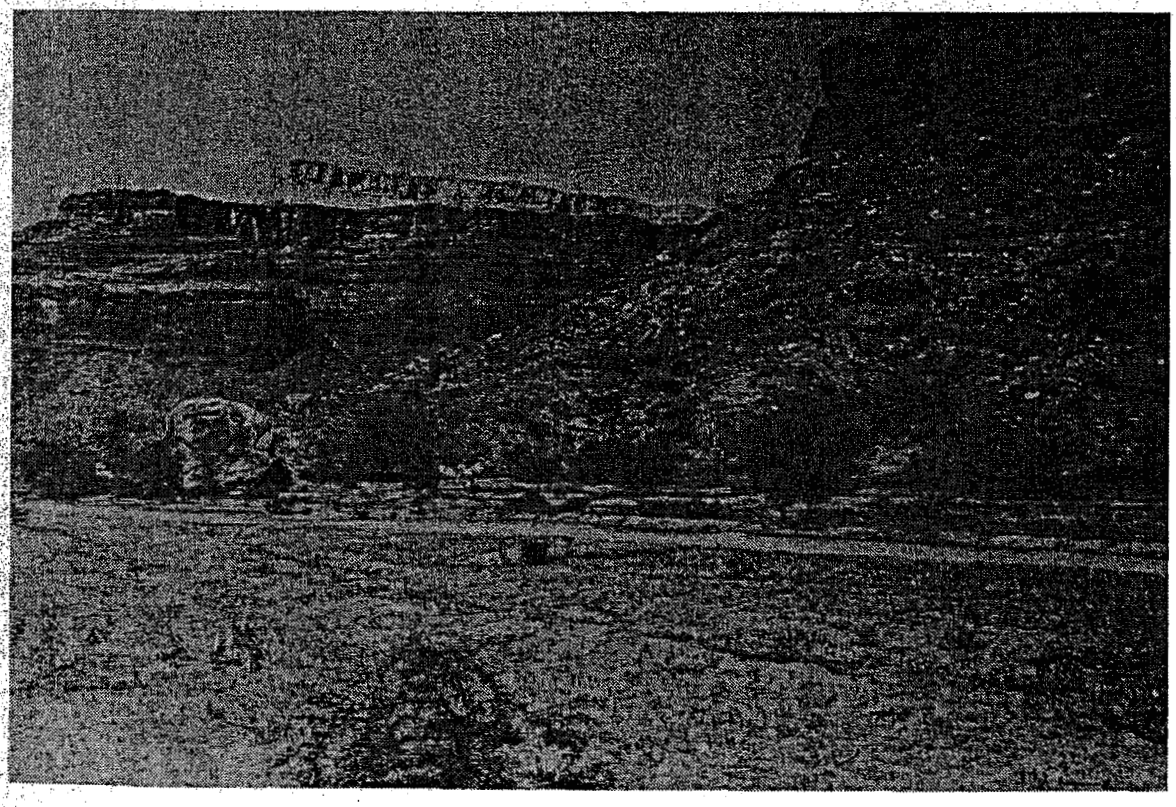

FIGURE V-25: Potential lodge location near Navajo Falls.

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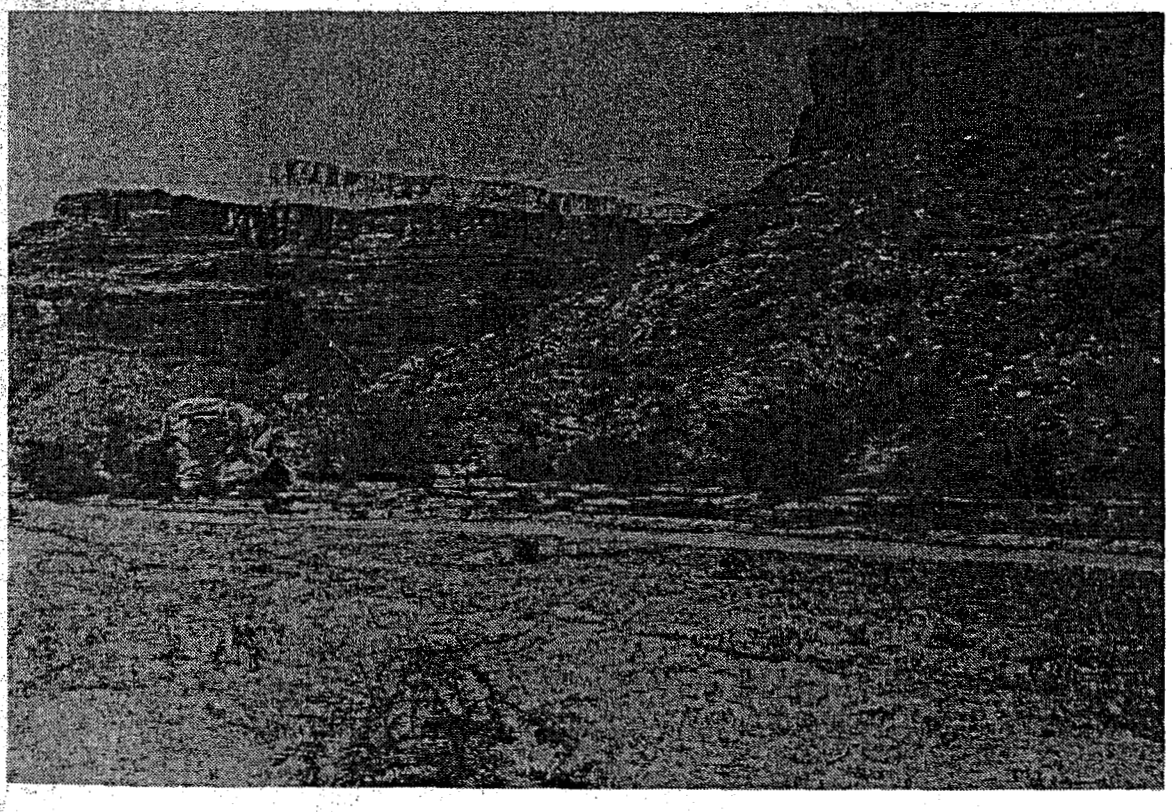

FIGURE V-25: Potential lodge location near Navajo Falls.

Navajo Falls Site

Pro: This is by far the most attractive physical location for a lodge with water falls nearby for a beautiful setting. The location removes the tourists from the village. (FIGURE V-25 V-26).

Con: In economic terms this location will discourage the use by tourists of the cafe and store. Location will probably necessitate a separate sewage disposal system.

Fifty Foot Falls (Panameta Falls)

Pro: An attractive site that is located outside the village.

Con: This area is a traditional swimming hole of the Havasupai. The children will feel uncomfortable swimming if they feel they are being observed by tourists. The impact on the Supai of placing a motel in such a traditionally used place will have an upsetting influence on the people.

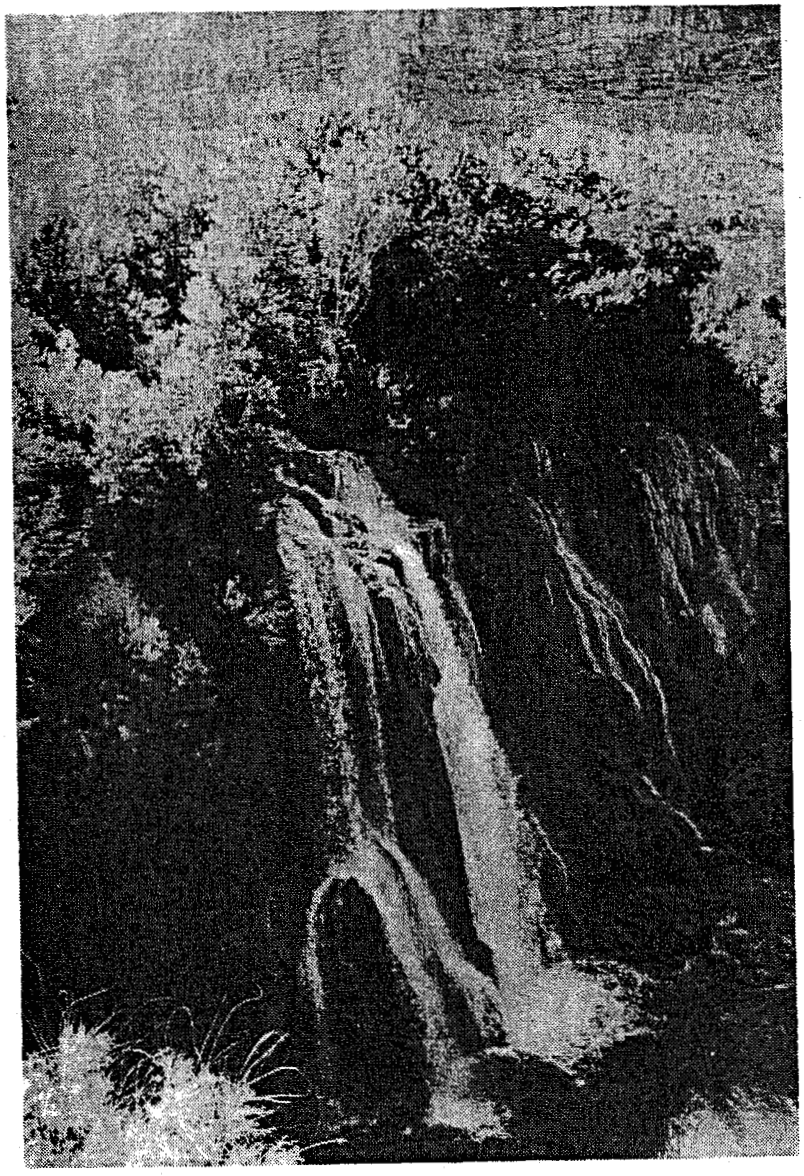

FIGURE V-26: Navajo Falls

Navajo Falls Site

Pro: This is by far the most attractive physical location for a lodge with water falls nearby for a beautiful setting. The location removes the tourists from the village. (FIGURE V-25 V-26).

Con: In economic terms this location will discourage the use by tourists of the cafe and store. Location will probably necessitate a separate sewage disposal system.

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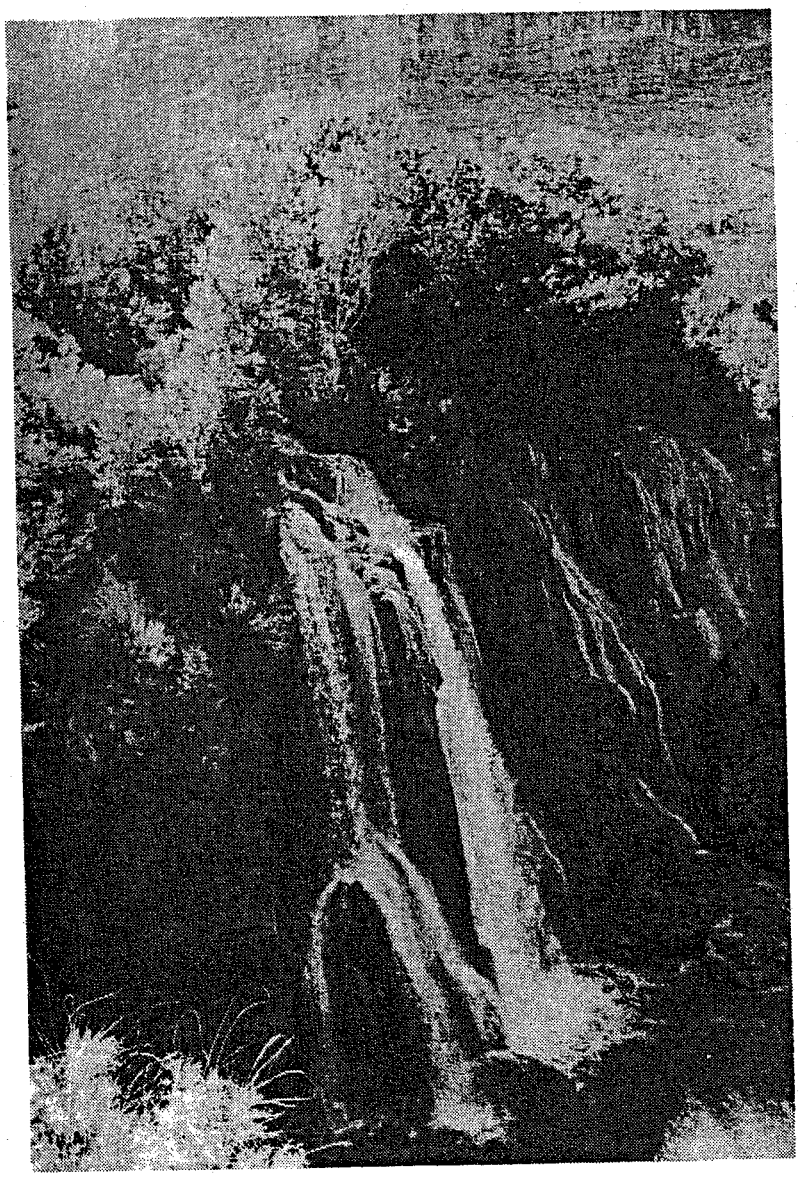

FIGURE V-26: Navajo Falls

TRIBAL CHOICES ON TOURISM

Various aspects of tourism have been discussed in Chapter V. To summarize a general policy approach that the tribal council should consider, the following four alternative approaches to tourism development are emphasized.

1. No change . . . . continue the present haphazard tourism enterprise.

The only beneficial factor in this approach is that it would require no change of present policy. As the tribal economy becomes more dependent on tourism dollars this policy will continue to become more unworkable.

2. Increase the number of tourists coming into Supai.

More tourists will assure more dollars. Supai, however, can only handle a limited number of tourists at any one time and therefore this approach has limited potential for expansion.

3. Maximize the revenue potential of each tourist.

This approach will require the development of revenue producing activities for tourists. Types of activities include camping trips, horseback tours, and barbecues. An organized program of this nature will provide jobs for tribal members, increase the length of stay of tourists and bring more money to Supai.

4. A combination of increasing the number of tourists and providing activities to increase per capita expenditures.

Supai can absorb additional tourists, but there is a finite limit to the number of additional visitors that can be tolerated by the natural environment and tribal members. Certain holidays and the peak tourist season already place strains on available facilities. Even if facilities are upgraded and expanded, there will be limitation to the number of tourists who can visit Supai. The effects of increased numbers of tourists must be carefully monitored, and a monitoring system should be designed and built into the tribe's tourism program.

While the number of tourists increases under careful supervision, modern-day methods should be developed to gain maximum revenue from each visitor. If this recommendation sounds grossly materialistic, we can only ask that the critic consider the poverty in which the Havasupai have lived for generations, and that they be granted a right consistent with America's free enterprise philosophy..the right to earn a livelihood through the resources available to them.

CHAPTER VI

PLAN IMPLEMENTATION

The key resources of the Havasupai Tribe are the people. It is for the people that the reservation exists. Tribal members have some reluctance to further develop the 518 acres for tourism. An upgrading of existing community facilities is necessary. Lack of employment opportunities is an obvious problem. The tribal council must set priorities and concentrate on solving these problems.

The most important part of this Havasupai Tribe Comprehensive Plan is "making it work for you." The tribe must use this plan as its tool. Decisions on tourism development and what steps can be taken are important considerations which can be guided by this publication.

Within this chapter are suggestions for the identification of resources to assist the tribe in a variety of areas. The tribe is encouraged to strengthen the tourism sector of the economy, to seek the assistance of the federal government, and to continue requesting assistance from the Governor's Office.

IDENTIFICATION OF RESOURCES

A wide variety of assistance is available to the Havasupai tribal members under numerous programs through many agencies. The first place to look for guidance in identifying this assistance is your tribal office. First contact can be made here in determining what services the tribe can provide or which agency is best able to render assistance (FIGURE VI-1).

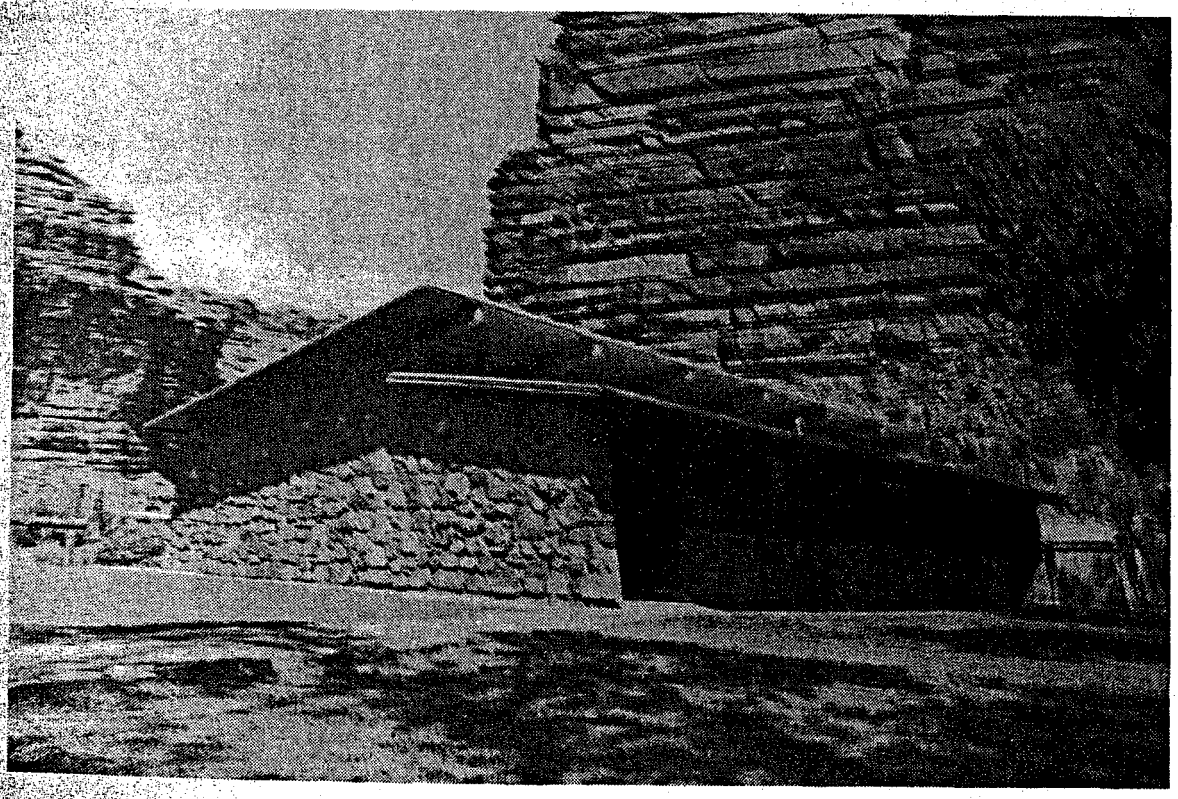

FIGURE VI-1: Community building which houses tribal offices and community meetings.

On the following page there is an organizational chart which depicts the tribal government and a number of the agencies which render assistance to the tribe. Examples of those providing assistance include the tribal attorney, Bureau of Indian Affairs, the Indian Health Service, and the Indian Development District of Arizona. The purpose of this chart and narrative is to indicate the services available to the tribe through existing agencies.

Indian Development District of Arizona

The Havasupai Tribe is a member of the Indian Development District of Arizona (IDDA), a non-profit state-chartered organization. The purpose of IDDA is to aid and facilitate sound economic planning for development on the reservations in conjunction with surrounding non-Indian areas. IDDA is also currently administering special manpower programs for Indian tribes.

Tribal Advisory Services

The tribe avails itself of advisory services. The use of a lawyer in the continuing land dispute is a good example of this type of service. Another example of advisory service is having a consultant evaluate the best method of sewage disposal for Supai.

Bureau of Indian Affairs

The Bureau of Indian Affairs, through the Truxton Canyon Agency in Valentine, Arizona, has a wide array of services available to the Havasupai Tribe. Listed below are eight functional areas in which an individual from the Bureau of Indian Affairs is assigned to perform.

A. Adult Education: This individual is responsible for operation of adult education programs on the reservation. This responsibility includes reports on workshops, seminars, instructional materials and program guides.

B. Employment Assistance: This individual is responsible for carrying out a program to inform Indians about work and living opportunities in urban industrial areas. On a voluntary basis, he may assist Indians who wish to move to such centers for employment and settlement. Similarly, he will assist Indians regarding adult vocational training opportunities available under the employment assistance program.

C. Forestry: This individual is responsible for the management and protection of forestry resources. He develops forestry programs consistent with area-wide policies and objectives; and cooperates with other government agencies concerned with the management utilization and protection of forest resources.

D. Housing Development: This individual is responsible for planning, developing and carrying out mutual help and low income housing programs for Indians living on the reservation. He conducts studies and surveys necessary for the development of reservation programs designed to improve housing conditions.

He also represents Indian groups or individuals in their relations with the Department of Housing and Urban Development, Farmers Home Administration, Veterans Administration, and other government agencies where housing for Indian groups or individuals is involved; and cooperates with the Indian Health Service in developing water and sewer systems.

E. Land Operations: This individual is responsible for the protection, conservation and proper utilization of Indian lands including soil, water, range, forest and wildlife. He is responsible for the full utilization of Indian human and natural resources

HAVASUPAI TRIBE ORGANIZATIONAL CHART

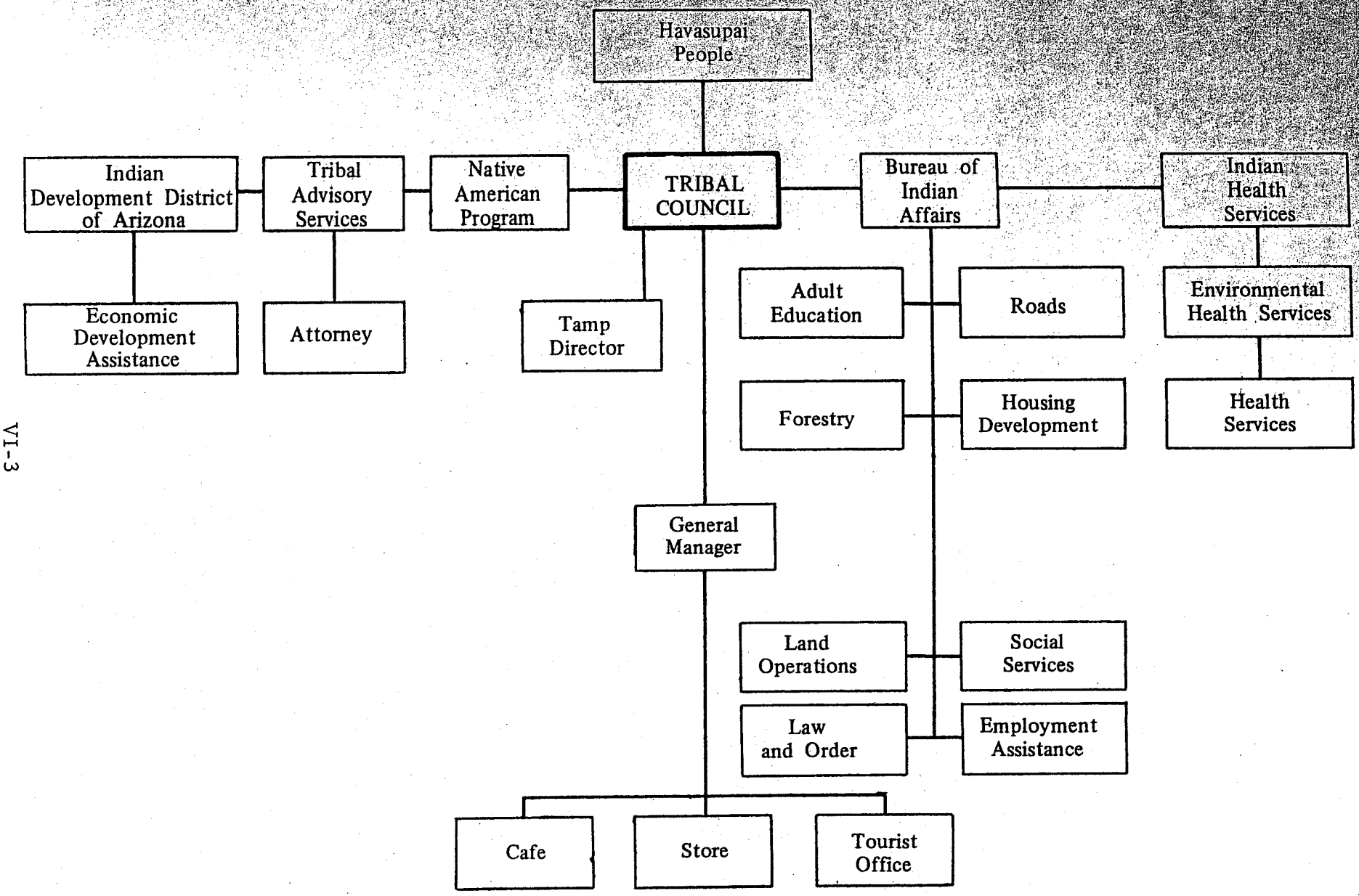

FIGURE VI-2: Havasupai Tribe Organizational Chart

insuring continued and permanent high productivity. Staff members of this function are responsible for directing the agricultural development program and improvement in the utilization of crops, land and livestock.

He is also responsible for the preparation and execution of plans and conservation operations for each land unit and reservation unit. The development, delivery, control and proper use of irrigation waters, the control and sale of grazing privileges on Indian lands is also under his jurisdiction. The management and use of forest and wildlife resources, drainages, erosion control, conservation of moisture and equalization of stream flow are all his responsibilities.

F. Law and Order: This individual is responsible for the enforcement of law, prevention of crime, investigation of crimes and offenses and the administration of justice on Indian lands. He maintains liaison with law enforcement agencies and works to insure proper disposition in cases involving the peace, protection, welfare or the prosecution of Indians within his jurisdiction.

G. Roads: This individual is responsible for the administrative functions and carrying out of construction maintenance for all Indian service roads. He works with the Bureau of Public Roads, state and county highway commissions and other governmental units cooperating and coordinating Indian affairs roads projects with other systems on the reservation.

H. Social Services: This individual is responsible for the operation of the social services program. He prepares recommendations for the investigation of causes of indigency among Indians of the Havasupai Reservation. Financial assistance is given to Indians living on the reservation which is not available through other agencies. He works with community, state and federal officials toward the inclusion of Indians into social planning programs.

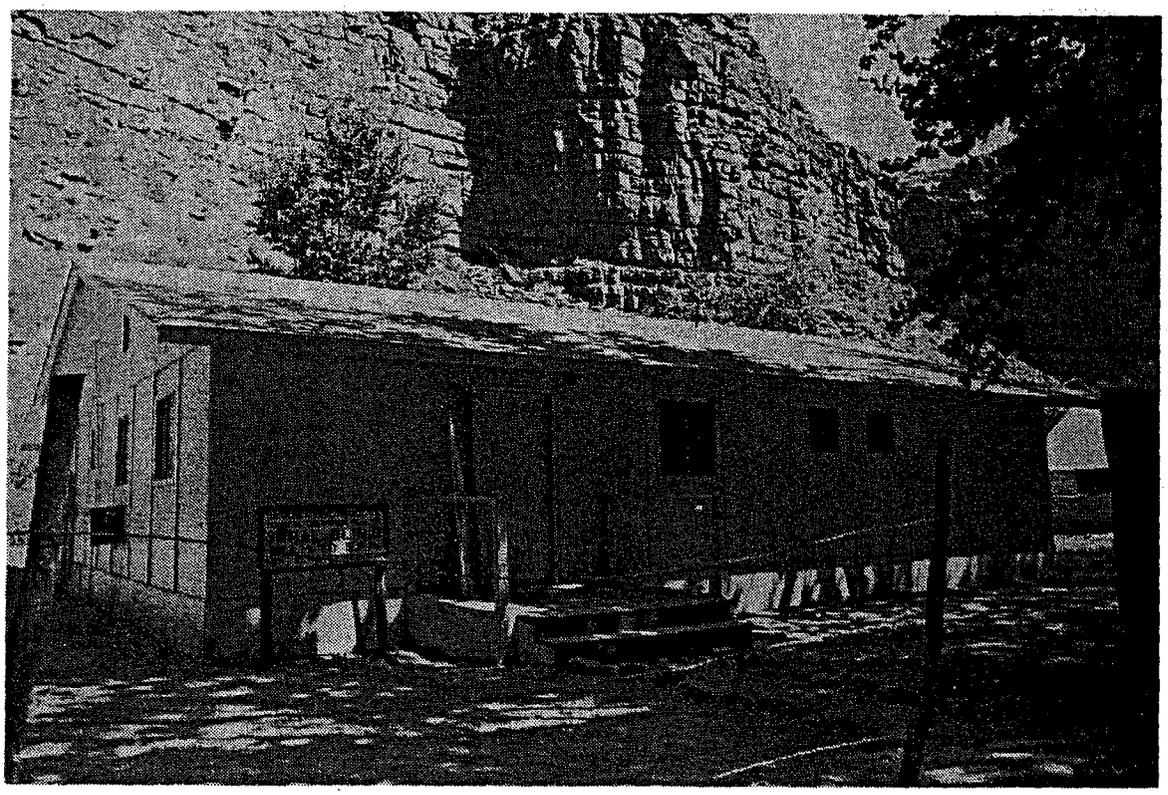

FIGURE VI-3: Public Health Service Supai Clinic.

Indian Health Service

Indian Health Service is a division of the Public Health Service under the U.S. Department of Health, Education and Welfare. In relation to service to Indians, the Indian Health Service is concerned with two broad areas.

A. Health Services: The Indian Health Service offers a comprehensive health service to Indians. A clinic is located in Supai to provide emergency and limited health care. Cases requiring more extensive treatment are serviced in health facilities at Parker and Phoenix (FIGURE VI-2).

B. Environmental Services: Water and sewer systems are provided through grants by the Indian Health Service to Indian reservations. At present there are plans to construct sewage collection and treatment facilities as soon as it is determined which type of disposal system is most appropriate for Supai.

EMPLOYMENT OF TRIBAL MEMBERS

On-reservation employment is desired by a number of tribal members. Expanded activities for tourists could provide these jobs. Horseback riding, overnight trips and daily activities should be initiated to provide employment and strengthen the economy.

TOURISM DEVELOPMENT COMMITTEE

At the August 30, 1974 meeting to review the comprehensive plan one member of the community suggested the formation of a Tourism Development Committee. This is an excellent idea. A Tourism Development Committee should be formed to begin "to make the tourism portion of the plan work." Members of the committee should include:

Chairman or Vice-Chairman of the Tribal Council

Manager of Tourist Enterprises

TAMP Manager

Member from the Arizona Office of Economic Planning and Development.

A number of tribal members who can directly benefit from a better tourism program.

The purpose of including a number of individuals who can directly benefit is to make this program work. If tribal members can see direct benefit to themselves and their families, they will be willing and anxious to participate.

The inclusion of a member from the Arizona Office of Economic Planning and Development is to provide the tribe with the services of this office in a manner consistent with the purposes of the comprehensive plan. This individual would serve solely at the pleasure and convenience of the tribal council. The appointment of this member by the tribal council would assure a liaison with the resources of the office, including expertise in tourism development.

CONTINUING PLANNING ASSISTANCE FROM THE OFFICE OF ECONOMIC PLANNING AND DEVELOPMENT

As an integral part of this plan the Office of Economic Planning and Development offers its assistance to the tribe in the use and interpretation of this plan. Upon request of the Havasupai Tribal Council, the office will assign an individual as liaison between these two bodies. It will be the responsibility of the assigned individual to provide technical planning advice to the tribe in terms of the comprehensive plan. Through this individual the tribe shall also have access to other expertise available within the Office of Economic Planning and Development.

ENVIRONMENTAL IMPACT

Where appropriate throughout this report, the natural environment has been considered and the welfare of the natural environment has been measured against the welfare of tribal members. The Indian people live a way of life which is essentially compatible with nature, often at a sacrifice of the material goods which most Americans consider to be necessary components of an acceptable lifestyle.

Certain lifestyle improvements, however, must come to Supai, and these improvements will require projects which will affect the natural environment.

Because of the critical environmental nature of the entire Havasuapi reservation, it is important that the tribal council evaluate all projects for their potential impact on the area. With the reacquisition of tribal lands, there will be even more areas that will require this consideration.

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MEC SOF EXH 10

OMB Approval No: 029-0188

STANDARD FORM 18, MARCH 1971
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.201

REQUEST FOR QUOTATIONS
(THIS IS NOT AN ORDER)

PAGE 1 OF

1. REQUEST NO. N-446
2. DATE ISSUED 6/8/76
3. REQUISITION/PURCHASE REQUEST NO.
4. CERTIFIED FOR NATIONAL DEFENSE UNDER DPS REG. 1 AND/OR DMS REG. 1 RATING:

BY Bureau of Indian Affairs
Phoenix Area Office
P. O. Box 7007
Phoenix, Arizona 85011

FOR INFORMATION CALL (Name, area code and tel. no.) (No collect calls)

6. DELIVER BY (Date)

7. DELIVERY
☐ FOB DESTINATION ☒ OTHER (See Schedule)

8. TO NAME AND ADDRESS (Street, city, state, and ZIP code)

9. DESTINATION (Consignee and address including ZIP code)
See Schedule

10. Please furnish quotations to the issuing office on or before close of business (date) 7/8/76. Supplies are of domestic origin unless otherwise indicated by quoter. This is a request for information, and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it. This request does not commit the government to pay any costs incurred in the preparation or the submission of this quotation, or to procure or contract for supplies or services.

SCHEDULE

11. ITEM NO.	12. SUPPLIES/SERVICES	13. QUANTITY	14. UNIT	15. UNIT PRICE	16. AMOUNT
	Provide electric energy to the Hualapai and Havasupai Reservation, Arizona in accordance with attached specifications, terms and conditions.				
	Citizens Utilities Mr Silva 753-2124 Kingman				
	Chuck Weiss Cavan 445-5700 Prescott (FTS 762-7800)				
	Jack Duffy A.P.S. FLAGSTAFF 774-4501 (FTS 261-1261)				
	P.O. Box 1329 FLAGSTAFF 86001 JIM BENT				
	Dale Tarkington 271-7900				
	H Gordon Stewart V.P. Charles Rieder 703 557-8570 GSA				
	203/327-9900				
	5% after payment of 50,000				
	Schrader Moore 753-2124				

17. PRICES QUOTED INCLUDE APPLICABLE FEDERAL, STATE, AND LOCAL TAXES.

DISCOUNT FOR PROMPT PAYMENT _____ %10 CALENDAR DAYS, _____ % 20 CALENDAR DAYS, _____ % 30 CALENDAR DAYS, _____ % _____ CALENDAR DAYS.

NOTE: Reverse must also be completed by the quoter.

AND ADDRESS OF QUOTER (Street, city, county, State, including ZIP code)	19. SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION	20. DATE OF QUOTATION
	21. SIGNER'S NAME AND TITLE (Type or print)	22. TELEPHONE NO. (Include area code)

18-111

S P E C I F I C A T I O N S

SCOPE: Electric energy is required to serve existing and future installations on the Hualapai and Havasupai Indian Reservations located north of Route 66 on and adjacent to the Supai Road, Coconino County, Arizona. Requirements consist of installation of transmission and/or distribution electrical facilities to serve residential and commercial installations located on each of the reservations in the area noted above.

EXISTING CONDITIONS: The Havasupai Indian Reservation is presently served by a diesel electric generating plant with 1300 KVA peak load capacity. Generation is 2400 volts, three phase delta, with transformation to 2400/4160 wye volts. The generating plant is located at the rim of the Grand Canyon, overlooking the Havasupai Reservation. The distribution facilities consist of overhead lines insulated for 25 KV to a riser pole in the Canyon floor. Distribution in the Canyon consists of 3-1/C25 KV XLPE concentric neutral underground cables with single phase radial feeders. At the present time, all loads are served at 120/240 volts from single phase pad mount transformers. The entire system is operated at 2400/4160 wye volts.

The power transformer at the generating plant is rated at 1000 KVA with a dual voltage primary rated 2400 volts delta, 14.4, 24.9 KV grounded wye; secondary 2400/4160 wye volts.

Installations on the Hualapai Reservation in the Frazier Wells area consist of two single phase generators rated 8 KW, and 25 KW for use during the summer months. The Hilltop area at the end of Suapi road is served by an 8KW single phase generator. There are no other electrical installations in the area to be served.

Extension of overhead lines from the Long Mesa and Supai Road Junction to the Hilltop area will only be considered as an added alternate.

REQUIREMENT: The electric utility shall make a proposal to furnish all labor and material for overhead transmission and/or distribution facilities from its (the utilities) source of supply to the Frazier Wells area, thence northeast along Supai Road to the Long Mesa Road, thence along the Long Mesa Road to the Long Mesa Generating Plant. Construction of the lines and facilities shall be in accordance with Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines, latest editions, as published by the National Bureau of Standards. Material and equipment shall meet NEMA and ASNI standards.

LOAD DATA:

1975-1976	Peak load-winter (Supai)	500 KVA
1976-1977	Peak load-winter (Supai)	650 KVA
1985	Peak load-winter (est.)(Supai)	1000 KVA
	Peak load-summer 1975 (Supai)	150 KVA
	Peak load-summer 1985 (Supai)	300 KVA
	Frazier Wells-winter 1975*	50 KVA
	Frazier Wells-summer 1975*	100 KVA

*Includes well pumping presently using LPG.

Forecasts for the area include development of the Frazier Wells area for tourism and probable permanent housing projects for the Hualapai Tribe, in addition to an existing summer youth camp.

RIGHTS-OF-WAY: The utility shall obtain all necessary rights-of-way from the Hualapai and Havasupai Tribes and rights-of-way for property belonging

to others, including property under Federal and State Jurisdiction. The Hualapai and Havasupai Tribes have passed joint resolutions requesting commercial electrical energy.

ENVIRONMENTAL IMPACT STATEMENT: The utility shall prepare an environmental impact statement for the proposed facilities and power lines.

JOINT USAGE: The Arizona Telephone Company provides telephone services to the area involved. Joint use of telephone-power facilities will be the responsibility of the utility companies concerned.

RIGHT-TO-SERVE: Construction of facilities on Indian Reservations is governed by Title 25 Code of Federal Regulations and other Public Laws passed by the U.S. Congress. Permission for the right to serve on other than Indian lands will have to be resolved by the utility with the Arizona Corporation Commission and whatever other Federal and local entities are involved.

REQUESTS FOR INFORMATION: Specific information regarding routes, topography, tribal permissions shall be addressed to Charles Pitrat, Superintendent, Truxton Canon Agency, Valentine, Arizona. Requests for technical information regarding existing facilities, loads and forecasts shall be addressed to John Artichoker, Area Director, Phoenix Area, P. O. Box 7007, Phoenix, Arizona 85011, Attention: Branch of Facility Management.

POINT OF INTERCONNECTION: The point of interconnection between the utility's facilities and the Bureau of Indian Affairs will be on the line side of the Long Mesa power transformer. Power for the Havasupai Reservation shall be metered primary. All metering facilities shall be furnished by the utility.

SPECIAL PROVISIONS:

1. A clause shall be included in the contract for maintenance of the distribution facilities from Long Mesa into the Havasupai Village to include overhead primary, underground primary, and installation and removal of distribution transformers. Maintenance shall be on an "on call" basis with payment to be cost plus overhead charges. The Bureau of Indian Affairs shall have the option of using other contractors if it is deemed in the best interests of the United States Government.

2. All facilities on the load side of the primary metering shall be under the jurisdiction of the Bureau of Indian Affairs. This shall include the Long Mesa Generating Plant and its associated equipment.

3. The Generating Plant will be utilized to provide emergency power to the Havasupai Indian Reservation in the event of power outage on the utility's system. Switching arrangements shall be provided by the utility to insure that the emergency generators shall not back-feed into the utility's system.

MEC SOF EXH 11

Plant Management

April 10, 1972

Memorandum

To: Superintendent, Truxton Canon Agency

From: Area Director

Subject: Electric Energy Charges - Supai Electric System

A meeting was held in March 1972 with Tribal members of the Havasupai Tribe and the electric rate schedule was reviewed. Electrical safety was also discussed.

It is recommended that by May 1, 1972 customer applications for electric service be filled out and meters be installed so that charges can be made for electric energy. It was agreed with the Chairman and the Tribal members that those installations that have been using electric prior to metering, be charged at the minimum rate of three dollars as noted in the schedule.

Sample copies of forms are enclosed which include the following:

1. Power Customer's Service Application
2. Power Customer's Disconnect Notice
3. Electric Bill Form
4. Electric Service Request and Agreement
5. Customer's Ledger

As a minimum, Item #1 should be used for an application. Meter reading forms have already been sent to your Agency under separate cover. These should be used when the meter is installed on the premises.

Provisions should be made for collection of funds including bonding if required. Ledger cards should be made out for records and auditing.

If necessary, it is recommended that personnel be sent to Colorado River Agency to become familiar with their system of water reading, collections etc.

Mr. Alfred Hanna and the Tribal Council should be notified prior to initiating action. Wayne Sinyella has agreed to act as service man and water reader.

/s/ James S. Dunn

ACTING ASS'T Area Director

SURNAME

Enclosures

Copy to A. Hanna, Tribal Chairman

VLund:sji

Date _____ Mr. _____
Assistant _____ C. Mr. _____
Lowell _____ Mrs. _____
Harvey _____ Carrier _____
Kelmer _____ Investigator _____
_____ Jordan _____

Phase II. Construction, will include:

At Long Mesa;

Site preparation
Fencing.
Building construction.
Installation of fuel storage tanks.
Construction of caretaker's quarters.
Installation of generators and controls.
Cable installation.
Line construction.

In Havasu Canyon;

Construction of electric distribution system, and installation of electric meters.

It is hoped that Phase I can be completed by the end of May, 1970, and Phase II should be completed by January 1, 1971.

This system will provide 125 kilowatts, and should be adequate for the present power needs. Within two to three years however, a permanent overhead distribution line should be constructed from Long Mesa to the floor of the Canyon. This will require an additional $50,000.

We will continue to negotiate with various utility companies for installation of a power line from the vicinity of Peach Springs to Long Mesa. The long term power needs of the Havasupai Reservation will best be met in this manner.

/Sgd/ ALBERT LASSITER

ASSISTANT Area Director

SURNAME
Dale

EEDale/lp

Dale _____ McCausland GM
Benham AWB Goldsmith
Lund _____ Richards _____
Perret _____ Gardiner _____
Kanimer AWB Johnson _____
Potter _____

MEC SOF EXH 12

Code of Federal Regulations Currentness
Title 25. Indians
Chapter I. Bureau of Indian Affairs, Department of the Interior
Subchapter H. Land and Water
➡ Part 175. Indian Electric Power Utilities (Refs & Annos)
Subpart A. General Provisions

§ 175.1 Definitions.

Appellant means any person who files an appeal under this part.

Area Director means the Bureau of Indian Affairs official in charge of a designated Bureau of Indian Affairs Area, or an authorized delegate.

Customer means any individual, business, or government entity which is provided, or which seeks to have provided, services of the utility.

Customer service means the assistance or service provided to customers, other than the actual delivery of electric power or energy, including but not limited to such items as: Line extension, system upgrade, meter testing, connections or disconnection, special meter-reading, or other assistance or service as provided in the operations manual.

Electric power utility or Utility means that program administered by the Bureau of Indian Affairs which provides for the marketing of electric power or energy.

Electric service means the delivery of electric energy or power by the utility to the point of delivery pursuant to a service agreement or special contract. The requirements for such delivery are set forth in the operations manual.

Officer-in-Charge means the individual designated by the Area Director as the official having day-to-day authority and responsibility for administering the utility, consistent with this part.

Operations manual means the utility's written compilation of its procedures and practices which govern service provided by the utility.

Power rates means the charges established in a rate schedule(s) for electric service provided to a customer.

Service means electric service and customer service provided by the utility.

Service agreement means the written form provided by the utility which constitutes a binding agreement between the customer and the utility for service except for service provided under a special contract.

Service fees means the charge for providing administrative or customer service to customers, prospective customers, and other entities having business relationships with the utility.

Special contract means a written agreement between the utility and a customer for special conditions of service. A special contract may include, but is not limited to, such items as: Street or area lights, traffic lights, telephone booths, irrigation pumping, unmetered services, system extensions and extended payment agreements.

Utility office(s) means the current or future facility or facilities of the utility which are used for conducting general business with customers.

§ 175.2 Purpose.

The purpose of this part is to regulate the electric power utilities administered by the Bureau of Indian Affairs.

§ 175.3 Compliance.

All utility customers and the utilities are bound by the rule in this part.

§ 175.4 Authority of area director.

The Area Director may delegate authority under this part to the Officer-in-Charge except for the authority to set rates as described in § § 175.10 through 175.13.

§ 175.5 Operations manual.

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(a) The Area Director shall establish an operations manual for the administration of the utility, consistent with this part and all applicable laws and regulations. The Area Director shall amend the operations manual as needed.

(b) The public shall be notified by the Area Director of a proposed action to establish or amend the operations manual. Notices of the proposed action shall be published in local newspaper(s) of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall contain: A brief description of the proposed action; the effective date; the name, address, and telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 30 days before the scheduled effective date of the operations manual, or amendments thereto.

(c) After giving consideration to all comments received, the Area Director shall establish or amend the operations manual, as appropriate. A notice of the Area Director's decision and the basis for the decision shall be published and posted in the same manner as the previous notices.

§ 175.6 Information collection.

The information collection requirements contained in § 175.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076-0021. This information is being collected to provide electric power service to customers. Response to this request is "required to obtain a benefit." Public reporting for this information collection is estimated to average .5 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, room 337-SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Project 1076-0021, Office of Management and Budget, Washington, DC 20502.

Subpart B. Service Fees, Electric Power Rates and Revenues

§ 175.10 Revenues collected from power operations.

The Area Director shall set service fees and electric power rates in accordance with the procedures in § § 175.11 and 175.12 to generate power revenue.

(a) Revenues. Revenues collected from power operations shall be administered for the following purposes, as provided in the Act of August 7, 1946 (60 Stat. 895), as amended by the Act of August 31, 1951 (65 Stat. 254):

(1) Payment of the expenses of operating and maintaining the utility;

(2) Creation and maintenance of reserve Funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the utility;

(3) Amortization, in accordance with repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and

(4) Payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law.

(b) Rate and fee reviews. Rates and fees shall be reviewed at least annually to determine if project revenues are sufficient to meet the requirements set forth in paragraph (a) of this section. The review process shall be as prescribed by the Area Director.

§ 175.11 Procedures for setting service fees.

The Area Director shall establish, and amend as needed, service fees to cover the expense of customer service. Service fees shall be set by unilateral action of the Area Director and remain in effect until amended by the Area Director pursuant to this section. At least 30 days prior to the effective date, a schedule of the service fees, together with the effective date, shall be published in local newspaper(s) of general circulation and posted in the utility office(s). The Area Director's decision shall be final for the Department of the Interior.

§ 175.12 Procedures for adjusting electric power rates except for adjustments due to changes in the

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cost of purchased power or energy.

Except for adjustments to rates due to changes in the cost of purchased power or energy, the Area Director shall adjust electric power rates according to the following procedures:

(a) Whenever the review described in § 175.10(b) of this part indicates that an adjustment in rates may be necessary for reasons other than a change in cost of purchased power or energy, the Area Director shall direct further studies to determine whether a rate adjustment is necessary and, if indicated, prepare rate schedules.

(b) Upon completion of the rate studies, and where a rate adjustment has been determined necessary, the Area Director shall conduct public information meetings as follows:

(1) Notices of public meetings shall be published in local newspapers of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall provide: The date, time, and place of the scheduled meeting; a brief description of the action; the name, the address, and the telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 15 days before the scheduled date of the meeting.

(2) Written and oral statements shall be received at the public meetings. The record of the public meeting shall remain open for the filing of written statements for five days following the meeting.

(c) After giving consideration to all written and oral statements, the Area Director shall make a decision about a rate adjustment. A notice of the Area Director's decision, the basis for the decision, and the adjusted rate schedule(s), if any, shall be published and posted in the same manner as the previous notices of public meetings.

(d) Rates shall remain in effect until further adjustments are approved by the Area Director pursuant to this part.

§ 175.13 Procedures for adjusting electric power rates to reflect changes in the cost of purchased power or energy.

Whenever the cost of purchased power or energy changes, the effect of the change on the cost of service shall be determined and the Area Director shall adjust the power rates accordingly. Rate adjustments due to the change in cost of purchased power or energy shall become effective upon the unilateral action of the Area Director and shall remain in effect until amended by the Area Director pursuant to this section. A notice of the rate adjustment, the basis for the adjustment, the rate schedule(s) shall be published and posted in the same manner as described in § 175.12(c) of this part. The Area Director's decision shall be final for the Department of the Interior.

Subpart C. Utility Service Administration

§ 175.20 Gratuities.

All employees of the utility are forbidden to accept from a customer any personal compensation or gratuity rendered related to employment by the utility.

§ 175.21 Discontinuance of service.

Failure of customer(s) to comply with utility requirements as set forth in this part and the operations manual may result in discontinuance of service. The procedure(s) for discontinuance of service shall be set forth in the operations manual.

§ 175.22 Requirements for receiving electrical service.

In addition to the other requirements of this part, the customer, in order to receive electrical service, shall enter into a written service agreement or special contract for electrical power services.

§ 175.23 Customer responsibilities.

The customer(s) of a utility subject to this part shall:

(a) Comply with the National Electrical Manufacturers Association Standards and/or the National Electrical Code of the National Board of Fire Underwriters for Electric Wiring and Apparatus as they apply to the installation and operation of customer-owned equipment;

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(b) Be responsible for payment of all financial obligations resulting from receiving utility service;

(c) Comply with additional requirements as further defined in the operations manual;

(d) Not operate or handle the utility's facilities without the express permission of the utility;

(e) Not allow the unauthorized-use of electricity; and

(f) Not install or utilize equipment which will adversely affect the utility system or other customers of the utility.

§ 175.24 Utility responsibilities.

A utility subject to this part shall:

(a) Endeavor to provide safe and reliable energy to its customers. The specific types of service and limitations shall be further defined in the operations manual;

(b) Construct and operate facilities in accordance with accepted industry practice;

(c) Exercise reasonable care in protecting customer-owned equipment and property;

(d) Comply with additional requirements as further defined in the operations manual;

(e) Read meters or authorize the customer(s) to read meters at intervals prescribed in the operations manual, service agreement, or special contract, except in those situations where the meter cannot be read due to conditions described in the operations manual;

(f) Not operate or handle customer-owned equipment without the express permission of the customer, except to eliminate what, in the judgment of the utility, is an unsafe condition; and

(g) Not allow the unauthorized use of electricity.

Subpart D. Billing, Payments, and Collections

§ 175.30 Billing.

(a) Metered customers. The utility shall render bills at monthly intervals unless otherwise provided in special contracts. Bills shall be based on the applicable rate schedule(s). Unless otherwise determined, the amount of energy and/or power demand used by the customer shall be as determined from the register on the utility's meter at the customer's point of delivery. A reasonable estimate of the amount of energy and/or power demand may be made by the utility in the event a meter is found with the seal broken, the utility's meter fails, utility personnel are unable to obtain actual meter registrations, or as otherwise agreed by the customer and the utility. Estimates shall be based on the pattern of the customer's prior consumption, or on an estimate of the customer's electric load where no billing history exists.

(b) Unmetered customers. Bills shall be determined and rendered as provided in the customer's special contract.

(c) Service fee billing. The utility shall render service fee bills to the customer(s) as a special billing.

§ 175.31 Methods and terms of payment.

Payments shall be made in person or by mail to the utility's office designated in the operations manual. The utility may refuse, for cause, to accept personal checks for payment of bills.

§ 175.32 Collections.

The utility shall attempt collection on checks returned by the customer's bank due to insufficient funds or other cause. An administrative fee shall be charged for each collection action taken by the utility other than court proceedings. An unredeemed check shall cause the customer's account to become delinquent, which may be cause for discontinuance of service. Only legal tender, a cashier's check, or a money order shall be accepted by the utility to cover an unredeemed check and associated charges.

Subpart E. System Extensions and Upgrades

§ 175.40 Financing of extensions and upgrades.

(a) The utility may extend or upgrade its electric

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system to serve additional loads (new or increased loads).

(b) If funds are not available, but the construction would not be adverse to the interests of the utility, a customer may contract with the utility to finance all necessary construction.

(1) A customer may be allowed to furnish required material or equipment for an extension or upgrade or to install such items or to pay the utility for such installation. Any items furnished or construction performed by the customer shall comply with the applicable plans and specifications approved by the utility.

(2) The utility may arrange to refund all or part of a customer's payment of construction costs if additional customers are later served by the same extension or if the Area Director determines that the service will provide substantial economic benefits to the utility. All arrangements for refunds shall be stipulated in a special contract.

Subpart F. Rights-of-way

§ 175.50 Obtaining rights-of-way.

Where there is no existing right(s)-of-way for the utility's facilities, the customer shall be responsible for obtaining all rights-of-way necessary to the furnishing of service.

§ 175.51 Ownership.

All rights-of-way, material, or equipment furnished and/or installed by a customer pursuant to this part shall be and remain the property of the United States.

Subpart G. Appeals

§ 175.60 Appeals to the area director.

(a) Any person adversely affected by a decision made under this part by a person under the authority of an Area Director may file a notice of appeal with the Area Director within 30 days of the personal delivery or mailing of the decision. The notice of appeal shall be in writing and shall clearly identify the decision being appealed. No extension of time shall be granted for filing a notice of appeal.

(b) Within 30 days after a notice of appeal has been filed, the appellant shall file a statement of reason(s) with the Area Director. The statement of reason(s) shall explain why the appellant believes the decision being appealed is in error, and shall include any argument(s) that the appellant wishes to make and any supporting document(s). The statement of reason(s) may be filed at the same time as the notice of appeal. If no statement of reason(s) is filed, the Area Director may summarily dismiss the appeal.

(c) Documents are properly filed with the Area Director when they are received in the facility officially designated for receipt of mail addressed to the Area Director, or in the immediate office of the Area Director.

(d) Within 30 days of filing of the statement of reason(s), the Area Director shall:

(1) Render a written decision on the appeal, or

(2) Refer the appeal to the Office of Hearings and Appeals Board of Indian Appeals for decision.

(e) Where the Area Director has not rendered a decision with 30 days of filing of the statement of reasons, the appellant may file an appeal with the Office of Hearings and Appeals Board of Indian Appeals pursuant to § 175.61.

§ 175.61 Appeals to the Interior Board of Indian Appeals.

(a) An Area Director's decision under this part, except a decision under § 175.11 or 175.13, may be appealed to the Office of Hearings and Appeals Board of Indian Appeals pursuant to the provisions of 43 CFR part 4, subpart D, except that a notice of appeal from a decision under § 175.12 shall be filed within 30 days of publication of the decision. The address for the Interior Board of Indian Appeals shall be included in the operations manual.

(b) Where the Area Director determines to refer an appeal to the Office of Hearings and Appeals Board of Indian Appeals, in lieu of deciding the appeal, he/she shall be responsible for making the referral.

(c) If no appeal is timely filed with the Office of

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Hearings and Appeals Board of Indian Appeals, the Area Director's decision shall be final for the Department of the Interior.

§ 175.62 Utility actions pending the appeal process.

Pending an appeal, utility actions relating to the subject of the appeal shall be as follows:

(a) If the appeal involves discontinuance of service, the utility is not required to resume such service during the appeal process unless the customer meets the utility's requirements.

(b) If the appeal involves the amount of a bill and:

(1) The customer has paid the bill, the customer shall be deemed to have paid the bill under protest until the final decision has been rendered on the appeal; or

(2) The customer has not paid the bill and the final decision rendered in the appeal requires payment of the bill, the bill shall be handled as a delinquent account and the amount of the bill shall be subject to interest, penalties, and administrative costs pursuant to section 3 of the Federal Claims Collection Act of 1966, As amended, 31 U.S.C. 3717.

(c) If the appeal involves an electric power rate, the rate shall be implemented and remain in effect subject to the final decision on the appeal.

Current through March 15, 2007; 72 FR 12121
END OF DOCUMENT

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MEC SOF EXH 13

SUPAI ELECTRIC POWER SYSTEM PROJECT
Havasupai Reservation - Arizona

The rules and regulations are proposed for the conduct of the electric power system of the Havasupai Indian Reservation under the direction of the Superintendent of the Truxton Canon Agency.

Applications

In order to become a consumer under this system, an application shall be made which becomes a contract upon the approval of the Agency Superintendent or his authorized representative. Applications can be rejected where it does not appear that the rules and regulations in this part will be complied with, or when not in the best interest of the United States. The Agency Superintendent or his authorized representative may suspend or cancel any contract upon failure to comply with rules and regulations, or to make payment under the standard schedule of rates. Electrical installations that do not comply with the National Electric Code, Latest Edition, shall be considered as non-compliance and shall be cause for contract rejection.

Deposits

Cash deposits in advance in the amount of the estimated monthly bill, but not less than $10 will be required from all consumers.

Consumer Responsible for Equipment

The consumer shall, at his own risk and expense, furnish, install and keep in good and safe condition, all electric wires, live machinery and apparatus which may be required for receiving electric energy from the United States and for applying and utilizing such energy, including all necessary protective appliances therefor.

Apparatus Detrimental to Service

1. The Project may refuse to supply loads of a character that may seriously impair service to other consumers. He may require the consumers to provide suitable equipment to limit reasonably the fluctuations.

2. All motors shall be provided with suitable starting devices or apparatus to limit their starting current.

3. The project may discontinue electric service to any customer or customers who use or continue to use appliances and/or apparatus detrimental to the service after they have been notified to correct the condition.

Meter Reading

Meters will be read and bills rendered at regular intervals. Bills are delinquent after the 15th day of the month succeeding that in which the service is rendered. Payments shall be made at location(s) designated by the Project.

Discontinuance of Service

1. A charge of $5 shall be made to discontinue service. Bills for reconnection shall be paid before service is reconnected.

2. On failure of the customer to pay his bill within 30 days after the end of the period in which the service was rendered, the Project shall discontinue the supply of energy and service to the customer.

Interruptions of Service

The United States will furnish energy continuously so far as reasonable diligence will permit, but the United States, its officers, agents or employees shall not be liable for damages when, for any reason, suspensions of the operation of the power of the United States, or any part thereof, interferes with the delivery of electric energy to the consumer.

Rate

Net Monthly Rate

(a) A minimum charge of $3 per month which entitles the customer to the use of 60 KWH.
(b) 2.5 cents per KWH for the next 250 KWH.
(c) 2.0 cents per KWH for the next 300 KWH.
(d) 1.0 cents per KWH for all additional KWH.

MEC SOF EXH 14

May 7, 1981

Superintendent, Truxton Canon Agency

Electric Rate Study - Supai

Area Director, Phoenix Area Office
Attention: Facility Management

As you know, this Agency was requested by your office to negotiate an electrical agreement between the Bureau and the Havasupai Tribe, wherein the Tribe would agree to be responsible for electrical billings and collections in Supai. Before an electrical agreement is consummated, I request that an electric rate study for Supai be conducted by your office.

Attached are copies of Havasupai Resolution No. 22-77 and Hualapai Resolution No. 36-77 for your information.

Attachments

cc: Facility Management
Tribal Operations
Contract File
RWolf:mkd 5/7/81
Chrono

Tab N-19

SURNAME
Herrington
Stein 7/13/81

July 10, 1981

Facility Management, Phoenix Area

Recommended Electrical Rates for the Village of Supai

Superintendent, Truxton Canon Agency

Attached please find rate study requested by your letter of May 22, 1981.

Attachment

Electric Rate Study for the
Village of Supai

The rates to be coordinated for the village of Supai are a large commercial and industrial rate or the L rate schedule; the small commercial service or the SCS rate schedule and the small general service or SGS rate schedule.

BIA sells power to the tribe at the L rate. The tribe in turn is responsible for the operation and maintenance of the electrical distribution system and billing and collecting from the residences and commercial establishments.

The L rate has an energy charge of $0.029 per kilowatt-hour (KWH), a demand charge of $6.90 per kilowatt (KW) and a power factor adjustment to the demand charge of one percent for each one percent the power factor is less than 90 percent. The power factor is assumed to be 80 percent or ten percent below 90 percent; therefore, the demand charge would be adjusted upward by ten percent. The demand charge would then be $7.59 per KW.

The second rate schedule would be the small commercial service (SCS) that the tribe would use for the cafe, tribal store, school and lodges, etc. The rate is for buildings that require less than 50 KVA transformer capacity. This rate has a minimum of $10.50 per month which includes the first 80 KWH. The next 120 KWH would be $0.100 per KWH. All energy over 200 KWH would be $0.0365 per KWH.

The third rate would be the residential or small general service (SGS) schedule. The tribe would use this rate for billing quarters. The rate has a minimum of $10.50 which includes the first 20 KWH. The energy charge over 20 KWH is $0.0481 per KWH.

In addition to the above rates, there is also a fuel and purchased power cost adjustment which affects all of the rates. If the purchased power expense is increased or decreased above or below the base cost of $0.04266 per KWH sold, such increases or decreases may be passed on to the consumer.

The L rate has an energy charge of $0.029 per KWH and the fuel cost adjustment base is $0.04266. Initially,,it would seem that the fuel cost adjustment base is greater than the selling price of the L rate electricity. If the demand charge, which is approximately proportional to the KWH consumed, is taken into account, the cost of the L rate would b be $0.0586 per KWH which is higher than the fuel cost adjustment base.

Likewise, the SCS rate of $0.035 per KWH is less than the fuel cost adjustment base. The SCS rate is limited to small commercial customers whose connected load does not require more than a 50 KVA transformer. The energy curves of the SCS rate and the fuel cost base converge, but the point of convergence is beyond the capacity of a 50 KVA transformer.

The SGS rate is $0.0481 per KWH is more than the $0.04266 per KWH fuel cost base and will always be able to absorb the cost.

The energy consumption for Supai varies from approximately 40,000 to 130,000 KWH per month in the winter and during the summer, respectively, Plotting the cost as a function of power consumption, the combined cost of the SGS and SCS consumers is above the L rate as indicated in Figure 1. Under these conditions, the SCS and SGS consumers would need to be subsidized. If the energy charge of the SGS and SCS consumers were adjusted to $0.0537 per KWH and $0.0417 per KWH, respectively, the curves would appear as shown in Figure 2 with the L rate below the total of the SGS and SCS rates. If load growth in the future causes the KWH to exceed 130,000, the two lines will cross and a rate adjustment will be required.

An alternate SGS rate is one which has a higher rate during the summer when the loads are higher and slower rate during the off peak season. The summer rate is applied from May 15 through October 14. The minimum for this rate is $5.00 with an energy charge of $0.0671 per KWH for the first 800 KWH and a charge of $0.0591 per KWH for all power over 800 KWH. During the winter season from October 15 through May 14, the rate has a minimum charge of $5.00, an energy charge of $0.0658 per KWH for the first 400 KWH, $0.0439 for the next 400 KWH and $0.0321 for all power over 800 KWH.

This rate is plotted against the II rate in Figure 3, During the summer, it is slightly above the L rate, and during the winter, slightly below. Over the course of a year, the deficiencies match the excesses.

In summary, the four rates are as follows:

L. Rate: Demand Charge - $6.90 per KW
Power Factor Adjustment - 1.1
Energy Charge - $0.029

SCS Rate: First 80 KWH - $10.50
Next 120 KWH - $0.100
All above 200 KWH - $0.0417

SGS Rate: First 20 KWH - $10.50
All above 20 KWH - $0.537

Alternate SGS Rate:

Summer - May 15 through October 14
Minimum - $5.00
First 800 KWH - $0.0671
All above 800 KWH - $0.0591

Winter - October 15 through May 14
Minimum - $5.00
First 400 KWH - $0.0658
Next 400 KWH - $0.0439
All above 800 KWH - $0.0321

MEC SOF EXH 15

DATE: September 27, 2002

BRIEFING FOR THE ASSISTANT SECRETARY INDIAN AFFAIRS

PREPARED BY: Dr. Kenneth G. Ross

FROM: Wayne Nordwall, Western Regional Director & Bill Collier, Director, OFMC

SUBJECT: Havasupai Canyon Electrical Power

PURPOSE OF BRIEFING DOCUMENT: To obtain approval for a BIA budget line item for Electrical Energy Utility Operations and Maintenance.

ISSUES: The Havasupai Tribe, located at the bottom of the Grand Canyon, is serviced by a 70-mile electrical power line constructed in 1982 by Mohave Electric Cooperative, Inc. This power line connects with an 8-mile BIA owned and maintained line from the canyon rim to the Supai village. The Bureau initiated a policy that provides for customers who receive electricity from the Bureau's electrical distribution system to pay for electric services. The actions taken, to purchase, deliver and sell electricity, had the effect of creating a small electric power utility. The maintenance cost and administrative cost of electrical utility power and distribution is not a Facilities O&M function. However, because the BIA has not created a budget and funding process for electrical power, education and non-education facilities operation and maintenance funds have been historically used to pay electrical consumption costs and the power line maintenance cost. PL 107-110 enacted on January 08, 2002, precludes any hold back of Education Facilities O&M funds beginning October 1, 2003, as all funds generated by education buildings will be distributed directly to the schools. OIEP will no longer be able to use Education O&M toward the electrical power line maintenance cost. The facilities O&M program relies on building square footage and maintenance technologies to generate funds for building maintenance and operation. Under this process, no funds are generated for off-site electrical power line maintenance or other infrastructure utilities systems. Thus, OFMC and Regions have no dedicated funds to pay these costs. The Truxton Canyon Agency expects to be over-obligated by approximately $55,000.00 by the end of this fiscal year. OFMC has provided a pro-rata amount of $75,000.00 in FY-02 toward the electrical power line maintenance cost. OFMC is pursuing efforts to try and resolve the unpaid amount in an effort to ensure electrical power to the Havasupai School, the BIA law enforcement complex, BIA employee housing, the Indian Health Service clinic and the Havasupai Tribal buildings. This situation will present an annual re-occurring electrical power cost that rightfully should not be paid from Facilities O&M but more appropriately from BIA, Trust Services funds.

MAIN DECISIONS: The BIA Directors, Western Region, OFMC and OIEP jointly recommend that the ASIA authorize the establishment of a Bureau budget line item for the Havasupai electrical power utility, not to exceed $250,000.00 in the Bureau of Indian Affairs, Division of Trust Services budget category and authorizes the Deputy Commissioner to pay these annual Havasupai electrical power line maintenance and operations costs.

Contact: Wayne Nordwall, BIA Western Regional Director; (602) 379-6600.

MEC SOF EXH 16

SURNAME
Lund
Dale

Facility Management

September 2, 1976

Memorandum

To: Chief, Division of Facilities Engineering

From: Area Director

Subject: Electric Service to Proposed Supai Elementary School

In order to supply electric power to the proposed Supai School, it will be necessary to extend primary electric underground service to the transformer (pad mount) location.

Since this system is owned by the Bureau of Indian Affairs, provisions should be made to include the electrical work as shown on the attached diagram.

No funds have been programmed to have this work done under the Facility Improvement Program, therefore, it should be incorporated into the construction project.

/Sgd/ Curtis Gejogamah
Assistant
Area Director

Attachment

cc: Supt., Truxton Canon Agency

VLund:nc

MEC SOF EXH 17

Dan Gambill/PHOENIX/BIA/DOI
11/28/2006 01:11 PM

To Cathy Wilson/PHOENIX/BIA/DOI@BIA
cc
bcc
Subject Re: BIA v. Mohave Electric Coop (Additional Data Request/SCIP and CRA only) - Time Sensitive

Cathy,

I attempted, albeit, ineffectively, to note at the top of the spreadsheet, that each fiscal year's customer count was based on the number of bills generated in the month of September, i.e., the last month of the fiscal year. Hence, 9.88 and 9.89 means September 1988 and September 1989.

We don't have a report for the whole fiscal year for a customer count, because the number of customers is in a constant state of flux - getting new ones and losing some each month. I guess we could have developed an average based on totaling all the months within a fiscal year and dividing by 12. I don't know whether that count would have been dramatically more accurate. The number count could be larger depending on the number of seasonal customers for the term Dec - Apr. Of course, they aren't here all year long.

Did you want me to just type September 1988 in lieu of 9.88, etc. and/or include the words from the paragraphs above as follows: "We don't have a report for the whole fiscal year for a customer count, because the number of customers is in a constant state of flux - getting new ones and losing some each month. Hence, used the number of bills generated in the month of September, i.e., the last month of the fiscal year for a number that approximates the customer count."

Dan

Cathy Wilson/PHOENIX/BIA/DOI

Cathy Wilson/PHOENIX/BIA/DOI
11/27/2006 04:10 PM

To Dan Gambill/PHOENIX/BIA/DOI@BIA
cc
Subject Re: BIA v. Mohave Electric Coop (Additional Data Request/SCIP and CRA only) - Time Sensitive

Dan: Thanks for all the work you and your staff did. It's much appreciated. A point of clarification:

The query asks us to identify by year (CY or FY) the number of connections/customers. I'm not sure I understand how you designated the year on your Work Sheet #2 spreadsheet, and presumably, the other parties to the case won't either. Would you be able to revise the spreadsheed to show a clear year designation on the spreadsheet? The copy you sent seems to designate like: 9.89, 9.90, 9.91, etc. Do you mean 1989, 1990, 1991, etc, and if so, can you revise so no one has to interpret? Alternatively, I may need you to prepare a legend on the work sheet that clarified what your year designations mean.

Thanks. Cathy

Dan Gambill/PHOENIX/BIA/DOI

Dan Gambill/PHOENIX/BIA/DOI

To Cathy Wilson/PHOENIX/BIA/DOI@BIA

11/27/2006 02:50 PM

cc

Subject Re: BIA v. Mohave Electric Coop (Additional Data Request/SCIP and CRA only) - Time Sensitive

Cathy,

Please find attached the subject spreadsheet file.

Dorothy Talayumptewa, Lead Accounting Technician-Billing Section, compiled from old paper copy reports, the number of customers based on the number of bills issued during the month of September for each of the fiscal years 1988, 1989, 1991, 1992, 1993, 1994, 1995, 1996, 1997. She was unable to locate reports for 1975-1987 and 1990, 1998 and 1999.

Ms Talayumptewa, who has performed billing here for many years, was unable to generate automated reports from OrCom, the prior automated billing system (maintained on the old System 36), hence, use of the old paper copy reports.

Fortunately, data was maintained in OrCom noting whether the service location was on the reservation or not, hence, Indian vs non-Indian.

Reports from the Continental Billing System (current utilized automated billing system) similarly reflect the number of bills issued for each September since conversion in 2000. Data is maintained using 4 different location codes (e.g., Coolidge, Oracle, Gila and San Carlos) reflective of the service address was used as the determiner for Indian vs non-Indian.

The true number of customers may be skewed somewhat depending on if all the routes were read and billed during the month, i.e., the "Meter's-on" report in the Continental Billing System (does not avail itself for reporting prior periods) currently shows 14,971 meter as on while only 11,970 were billed in September 2006. I checked with Dorothy (above). She said not all Sept reads were billed. Some were billed in Oct.

Please call my cell of 520-560-6576 if this is sufficient and if there are any questions.

Dan

Statistical information 1975-2006.xls

Cathy Wilson/PHOENIX/BIA/DOI

Cathy Wilson/PHOENIX/BIA/DOI

11/11/2006 01:30 PM

To Robert LaCapa/PHOENIX/BIA/DOI@BIA, Neil Messer/PHOENIX/BIA/DOI@BIA, Dan Gambill/PHOENIX/BIA/DOI@BIA, Perry Baker/BILLINGS/BIA/DOI@BIA, Roger Hawkins/PHOENIX/BIA/DOI@BIA, John Sutliff/PHOENIX/BIA/DOI@BIA

cc Allen Anspach/PHOENIX/BIA/DOI@BIA, Bryan Bowker/PHOENIX/BIA/DOI@BIA, Merle Zunigha/PHOENIX/BIA/DOI@BIA

Subject BIA v. Mohave Electric Coop (Additional Data Request/SCIP and CRA only) - Time Sensitive

Gentlemen: WRO has a data request in our litigation with Mohave Electric that pertains just to SCIP and CRA. The WRO deadline is December 15, 2006, and therefore, We need this information from SCIP and CRA by December 8, 2006. The data request is:

"For the period from January 1, 1975 to present, identify, by year (calendar or fiscal):

-The number of electric connections/customers served by BIA (identifying same by electric system), including:

(a) a breakdown by customer class, and

(b) whether the entity receiving electric service is Indian or non-Indian"

By return email, please let me know whether you have in your files, or can generate an annual report that provides, the above details and how many years back you can generate the report. If you can't generate a report electronically, let me know what records you have that can be assembled to be responsive to this data request, and what it would take to prepare the information, and how far back in time you can go. If you do not keep records based on whether the customer is Indian or non-Indian, let me know if you are able to estimate approximately the percentage of customers who are Indian v. non-Indian.

I looked at some of the SCIP records I have in my files, such as the annual rate studies, and there is no numbers of customers given in each customer class.

We have funds to pay overtime to assemble these records (if the RD's office approves overtime).

Let me know ASAP what it will take to assemble this information.

Thanks.

Cathy Wilson

Information requested via e-mail re BIA vs Mohave Electric Coop

Year	Indian	Non-Indian
Records not available for years 1975 thru 1987		
9.88	3559	5188
9.89	2686	8222
9.9	N/A	N/A
9.91	3794	7140
9.92	4010	7199
9.93	3966	7656
9.94	2128	7531
9.95	4096	7688
9.96	2169	7861
9.97	4367	8093
9.98	N/A	N/A
9.99	N/A	N/A

Billing Information requested via the November 11, 2006 e-mail re BIA vs Mohave Electric Coop
Number of Bills for the *Identified Fiscal Year's Month of September

*Records not available for years 1975 thru 1987, 1990, 1998, 1999

9.88	**Indian	***Non-Indian
Residential	2,887	4,378
Small Commercial	438	523
Industrial	53	28
Pump	36	81
Dusk to Dawn Lite	145	173
Special Billing		5
Total	3,559	5,188

9.89	**Indian	***Non-Indian
Residential	2,129	6,859
Small Commercial	323	845
Industrial	47	37
Pump	39	91
Dusk to Dawn Lite	148	380
Special Billing	1	10
Total	2,687	8,222

9.91	**Indian	***Non-Indian
Residential	3,198	6,018
Small Commercial	403	740
Industrial	33	48
Pump	19	114
Dusk to Dawn Lite	141	212
Special Billing		8
Total	3,794	7,140

9.92	**Indian	***Non-Indian
Residential	3,302	6,102
Small Commercial	478	728
Industrial	34	41
Pump	30	108
Dusk to Dawn Lite	166	213
Special Billing		7
Total	4,010	7,199

9.93	**Indian	***Non-Indian
Residential	3,367	6,462
Small Commercial	413	814
Industrial	14	59
Pump	24	105
Dusk to Dawn Lite	148	209
Special Billing		7
Total	3,966	7,656

9.94	**Indian	***Non-Indian
Residential	3,366	6,367
Small Commercial	447	817
Industrial	22	49
Pump	49	83
Dusk to Dawn Lite	153	208
Special Billing	1	7
Total	4,038	7,531

9.95	**Indian	***Non-Indian
Residential	3,436	6,507
Small Commercial	429	838
Industrial	21	49
Pump	47	82
Dusk to Dawn Lite	162	206
Special Billing	1	6
Total	4,096	7,688

9.96	**Indian	***Non-Indian
Residential	3,461	6,682
Small Commercial	471	840
Industrial	23	49
Pump	52	80
Dusk to Dawn Lite	170	205
Special Billing	2	5
Total	4,179	7,861

9.97	**Indian	***Non-Indian
Residential	3,634	6,869
Small Commercial	493	879
Industrial	21	56
Pump	32	80
Dusk to Dawn Lite	171	202
Special Billing	16	7
Total	4,367	8,093

There wasn't a Large Commercial Designation prior to 2000

9.00	**Indian	***Non-Indian
Residential	5,618	5,272
Small Commercial	928	752
Industrial	3	1
Pump	101	26
Dusk to Dawn Lite	93	253
Large Commercial	30	14
Total	6,773	6,318

9.01	**Indian	***Non-Indian
Residential	3,694	7,131
Small Commercial	631	1,146
Industrial	2	1
Pump	50	84
Dusk to Dawn Lite	203	236
Large Commercial	32	19
Total	4,612	8,617

9.02	**Indian	***Non-Indian
Residential	4,925	5,274
Small Commercial	691	783
Industrial	1	2
Pump	27	96
Dusk to Dawn Lite	327	102
Large Commercial	13	13
Total	5,984	6,270

9.03	**Indian	***Non-Indian
Residential	3,780	8,125
Small Commercial	644	1,342
Industrial	4	1
Pump	50	89
Dusk to Dawn Lite	230	298
Large Commercial	37	26
Total	4,745	9,881

9.04	**Indian	***Non-Indian
Residential	3,774	8,030
Small Commercial	710	1,287
Industrial	5	2
Pump	53	87
Dusk to Dawn Lite	219	289
Large Commercial	37	22
Total	4,798	9,717

9.05	**Indian	***Non-Indian
Residential	3,924	7,540
Small Commercial	777	1,195
Industrial	4	4
Pump	52	83
Dusk to Dawn Lite	243	248
Large Commercial	39	23
Total	5,039	9,093

9.06	**Indian	***Non-Indian
Residential	3,136	6,696
Small Commercial	586	1,006
Industrial	4	2
Pump	43	66
Dusk to Dawn Lite	214	165
Large Commercial	34	18
Total	4,017	7,953

"***" and "****" Indian vs Non-Indian determination based on service location whether on or off the respective reservations.

Roger Hawkins/PHOENIX/BIA/DOI
11/28/2006 12:01 PM

To Cathy Wilson/PHOENIX/BIA/DOI@BIA
cc Perry Baker/BILLINGS/BIA/DOI@BIA, John Sutliff/PHOENIX/BIA/DOI@BIA
bcc
Subject

Cathy,
In response to your first e-mail dated 11/11/2006 01:30 PM:
-The number of electric connections/customers served by BIA (identifying same by electric system), including:
(a) a breakdown by customer class, and
(b) whether the entity receiving electric service is Indian or non-Indian"

In Response to (a) and (b) above:
CRA was able to collect data back to 1991. To go back farther would be all most impossible. There was mention of some "Old Optical Tapes" but the IT person I talked with was not sure if he could get the old 80-88 computer to work which runs the program to use the tapes, much less the Optical Tapes. He said it would be very time consuming with no guarantee of results.
The data that I was able to collect 1991 through 2006 is broken down into three classes, commercial, irrigation and residential. The first tab is the average for each of the years. The second tab is a break down of each year by month. The months blocked in yellow on the second tab are months that were estimated because there was no data available for those months.

CRA does not keep track of Indian or non-Indian customers. However, we do keep track of on-off reservation. CRA has 4 commercial accounts that serve off reservation loads. There is a fifth account that serves load off the reservation but CRA meters this account at the reservation boundary. These can be seen on the 3rd tab.

See attachment: Accounts by Class__.xls

In response to your second e-mail dated 11/11/2006 01:36 PM:
"Identify all electric providers with whom the BIA has had arrangements to secure electric power during the period from January 1, ~~1975~~ 1981 to present, specifically identifying each such arrangement, whether written or oral:
a. ~~To provide electricity for resale.~~
b. To provide electricity for the benefit of Indian nations.
c. T~~o provide for delivery to third parties other than identified in (a) or (b) above~~."

Here are the contracts CRA has associated with securing energy for the benefit of the Colorado River Indian Tribes Reservation. An index of these contracts can be found on the second attachment.

See attachment: Contract Info.doc

Headgate Rock dam which has a capacity rating of 18.5 MW's is CRA's biggest asset in providing economical energy to the CRIT Reservation.

Any questions I will be here until Noon on Friday then back next week Monday through Thursday... December 11 through the 15, we will be on travel working with Russell Kaskalla. Returning to the office on December 19...

Roger Hawkins

PUBLIC UTILITIES SPECIALIST
COLORADO RIVER AGENCY
PHONE: 928-669-7155
FAX: 928-669-5317

	TOTAL ACCTS.	Commercial	Irrigation	Residential	√	Rounding Error
FY 2006	4662	658	71	3933	4662	0
FY 2005	4620	644	70	3906	4620	0
FY 2004	4574	635	70	3870	4575	1
FY 2003	4519	626	70	3823	4519	0
FY 2002	4574	635	70	3870	4575	1
FY 2001	5110	637	85	4389	5110	0
FY 2000	5002	619	84	4298	5002	0
FY 1999	5128	610	89	4428	5127	-1
FY 1998	4320	576	77	3667	4320	0
FY 1997	4244	549	78	3617	4244	0
FY 1996	3571	391	55	3125	3571	0
FY 1995	4091	519	77	3495	4091	0
FY 1994	3454	379	54	3020	3453	-1
FY 1993	3425	395	52	2978	3425	0
FY 1992	3422	408	64	2950	3422	0
FY 1991	3438	428	72	2938	3438	0

Route	ID numbers		
13	82417121	ATT Wireless	Black Peak-Next to ATT
13	82417155	Western Wireless	Top of Black Peak
13	57491418	AAT Communications	Top of Black Peak
13	57491475	Verizon Telephone	Top of Black. Peak-Microwave Facility
16	01249219	Southern California Edison	End of Burns on Az. Side of river Metered on the reservation at the border

Customer Number	Distance to Load
13394-2 14031-9 11262-3 1658-4	anywhere from 1 yard to 100 yards
13071-6	20 miles

FY 2006

		ACCTS.	Comm	Irrig	Residential
10	Oct-05	4,644	653	70	3,921
11	Nov-05	4,649	655	70	3,924
12	Dec-05	4,654	656	70	3,928
1	Jan-06	4,654	655	70	3,929
2	Feb-06	4,655	656	71	3,928
3	Mar-06	4,658	657	71	3,930
4	Apr-06	4,664	658	72	3,934
5	May-06	4,667	658	72	3,937
6	Jun-06	4,670	660	72	3,938
7	Jul-06	4,674	661	72	3,941
8	Aug-06	4,675	661	72	3,942
9	Sep-06	4,678	661	72	3,945
	AVG	**4,662**	**658**	**71**	**3,933**

FY 2005

		ACCTS.	Comm	Irrig	Residential
10	Oct-04	4,604	637	70	3,897
11	Nov-04	4,609	637	70	3,902
12	Dec-04	4,613	640	70	3,903
1	Jan-05	4,615	645	70	3,900
2	Feb-05	4,619	645	70	3,904
3	Mar-05	4,617	645	70	3,902
4	Apr-05	4,620	645	70	3,905
5	May-05	4,624	645	70	3,909
6	Jun-05	4,626	647	70	3,909
7	Jul-05	4,629	648	70	3,911
8	Aug-05	4,632	649	70	3,913
9	Sep-05	4,636	649	70	3,917
	AVG	**4,620**	**644**	**70**	**3,906**

FY 2004

		ACCTS.	Comm	Irrig	Residential
10	Oct-03	4,548	633	70	3,845
11	Nov-03	4,551	633	70	3,848
12	Dec-03	4,556	634	70	3,852
1	Jan-04	4,561	634	70	3,857
2	Feb-04	4,564	634	70	3,860
3	Mar-04	4,574	634	70	3,870
4	Apr-04	4,580	635	70	3,875
5	May-04	4,581	634	70	3,877
6	Jun-04	4,586	635	70	3,881
7	Jul-04	4,591	635	70	3,886
8	Aug-04	4,595	636	70	3,889

9	Sep-04	4,602	637	70	3,895
	AVG	**4,574**	**635**	**70**	**3,870**

FY 2003

		ACCTS.	Comm	Irrig	Residential
10	Oct-02	4,503	621	72	3,810
11	Nov-02	4,505	622	72	3,811
12	Dec-02	4,504	625	70	3,809
1	Jan-03	4,506	625	70	3,811
2	Feb-03	4,509	625	70	3,814
3	Mar-03	4,514	627	70	3,817
4	Apr-03	4,519	626	70	3,823
5	May-03	4,524	627	70	3,827
6	Jun-03	4,530	628	70	3,832
7	Jul-03	4,536	629	70	3,837
8	Aug-03	4,538	629	70	3,839
9	Sep-03	4,541	629	70	3,842
	AVG	**4,519**	**626**	**70**	**3,823**

FY 2002

		ACCTS.	Comm	Irrig	Residential
10	Oct-01	4,548	633	70	3,845
11	Nov-01	4,551	633	70	3,848
12	Dec-01	4,556	634	70	3,852
1	Jan-02	4,561	634	70	3,857
2	Feb-02	4,564	634	70	3,860
3	Mar-02	4,574	634	70	3,870
4	Apr-02	4,580	635	70	3,875
5	May-02	4,581	634	70	3,877
6	Jun-02	4,586	635	70	3,881
7	Jul-02	4,591	635	70	3,886
8	Aug-02	4,595	636	70	3,889
9	Sep-02	4,602	637	70	3,895
	AVG	**4,574**	**635**	**70**	**3,870**

FY 2001

		ACCTS.	Comm	Irrig	Residential
10	Oct-00	5,267	638	89	4,540
11	Nov-00	5,273	639	89	4,545
12	Dec-00	5,277	639	89	4,549
1	Jan-01	5,279	639	89	4,551
2	Feb-01	5,281	640	89	4,552
3	Mar-01	5,277	640	89	4,548
4	Apr-01	5,073	635	85	4,353
5	May-01	5,110	637	85	4,388

6	Jun-01	4,933	633	83	4,217
7	Jul-01	4,917	634	83	4,200
8	Aug-01	4,820	633	73	4,114
9	Sep-01	4,816	633	73	4,110
	AVG	**5,110**	**637**	**85**	**4,389**

FY 2000

		ACCTS.	Comm	Irrig	Residential
10	Oct-99	5,171	618	89	4,464
11	Nov-99	5,178	618	89	4,471
12	Dec-99	5,183	618	89	4,476
1	Jan-00	5,190	619	89	4,482
2	Feb-00	5,197	624	88	4,485
3	Mar-00	4,397	601	71	3,725
4	Apr-00	5,204	627	88	4,489
5	May-00	5,211	629	88	4,494
6	Jun-00	5,215	629	88	4,498
7	Jul-00	5,224	633	89	4,502
8	Aug-00	4,423	607	72	3,744
9	Sep-00	4,425	608	72	3,745
	AVG	**5,002**	**619**	**84**	**4,298**

FY 1999

		ACCTS.	Comm	Irrig	Residential
10	Oct-98	5,128	610	90	4,428
11	Nov-98	5,102	600	94	4,408
12	Dec-98	5,108	603	94	4,411
1	Jan-99	5,117	611	87	4,419
2	Feb-99	5,124	611	87	4,426
3	Mar-99	5,128	611	87	4,430
4	Apr-99	5,132	613	87	4,432
5	May-99	5,139	614	88	4,437
6	Jun-99	5,148	615	88	4,445
7	Jul-99	5,153	616	88	4,449
8	Aug-99	5,155	617	88	4,450
9	Sep-99	5,099	600	94	4,405
	AVG	**5,128**	**610**	**89**	**4,428**

FY 1998

		ACCTS.	Comm	Irrig	Residential
10	Oct-97				
11	Nov-97				
12	Dec-97				
1	Jan-98				
2	Feb-98				

3	Mar-98				
4	Apr-98				
5	May-98				
6	Jun-98				
7	Jul-98				
8	Aug-98				
9	Sep-98				
	AVG	**4,320**	**576**	**77**	**3,667**

FY 1997

		ACCTS.	Comm	Irrig	Residential
10	Oct-96				
11	Nov-96				
12	Dec-96				
1	Jan-97				
2	Feb-97				
3	Mar-97				
4	Apr-97				
5	May-97				
6	Jun-97				
7	Jul-97				
8	Aug-97				
9	Sep-97				
	AVG	**4,244**	**549**	**78**	**3,617**

FY 1996

		ACCTS.	Comm	Irrig	Residential
10	Oct-95	3,534	382	54	3,098
11	Nov-95	3,552	388	54	3,110
12	Dec-95	3,565	389	55	3,121
1	Jan-96	3,589	390	53	3,146
2	Feb-96	3,601	391	56	3,154
3	Mar-96	3,577	391	56	3,130
4	Apr-96	3,564	389	55	3,120
5	May-96	3,559	391	55	3,113
6	Jun-96	3,589	394	56	3,139
7	Jul-96	3,587	396	55	3,136
8	Aug-96	3,582	396	53	3,133
9	Sep-96	3,555	397	54	3,104
	AVG	**3,571**	**391**	**55**	**3,125**

FY 1995

		ACCTS.	Comm	Irrig	Residential
10	Oct-95				
11	Nov-95				

12	Dec-95				
1	Jan-96				
2	Feb-96				
3	Mar-96				
4	Apr-96				
5	May-96				
6	Jun-96				
7	Jul-96				
8	Aug-96				
9	Sep-96				
	AVG	**4,091**	**519**	**77**	**3,495**

FY 1994

		ACCTS.	Comm	Irrig	Residential
10	Oct-93	3,383	377	53	2,951
11	Nov-93	3,400	376	55	2,969
12	Dec-93	3,412	378	53	2,981
1	Jan-94	3,429	379	55	2,995
2	Feb-94	3,446	380	57	3,009
3	Mar-94	3,463	381	53	3,029
4	Apr-94	3,480	381	53	3,046
5	May-94	3,497	382	53	3,062
6	Jun-94	3,514	382	53	3,079
7	Jul-94	3,551	381	56	3,114
8	Aug-94	3,416	375	55	2,986
9	Sep-94	3,453	375	55	3,023
	AVG	**3,454**	**379**	**54**	**3,020**

FY 1993

		ACCTS.	Comm	Irrig	Residential
10	Oct-92	3,417	400	52	2,965
11	Nov-92	3,446	399	52	2,995
12	Dec-92	3,433	396	52	2,985
1	Jan-93	3,432	400	50	2,982
2	Feb-93	3,434	401	51	2,982
3	Mar-93	3,428	405	51	2,972
4	Apr-93	3,520	409	54	3,057
5	May-93	3,411	403	53	2,955
6	Jun-93	3,405	399	54	2,952
7	Jul-93	3,384	375	54	2,955
8	Aug-93	3,362	371	53	2,938
9	Sep-93	3,431	378	53	3,000
	AVG	**3,425**	**395**	**52**	**2,978**

FY 1992

	Comm	Irrig	Residential

		ACCTS.			
10	Oct-91	3,461	423	69	2,969
11	Nov-91	3,460	421	68	2,971
12	Dec-91	3,458	417	68	2,973
1	Jan-92	3,434	406	62	2,966
2	Feb-92	3,431	405	68	2,958
3	Mar-92	3,427	403	68	2,956
4	Apr-92	3,425	405	67	2,953
5	May-92	3,407	407	70	2,930
6	Jun-92	3,401	406	62	2,933
7	Jul-92	3,398	408	61	2,929
8	Aug-92	3,390	401	52	2,937
9	Sep-92	3,377	395	52	2,930
	AVG	**3,422**	**408**	**64**	**2,950**

FY 1991

		ACCTS.	Comm	Irrig	Residential
10	Oct-90	3,388	430	74	2,884
11	Nov-90	3,401	430	74	2,897
12	Dec-90	3,407	430	73	2,904
1	Jan-91	3,433	432	73	2,928
2	Feb-91	3,441	435	71	2,935
3	Mar-91	3,466	432	71	2,963
4	Apr-91	3,434	425	71	2,938
5	May-91	3,453	426	71	2,956
6	Jun-91	3,455	425	70	2,960
7	Jul-91	3,460	425	70	2,965
8	Aug-91	3,453	422	70	2,961
9	Sep-91	3,463	424	70	2,969
	AVG	**3,438**	**428**	**72**	**2,938**

MEC SOF EXH 18

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Budget Justifications
Fiscal Year 2007

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This money is allocated as follows: $2,700 to the New York Indians for the purchase of dress goods, implements of husbandry, and other utensils suited to their circumstances. The remaining of $1,800 is distributed per capita to the Oneida Indians under the jurisdiction of the Great Lakes Agency, Wisconsin, as provided by the Treaty of November 11, 1794, and the Act of February 25, 1979, *(1 Stat. 618, 619)*.

Fulfilling treaties with the Pawnees of Oklahoma - This money is distributed per capita to the Pawnees as provided by the Treaty of September 24, 1857, Article 2 *(11 Stat. 729)*.

O&M Indian Irrigation Systems ($25,854,000): These funds are obtained through the annual collection from water users of assessments against irrigation lands in the 16 Bureau irrigation projects based on statutory requirements. These funds are deposited in the Treasury to the credit of the respective projects. The Bureau's goal is to deliver available water during the irrigation season, consistent with the agricultural needs of each project. Collected funds are used to operate, maintain, and rehabilitate irrigation infrastructure such as, but not limited to: (1) water storage reservoirs, diversion structures, pumping plants; (2) canals, pumping plants, water control structures; and (3) deteriorated infrastructure. Unchecked deterioration could result in unreliable and unsafe operation and jeopardize the viability of the local agricultural economy.

The Bureau makes every effort, within the constraints of physical and fiscal limitations, to operate, maintain, and rehabilitate the irrigation projects constructed and owned by the United States for utilization by Indian and non-Indian landowners and water users. As authorized by the FY 1984 Appropriations Act (*Public Law 98-146*), collections are invested in interest-bearing securities until required for project operations.

Power Systems, Indian Irrigation Systems ($73,400,000): These funds are obtained through the periodic collection from power consumers and users in the three Bureau power projects based on statutory requirements. These funds are then deposited in the Treasury to the credit of the respective projects. The Bureau's goal is to reliably and efficiently deliver electrical power to authorized power consumers and users. Collected funds are used to operate, maintain and rehabilitate power system infrastructure on each project such as, but not limited to: power generating facilities, power substations, electrical switching stations, transmission lines, distribution lines and deteriorated infrastructures. Unchecked deterioration could result in injuries or lost of life, unreliable and unsafe operation and jeopardize the ability of the Bureau to maintain reliable electrical power to hospitals, sewer operations, municipal water plants, and residential, commercial, and local government services.

The Bureau makes every effort, within the constraints of physical and fiscal limitations, to operate, maintain, and rehabilitate the power projects constructed and owned by the United States for utilization by Indian and non-Indian power consumers and users. As authorized by the FY 1984 Appropriations Act (*Public Law 98-146*), collections are invested in interest-bearing securities until needed by a project.

Alaska Resupply Program ($1,100,000): Revenues collected from operation of the Alaska Resupply Program are used to operate and maintain this program (*Public Law 77-457, 56 Stat. 95*), which is managed by the Bureau's Seattle Support Center in Seattle, Washington. The

program provides resupply of essential life-sustaining commodities, such as heating fuel, to remote Alaskan Native Villages and Bureau facilities through mandatory inter-governmental resources.

Performance by Fiscal Year:

The Bureau does not have any performance measures in place for this appropriation.

STANDARD FORM 300
JULY 1964

MISCELLANEOUS PERMANENT APPROPRIATIONS
PROGRAM AND FINANCING SCHEDULE (in millions of dollars)

Identification code: 14-9925-0-2-452		2005 Actual	2006 Estimate	2007 Estimate
	Unavailable Receipts			
01.99	Balance, start of year	0	1	1
Receipts:				
02.20	Deposits, operation and maintenance, Indian irrigation systems	25	28	30
02.21	Alaska resupply program	2	2	2
02.22	Power revenues, Indian irrigation projects	57	62	67
02.41	Earnings on investments, Indian irrigation projects	2	2	2
02.99	Total receipts and collections	86	94	101
04.00	Total: Balances and collections	86	95	102
05.00	Appropriations: Miscellaneous permanent appropriations	-85	-94	-101
07.99	Balance, end of year	1	1	1
	Program and financing			
Obligations by program activity:				
00.02	Operation and maintenance, Indian irrigation systems	33	25	26
00.03	Power systems, Indian irrigation projects	61	67	73
00.04	Alaska resupply program	2	3	3
10.00	Total new obligations	96	95	102
Budgetary resources available for obligation:				
21.40	Unobligated balance carried forward, start of year	61	51	52
22.00	New budget authority (gross)	85	94	101
22.10	Resources available from recoveries of prior year obligations	1	2	2
23.90	Total budgetary resources available for obligation	147	147	155
23.95	Total new obligations	-96	-95	-102
24.40	Unobligated balance carried forward, end of year	51	52	53
New budget authority (gross), detail:				
	Mandatory:			
60.20	Appropriation (special fund)	85	94	101
Change in obligated balances:				
72.40	Obligated balance, start of year	16	25	48
73.10	Total new obligations	96	95	102
73.20	Total outlays (gross)	-86	-70	-95
73.45	Recoveries of prior year obligations	-1	-2	-2
74.40	Obligated balance, end of year	25	48	53
Outlays (gross), detail:				
86.97	Outlays from new mandatory authority	18	19	20
86.98	Outlays from mandatory balances	68	51	75
87.00	Total outlays (gross)	86	70	95
Net budget authority and outlays:				
89.00	Budget authority	85	94	101
90.00	Outlays	86	70	95
Memorandum (non-add) entries:				
92.01	Total investments, start of year: Federal securities: Par value	69	67	
92.02	Total investments, end of year: Federal securities: Par value	67		
	Object Classification			
11.1	Personnel compensation: full-time permanent	25	24	26
12.1	Civilian personnel benefits	15	15	16
22.0	Transportation of things	9	9	10
23.3	Communications, utilities, and miscellaneous charges	7	7	7
25.2	Other services	24	24	26
25.3	Other purchases of goods and services from Government accounts	11	11	12
25.4	Operation and maintenance of facilities	5	5	5
99.9	Total new obligations	96	95	102
	Personnel Summary			
Direct: Total compensable workyears:				
1001	Civilian full-time equivalent employment	398	398	398

MEC SOF EXH 19

DATE FILE NO. 1234-7-19-1
...ROX ALL PLEADINGS ✓
COPIES TO MAC NPS RR NAM
STAMPED_____ DATE
ROUTED TO MAC NPS RR NAM
ALL ITEMS CHECKED
AND INITIALED MAN

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER, CHAIRMAN
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

IN THE MATTER OF THE COMPLAINT OF THE BUREAU OF INDIAN AFFAIRS, UNITED STATES OF AMERICA, AGAINST MOHAVE ELECTRIC COOPERATIVE, INC. AS TO SERVICES TO THE HAVASUPAI AND HUALAPAI INDIAN RESERVATIONS	DOCKET NO. E-01750A-0579 BUREAU OF INDIAN AFFAIRS' RESPONSE TO MOHAVE ELECTRIC'S PROPOSED DISCOVERY PLAN

The Bureau of Indian Affairs ("BIA") responds to Mohave Electric Cooperative's ("MEC") proposed discovery plan. The plan is not only overly broad, but the suggested discovery premature. In the same vein, the BIA objects to the first set of discovery requests that MEC references in its proposed plan.[1]

Discovery as suggested and as already propounded by MEC is premature. The issue in this case is straightforward - whether MEC violated ACC rules and regulations when it unilaterally transferred its 70 mile electric line to the BIA. At this point, no discovery is necessary as all pertinent facts are undisputed. The parties agree that the BIA and MEC entered into a contract, MEC built the electric line, and MEC subsequently transferred that line to the BIA. It is a matter of law whether or not the transfer complied with applicable law. The BIA intends to move for partial summary judgment by October 16, 2006. MEC also may move or countermove for summary judgment. If any issues remain after dispositive motions are decided, then the BIA agrees that discovery on those remaining issues may be necessary. But to conduct full-blown discovery beforehand would be a waste of time and expense for the parties. All material facts, the BIA firmly believes, are undisputed so discovery at this stage is premature.

---

[1] The BIA reserves its right to assert all objections to MEC's discovery requests when the BIA responds to them.

RECEIVED
OCT 06 2006
CURTIS, GOODWIN, SULLIVAN,

MEC's discovery, which MEC already has propounded and which it apparently intends to propound, is also overbroad. Attached are copies of MEC's first set of discovery requests and its associated September 13th letter that provides the instructions for the requests. Among other things, MEC requests information about every other arrangement dealing with electricity that the BIA has anywhere in the United States. An arrangement the BIA may have had in, say, North Dakota is completely irrelevant to this case. Similarly, MEC demands information about the BIA's activities dating back to1975, years before MEC even constructed its electrical line that is the subject of this dispute. MEC's first set of discovery requests contains 39 requests, excluding dozens of sub-parts and MEC asserts a second is forthcoming. Even if there were some material facts in dispute, MEC's requests are unduly burdensome and overbroad. In its proposed discovery plan, MEC indicates it wants to depose unnamed individuals associated with the San Carlos Irrigation and Power Project. That too is overbroad and overreaching as the San Carlos Irrigation and Power Project has no pertinent connection to the present dispute between the BIA and MEC and the electrical line that is located in Northern Arizona.

The material facts are undisputed and no discovery is needed at this time. The BIA suggests that the Commission delay discovery until dispositive motions are filed and ruled upon. The BIA also requests a protective order that it need not respond to MEC's first set of discovery requests until the BIA's forthcoming motion for summary judgment is decided.

Respectfully submitted this 5 day of October, 2006.

PAUL K. CHARLTON
United States Attorney
District of Arizona

Mark Wenker

MARK J. WENKER
Assistant U.S. Attorney
Attorneys for the Bureau of Indian Affairs

Original and 13 copies filed
this 5th day of October, 2006, to:

Docket Control Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copies delivered this
5th day of October, 2006, to:

Jeff Hatch-Miller, Chairman
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

William A. Mundell
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Mike Gleason
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Kristin K. Mayes
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Barry Wong
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Teena Wolfe, Esq.
Administrative Law Judge, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Christopher Kempley, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson
Director, Utilities Division
Arizona Corporation Division
1200 West Washington Street
Phoenix, Arizona 85007

Copy mailed
this 5th day of October, 2006, to:

Michael A. Curtis
William P. Sullivan
Larry K. Udall
Curtis, Goodwin, Sullivan, Udall & Schwab
2712 N. 7th Street
Phoenix, AZ 85006-1090

R. Lebrun

The Law Offices of
CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB, P.L.C.
2712 North Seventh Street
Phoenix, Arizona 85006-1003
Telephone (602) 393-1700
Facsimile (602) 393-1703
E-mail wsullivan@cgsuslaw.com

Michael A. Curtis
Susan D. Goodwin
Kelly Y. Schwab
Phyllis L.N. Smiley
Nancy A. Mangone

William P. Sullivan
Larry K. Udall
Anja K. Wendel
K. Russell Romney
Steven G. Zraick

Of Counsel
Joseph F. Abate
Thomas A. Hine
David M. Lujan

REFER TO FILE NO. 1234-17-19-1

VIA EMAIL AND FIRST CLASS MAIL

September 13, 2006

Paul K. Charlton, Esq.
Mark J. Wenker, Esq.
U S ATTORNEY'S OFFICE
40 N. Central, Suite 1200
Phoenix, Arizona 85004-4408

Re: First Set of Data Requests to Bureau of Indian Affairs, the Havasupai and Hualapai Nations
Docket No. E-01750A-05-0579

Dear Messers Charlton and Wenker:

Enclosed is Mohave Electric Cooperative Inc.'s ("MEC") First Set of Data Requests to Bureau of Indian Affairs, the Havasupai and Hualapai Nations, in the above referenced docket. Usual and customary practice before the Arizona Corporation Commission requires responses to be filed within ten (10) calendar days of receipt. We anticipate you will make every effort to provide responses within this standard time frame. However, as we noted prior to and during the procedural conference, we understand relevant documents are likely stored in multiple locations and that this case spans a long period of time. We are open to mutually agreeing to extend the time to respond for those data requests that additional time is shown to be necessary. In the event you intend to object to any data request, please contact us first to see if we can reach an agreement to resolve the objection prior to filing a formal objection with the Commission.

The following definitions should be considered applicable to the data request and throughout the duration of this matter.

DEFINITIONS

"Staff" refers to Arizona Corporation Commission Staff.

"Commission" refers to the Arizona Corporation Commission.

"BIA" refers to the United States of America acting through the Bureau of Indian Affairs, an agency thereof, its employees, agents and employees, as well as in its capacity as trustee and representative of the Havasupai and Hualapai Nations.

"Havasupai" refers to the Havasupai Indian Nation, its employees, agents and representatives.

"Hualapai" refers to the Hualapai Indian Nation, its employees, agents and representatives.

"Mohave" refers to the Mohave Electric Cooperative, Inc., its employees, agents and representatives.

"Complainant" or "Plaintiff" refers to the BIA in its capacity as an agency of the United States, as well as trustee and representative of the Havasupai and Hualapai Nations.

"Respondent" or "Defendant" refers to Mohave.

"Document" includes all written matter of every kind and description, whether draft or final, original or reproduction, including but not limited to, correspondence, memoranda, notes, transcripts, contracts, agreements, memoranda of telephone conversations or personal conversations, notices, reports, rules, regulations, facsimile messages, minutes of meetings, interoffice communications, reports, tapes for visual or audio reproduction, drawings, graphs, charts, electronic mail message, and other compilations from which information can be obtained. The term "document" includes all copies of the document which contain any additional writing, underlining, notes, deletions, or any other markings or notations, or otherwise not identical copies of the original. The term "document" refers to items known by the BIA, after reasonable inquiry and search, to exist whether or not in the BIA's possession, custody or control and which the BIA believes may be relevant to the subject matter of the Complaint, and those which appear reasonably calculated to lead to the discovery of admissible evidence

"Identify" when used in referring to a person, shall mean to state the following with regard to the person: (a) name; (b) last know address; (c) residence and business telephone numbers; (d) relationship to you; and (e) occupation at the date of these data requests.

"Identify" and "identity" with respect to a document mean to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general subject matter, its present location, and its present custodian. If any such document was in your possession or subject to your control, but is no longer, state what disposition was made of it and explain the

circumstances surrounding, and the authorization for, such disposition, and state the date or approximate date of such disposition.

"List", "describe", "explain", "specify", or "state" shall mean to set forth fully, in detail, and unambiguously, each and every fact of which you have knowledge which is relevant to the answer called for by the data request.

INSTRUCTIONS

In responding to these Data Requests, please indicate the person or persons responsible for the compilation of the information provided in response to each request.

Included within this set of Data Requests may be Requests for Admission. A request will be deemed admitted unless BIA provides a specific denial thereof or a written objection and the reasons therefore, or a statement explaining why BIA can neither admit or deny. If BIA denies or fails to admit any of the attached Requests for Admission or any portion thereof, for each denial or failure to admit, BIA must:

a. State each and every fact and reason that supports or tends to support the denial of the specific Request for Admission;

b. State the name, address, and telephone number of each and every person who has personal knowledge of the facts alleged in BIA's answer to (a) above;

c. Identify with sufficient particularity each and every document, memorandum or writing of any kind that substantiates or tends to substantiate the facts alleged in subpart (a) above;

d. If BIA answers any Request for Admission by stating that it lacks information or knowledge as a reason for the failure to admit or deny, state specifically what "reasonable" inquiry was made to obtain sufficient information to enable BIA to admit or deny such request for admission;

e. If BIA can admit a portion of said request for admission, please indicate the portion which BIA admits; and

f. State the legal authority which supports said denial.

If any information is withheld under claim of privilege, confidentiality or proprietary trade secret, you are required to: (1) identify in writing such information with sufficient particularity as to permit the Commission to make a full determination as to whether the claim or privilege is valid; (2) identify the nature of the privilege(s) asserted; and (3) identify the factual basis of the claim of privilege.

1. Michael A. Curtis and William P. Sullivan, Attorneys, Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C., 2712 N. 7th Street, Phoenix, Arizona 85006.

2. Stephen McArthur, Mohave Electric Cooperative, Inc., Post Office Box 1045, Bullhead City, Arizona 86430.

Commission Staff, through Janice M. Alward of its legal division has also requested a courtesy copy of all data requests and responses.

These data requests are continuing in nature. Accordingly, BIA is requested to supplement prior responses if it receives or generates additional information, reports or other data within the scope of any of the data requests between the time of the original response and the hearing to be held in connection with BIA's Complaint.

If you have any questions, please do not hesitate to contact me.

Very Truly Yours,

Michael A. Curtis
William P. Sullivan
For the Firm

WPS
Enclosures: First Set of Data Requests to BIA

cc: Janice M. Alward, Esq.
Mohave Electric Cooperative, Inc.

1234-17-19-1(BIA)\Documents\Discovery\MEC to BIA\Charlton-Wenker(transmittal 1st set of DR to BIA)

FIRST SET OF DATA REQUESTS
FROM MOHAVE ELECTRIC COOPERATIVE, INC.
TO BUREAU OF INDIAN AFFAIRS
(Docket No. E-01750A-05-0579)

1.0 When did the BIA first commence providing electric power to or on:

a. The Havasupai Reservation.
b. The Hualapai Reservation.

1.1 Describe the electric system(s) used to provide electric service between 1975 and October 1, 1981 (i.e., prior to construction of the 70-mile transmission line pursuant to the October 1, 1981 contract between BIA and Mohave), including all major components of the system, including all sources of power:

a. The Havasupai Reservation.
b. The Hualapai Reservation.

1.2 Identify the owner(s) of the electric system(s) set forth in response to the preceding data request and their respective role in owning, operating, maintaining and repairing the electric system of:

a. The Havasupai Reservation.
b. The Hualapai Reservation.

1.3 Identify the general manner of operating (including, without limitation, operations, maintenance, planning, replacement, improvements, billing, administration) the electric system(s) utilized between 1975 and October 1, 1981 to serve:

a. The Havasupai Reservation.
b. The Hualapai Reservation.

1.4 Describe the operational problems, if any, incurred between 1975 and October 1, 1981by the electric system(s) utilized to serve:

a. The Havasupai Reservation.
b. The Hualapai Reservation.

1.5 Identify all alternatives considered between 1975 and October 1, 1981 by the BIA, or any other department or agency of the United States, the Havasupai and/or the Hualapai for securing and providing electric power and service to and on:

a. The Havasupai Reservation.
b. The Hualapai Reservation.
c. Provide copies of all documents discussing any of the alternatives so identified.
d. Identify the person most knowledgeable regarding each alternative so identified.

1.6 Explain the reasons the United States, through the Administrator of General Services Administration on behalf of the BIA decided to enter into the October 1, 1981 contract with Mohave (the "1981 Contract").

1.7 For the period from January 1, 1975 to present, identify all electric systems, not identified in responses to the preceding data requests, owned or operated by the BIA.

1.8 After the 70-mile transmission line was constructed and operational and the electric system(s) on the Havasupai Reservation were interconnected therewith, identify:

a. What additions and modifications were made to that existing electric system on the Reservation to accommodate the change in power supply.
b. What changes were made in operations to that existing electric system on the Reservation to accommodate the change in power supply.
c. What major improvements, replacements, additions and retirements have been made to the electric system(s) on the Reservation since 1981.
d. What major changes have been made to the operations of the electric system(s) on the Reservation since 1981.

1.9 After the 70-mile transmission line was constructed and operational and the electric system(s) on the Hualapai Reservation were interconnected therewith, identify:

a. What additions and modifications were made to that existing electric system on the Reservation to accommodate the change in power supply.
b. What changes were made in operations to that existing electric system on the Reservation to accommodate the change in power supply.
c. What major improvements, replacements, additions and retirements have been made to the electric system(s) on the Reservation since 1981.
d. What major changes have been made to the operations of the electric system(s) on the Reservation since 1981.

1.10 For the period from January 1, 1975 to present, identify, by year (calendar or fiscal):

a. The number of electric connections/customers served by the BIA on the Havasupai Reservation, including:
    i. A breakdown by customer class,
    ii. Whether the entity receiving electric service is Indian or Non-Indian,
    iii. The number of connections/customers to whom the BIA renders a bill for electric service provided, and
    iv. The number of connections/customers to whom a party other than the BIA renders a billing for electric service provided.
b. The number of electric connections/customers served by the BIA on the Hualapai Reservation, including:
    i. A breakdown by customer class,

ii. Whether the entity receiving electric service is Indian or Non-Indian,
iii. The number of connections/customers to whom the BIA renders a bill for electric service provided, and
iv. The number of connections/customers to whom a party other than the BIA renders a billing for electric service provided.

c. The number of electric connections/customers, not identified in (a) or (b) above, served by the BIA (identifying same by electric system), including,
   i. A breakdown by customer class, and
   ii. Whether the entity receiving electric service is Indian or Non-Indian.

1.11 Identify all electric providers with whom the BIA has had arrangements to secure electric power during the period from January 1, 1975 to present, specifically identifying each such arrangement, whether written or oral:

a. To provide electricity for resale.
b. To provide electricity for the benefit of Indian nations.
c. To provide for delivery to third parties other than identified in (a) or (b) above.

1.12 Admit that an objective of the BIA in pursuing this Complaint is to limit its electric service responsibility to the Havasupai and Hualapai Reservations.

a. Provide all documents that support or contradict the BIA's response to this data request.

1.13 When did the BIA first develop its theory that Mohave was obligated to operate and maintain the 70-mile transmission line constructed pursuant to the 1981 Contract beyond obligations contained in the 1981 Contract?

a. Provide all documents that support or contradict the BIA's response to this data request.

1.14 When and how did the BIA first communicate to Mohave that the BIA believed Mohave was obligated to operate and maintain the 70-mile transmission line constructed pursuant to the 1981 Contract beyond obligations contained in the 1981 Contract.

a. Provide all documents that support or contradict the BIA's response to this data request.

1.15 Set forth all authorities, including, without limitation, statutes, executive orders, rules, regulations, internal directives, tribal resolutions, contracts, etc., authorizing the BIA and/or the Department of Interior to:

a. Provide electric service generally.
b. Provide electric service to Indians.
c. Provide electric service on or to Indian nations.

d. Provide electric service to or on the Havasupai Reservation.
e. Provide electric service to or on the Hualapai Reservation.

1.16 Provide copies of all authorities cited in response to the preceding data request.

1.17 Set forth all authorities, including, without limitation, statutes, executive orders, rules, regulations, internal directives, tribal resolutions, contracts, etc., authorizing Mohave to:

a. Provide electric service to Indians.
b. Provide electric service on or to Indian nations.
c. Provide electric service to or on the Havasupai Reservation.
d. Provide electric service to or on the Hualapai Reservation.

1.18 Provide copies of all authorities cited in response to the preceding data request.

1.19 Identify and produce any authority that requires Mohave to deliver power outside of its CC&N.

1.20 Provide copies of all documents relating to the obligation of the BIA, the Department of Interior or any other department or agency of the United States to secure and/or provide electric power to:

a. the Havasupai Reservation.
b. the Hualapai Reservation

1.21 Provide copies of all documents relating to the obligation of Mohave to secure and/or provide electric power to:

a. the Havasupai Reservation.
b. the Hualapai Reservation

1.22 Identify and produce any documents where the notion of a policy, plan or project (etc.) to transfer costs and obligations of the BIA, the Department of Interior and/or the United States to provide electric service to the Hualapai or Havasupai Indians, reservations or nations is discussed.

1.23 Admit that the 1981 Contract contains no provision terminating the United States' obligation to pay the Facilities Charge specified in the 1981 Contract.

a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.
b. Provide all documents that support or contradict the BIA's response to this data request.

1.24 Admit that the 1981 Contract provides: "If the Government does not exercise its renewal option or terminates this Contract, the Government shall pay, in U.S. currency, in a single payment, an amount equal to Mohave's undepreciated value plus facility removal costs, less salvage value of the facilities that Mohave constructs because of this contract."

a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.
b. Provide all documents that support or contradict the BIA's response to this data request.

1.25 Admit that the provision of the 1981 Contract quoted in the preceding data request anticipates the removal of the 70-mile transmission line at the expense of the U.S. upon termination of the Contract through non-renewal or termination by the U.S.

a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.
b. Provide all documents that support or contradict the BIA's response to this data request.

1.26 Admit that in Decision No. 53174, the Arizona Corporation Commission, in discussing the 70-mile transmission line and interest expense associated with the financing of the line, found that the plant "<u>is not</u> used and useful, <u>will not be</u> used and useful, and <u>was never intended to be</u> used and useful in the provision of electric service to [Mohave's] ratepayers."

a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.
b. Provide all documents that support or contradict the BIA's response to this data request.

1.27 Admit that the BIA is aware that the following entities are willing to provide operation and maintenance on the 70-mile transmission line, provided BIA pays for such service:

a. The Western Power Authority
b. UNS Electric
c. Arizona Public Service Company
d. In the event any of these requests is not admitted, please explain, in detail the basis for such failure to admit.
e. Provide all documents that support or contradict the BIA's response to this data request.

1.28 Admit the BIA has no authority from any federal law or the Code of Federal Regulations to impose any of the costs of the delivery of power to any tribal lands administered by the BIA to non-tribal utility companies.

a. In the event this request is not admitted, please explain, in detail the basis for such failure to admit.

b. Provide all documents that support or contradict the BIA's response to this data request.

1.29 Identify all facts and produce any documents and authorities associated with the approximately 13-mile line constructed and interconnected to the 70-mile transmission line after April 17, 2003 for the benefit of the Indian Health Service.

1.30 Identify all facts and produce any documents and authorities you believe support the contention that the 70-mile transmission line is used and useful in the provision of electric service to Mohave's ratepayers.

1.31 Identify all facts and produce any documents and authorities you believe support the contention that the BIA properly exercised either of its renewal options under the 1981 Contract.

1.32 Identify all facts and produce any documents and authorities you believe support the contention that 1981 Contract is still in full force and effect.

1.33 Identify all facts and produce any documents and authorities you believe support the contention that the United States could unilaterally alter the terms and conditions of the 1981 Contract.

1.34 Identify all facts and produce any documents and authorities you believe support the contention that Mohave did not properly operate and maintain the 70-mile transmission line prior to April 17, 2003, when the Mohave Board of Directors declared the line not necessary or useful to the Cooperative in the performance of its duties to the public.

1.35 Identify all facts and produce any documents and authorities you believe support the contention that Mohave has not timely responded to outages or other problems on the 70-mile transmission line, provided the BIA had acknowledged its responsibility to pay the cost of such response.

1.36 Identify all facts and produce any documents and authorities that reflect how electric service and/or the manner of rendering service to the Havasupai and/or Hualapai Reservations changed after the 70-mile transmission line was constructed under the 1981 Contract.

1.37 Identify all facts and produce any documents and authorities that reflect how electric service and/or the manner of rendering service to the Havasupai and/or Hualapai Reservations changed after April 17, 2003, when the Mohave Board of Directors declared the line not necessary or useful to the Cooperative in the performance of its duties to the public.

1.38 Identify and provide a copy of any and all studies undertaken by the BIA or any other department or agency of the United States regarding the potential savings for the BIA and/or the United States from shifting any portion of the obligation to deliver electric power to tribal lands (including without limitation the Havasupai and Hualapai Reservations) on non-tribal utility companies (including without limitation Mohave).

1.39 Consistent with Rule 26.1 of the Arizona Rules of Civil Procedure, to the extent not provided in response to the preceding data requests, identify:

a. The factual basis of each claim or defense of the BIA.
b. The legal theory upon which each claim or defense is based, including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.
c. The names, addresses, and telephone numbers of any witnesses whom the BIA expects to call at hearing with a fair description of the substance of each witness' expected testimony.
d. The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.
e. The name and address of each person whom the BIA expects to call as an expert witness at hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert.
f. The existence, location, custodian, and general description of any tangible evidence or relevant documents that the BIA plans to use at hearing.
g. A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by the BIA to exist whether or not in the BIA's possession, custody or control and which the BIA believes may be relevant to the subject matter of the Complaint, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents will be made, or have been made, available for inspection and copying. Unless good cause exists and is set forth in the BIA's response for not doing so, provide a copy of each document listed with the response. If production is not made, provide the name and address of the custodian of the document.

MEC SOF EXH 20

Jim

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
P.O. BOX 10
PHOENIX, ARIZONA 85001

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
Office of the Regional Director
(602) 379-6600
Fax: 379-4413

RECEIVED
NOV 05 2002
BIA Truxton Canon
Valentine, AZ

October 9, 2002

Memorandum

To: Deputy Commissioner of Indian Affairs

From: Western Regional Director

Subject: Havasupai Electric System

Because of a change in the law governing the utilization of Office of Indian Education Programs funds, OIEP has discontinued paying for its share of the O&M on the Havasupai electric system. The Truxton Canyon Agency ran short of money and fortunately for this fiscal year, OFMC managed to cover the shortfall and keep the agency from running a deficit. However, this is going to be an annual problem and a consistent source of funding has to be found in order to ensure the continuity of operations in Supai Canyon. Attached is a decision paper, a sketch map of the system, a more detailed briefing paper, and letters of support from the Havasupai Tribe, OIEP, IHS, OFMC and LES to secure additional funding for the system. Raising rates is simply not viable because of the small number of customers. Shutting off the system is also not viable since electricity is simply no longer a luxury but is a necessity in the 21st Century.

If you need additional information or would like to discuss this matter, please give me a call.

WAYNE C. NORDWALL

Attachments

cc: Superintendent, Truxton Canon Agency
Branch of Facility, Western Regional Office

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL # of pages ▶ 12

To Jim Williams	From Esguerra
Dept./Agency	Phone #
Fax # 928 769 2444	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Deputy Commissioner Decision Paper

Issue: Securing supplemental funding for the Operation & Maintenance (O&M) of the Supai Canyon Electric system

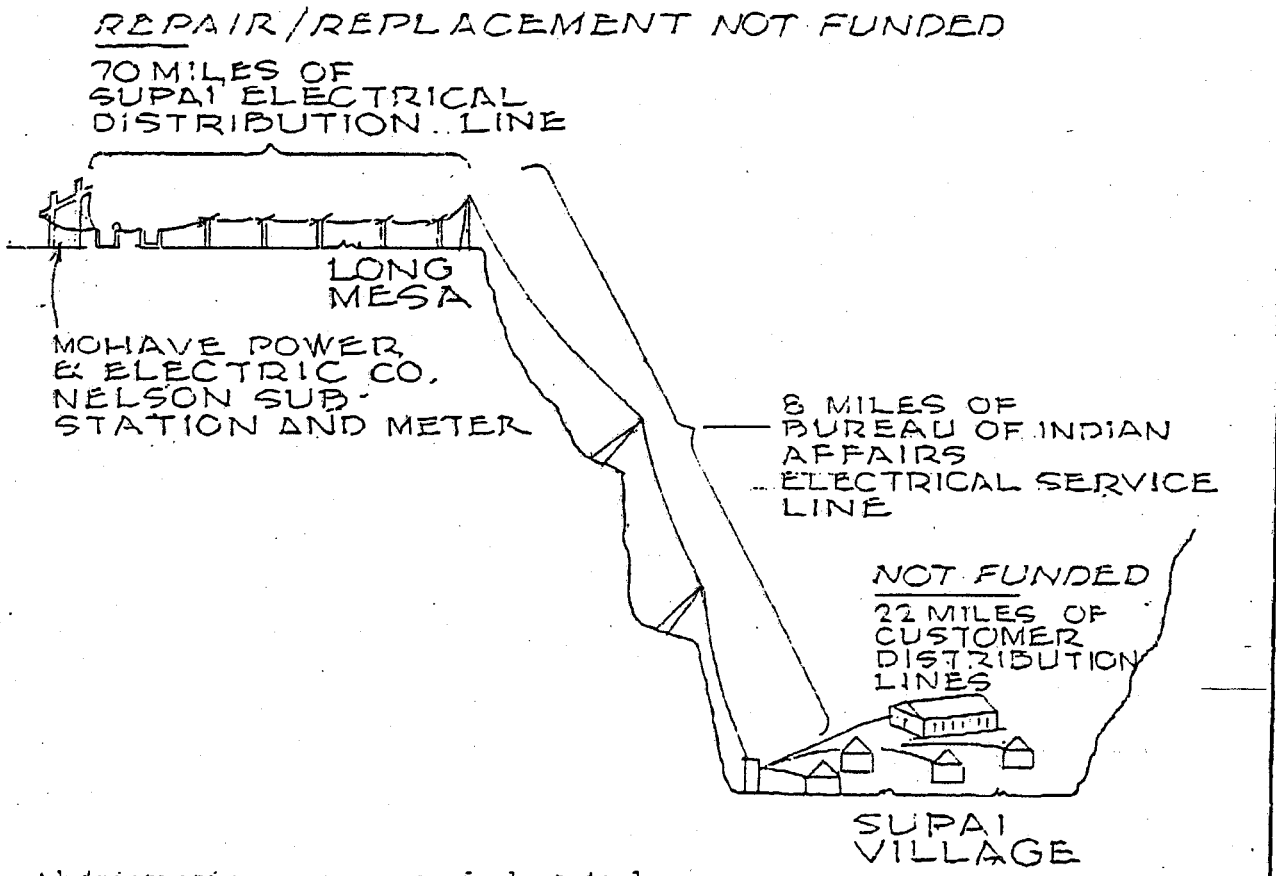
Background: This is another one of those situations the Bureau finds itself in because of historic necessity. The Havasupai Tribe is located in a remote area at the bottom of the Grand Canyon and until the advent of helicopters the only ingress and egress has been by foot or pack animal. For decades, the reservation had no electricity. As the Bureau built schools, health clinics, detention facilities, etc., there was a need for electricity. Initially, this was provided by portable generators at each facility and fuel was hauled in by pack animal. In 1970, the Bureau installed a diesel generator on the rim of the canyon and ran a line into the canyon. As demand for electricity increased, the Bureau looked for an alternative power source. No commercial electric provider would agree to provide retail electric service to the reservation. In the alternative, the Bureau contracted with a local provider to build a line from their nearest distribution point to the old diesel site. The Bureau remained responsible for all activity below the canyon rim. The costs for electricity and for O&M of the system are born by the consumers (most of whom are poor, thus, there is a high delinquency rate on the payment of electric bills) and government facilities in the canyon. With passage of P.L. 107-110, OIEP has taken the position that it can no longer contribute to the O&M of the electric system. This has created a funding shortfall. Because of increasing costs from the school, LES facilities, BIA employee housing, the IHS clinic and tribal buildings, there will be an annual recurring cost that is beyond the budget of the Truxton Canyon Agency. The system is not economically viable. However eliminating service and plunging Supai literally back into the dark ages is not a viable alternative. In essence, this program has become a social services program.

Decision Needed: The WRO, OIEP, LES, OFMC, and IHS have all met and tried to resolve the funding issue. All agree that abandoning the electric system is not an option and that finding funding to continue operations is absolutely essential. A decision needs to be made on where the funding should come from. The estimated O&M budget ranges from about $150,000.00 to $250,000.00 per year.

Options: (1) Supplement the existing OFMC funding (approximately $75,000.00 per year) with an additional $125,000.00 annually from OFMC, and have all the O&M come from the OFMC budget, or

(2) Create a new line item within the trust services budget or other bureau budget line item.

Option selected: (1)_____ (2)_____



Administrative management of electrical power utility NOT FUNDED:
Billing payments, meter reading, meter installation and disconnect, preventive maintenance and replacement of equipment, etc.

CUSTOMERS
- Havasupai Tribe
- Tribal members
- U.S. Indian Health Service Clinic
- BIA Law Enforcement
- BIA employee housing
- BIA funded school

	FACILITIES MANAGEMENT WESTERN REGIONAL OFFICE PHOENIX ARIZONA	Truxton Canon Field Office
	Distribution Diagram	HAVASUPAI ELECTRICAL POWER DISTRIBUTION LINES for Supai Electrical Power Utility Valentine, Arizona

BRIEFING PAPER OF THE WESTERN REGIONAL OFFICE REGARDING THE HAVASUPAI ELECTRIC POWER SYSTEM

The Bureau of Indian Affairs owns, operates and maintains an electric power distribution system on the Havasupai Reservation in Arizona. The system consists primarily of overhead and underground lines, transformers, switchgear, service laterals, and metering equipment. It is presently connected to approximately 120 active service points that interface with residential, commercial and government facilities. Government facilities include a school, apartment units, maintenance shop, and detention center owned by the Bureau, and a health clinic and apartment owned by the Indian Health Service. The Bureau buys electric power from a public utility company at a specified delivery point and distributes the power to customer service points that are metered individually. Each month the Bureau reads the electric meters, prepares and sends invoices to power customers, and collects payments from customers. The average amount paid by customers for electricity is almost 10 cents per kilowatt hour. Facilities program funds and revenues from the sale of electric power are used to defray costs associated with the electric power distribution system, including the cost of purchased power.

The first electric power source at Supai Village was small, local generators that served individual service locations such as the Bureau school. Fuel for the generators had to be hauled into Havasupai Canyon on pack animals. The difficulty and expense of hauling fuel into the canyon prompted the Bureau to explore other options for providing electricity to government facilities as well as the community. In about 1970, the Bureau initiated steps to install a diesel-fueled power plant on the remote rim of Long Mesa and to construct a overhead power line from the power plant to Supai Village at the bottom of the canyon. The new power plant and power line, which were completed in 1971, provided a more reliable supply of electricity for the school and other government facilities, as well as a minimal number of tribal locations. In order to defray the cost of operating the electric power system, the Bureau initiated a policy that provided for power users to pay for electric service. As the demand for electric power increased, the Bureau installed additional generators and distribution system capacity. The power plant and power line from the rim of Long Mesa to Supai Village was strategically placed in anticipation of the eventual takeover of the system by a public utility.

Unfortunately, Mohave Electric Cooperative, the public electric power utility nearest to the Havasupai Reservation, declined the opportunity to provide retail electric service to individual customers on the reservation. Mohave Electric Cooperative was receptive, however, to providing electric service to a specified delivery point on the rim of Long Mesa, where the Bureau's distribution system was connected to the Bureau's power plant. Because there was no other public utility near the reservation willing to provide retail electric service to Supai Village, the Bureau was compelled to continue the operation and maintenance of the electric distribution system on the Havasupai Reservation. In about 1982, the Bureau entered into an electric service contract with Mohave Electric Cooperative. In addition to the requirement to provide power to a specified delivery point, the contract provided for Mohave Electric Cooperative to construct a 70-mile power line from its power grid , across the Hualapai Reservation, to the Bureau's power plant site on the rim of Long Mesa.

The funding requirements of the Bureau's electric power utility have been met from two sources the past two decades. Following is a tabulation of the fund sources and operating expenditures of the electric power utility for the past three fiscal years:

	FY 1999	FY 2000	FY 2001
Fund Sources:			
Receipts from Customers	$ 199,923.05	$ 222,857.68	$ 207,514.77
Facilities Program Funds	147,000.00	143,339.42	199,585.00
Subtotal	$ 346,923.05	$ 366,197.10	$ 407,099.77
Operating Expenditures:			
Mohave Electric	$ 161,074.64	$ 173,912.90	$ 171,493.65
Employee Salaries	55,039.10	43,386.40	49,096.50
Maintenance & Repairs	31,855.36	4,908.72	103,913.35
GSA Vehicle(s)	819.60	1,500.00	1,650.00
Aviation Services	32,759.52	34,231.00	12,318.00
Consultants	14,684.25	15,000.00	34,500.00
Equipment	0	0	131,514.86
Subtotal	$ 296,232.47	$ 272,939.02	$ 504,486.36

As of August 31, 2002, the total amount of receipts from customers and facilities program allocations in FY 2002 were $274,748.52. The amount of receipts from customers was $175,356.52, and the amount allocated to the Western Regional Office for maintenance and repairs to the electrical distribution system was $99,392.00. As of August 31, 2002, the total of expenditures of the electric power utility were $400,651.27. On April 15, 2002, the Superintendent, Truxton Canon Field Office, notified the Western Regional Director that FY 2002 operating expenditures of the Bureau's electric power utility had exceeded the amount of funds received from customers and from the facilities program. The Superintendent attributed the over-obligation of funds to a reduction of $65,000 in FY 2002 of Education facilities program fund allocations for operation of the electric power system.

The Branch of Facilities Management of the Western Regional Office agrees that facilities program funds have been reduced to a level in FY 2002 that results in a shortfall of funding for the Bureau's electric power utility. The reduction of funds is from a decision of the Office of Indian Education Programs to discontinue the use of Education facilities program funds for operation of the electric power utility. In an effort to resolve this issue the Western Regional Office has considered the following options:

1. The Bureau divest itself of the role of an electric service provider and of its responsibility

to provide funds and other resources for operation, maintenance and construction of the electric power distribution system.

2. The Bureau set electric power service rates at levels that will provide revenues sufficient to cover all the costs associated with the electric power utility.

3. The Bureau use receipts from customers and appropriated funds from another program, such as Trust Services, to defray costs associated with the electric power utility.

4. The Bureau use receipts from customers and non-education facilities program funds to defray costs associated with the electric power utility.

Option 1 is not acceptable because Mohave Electric Cooperative, the only public utility that now provides retail electric service near the Havasupai Reservation, is not willing to operate an electric power utility on Indian lands including the Havasupai Reservation. If there is a public utility besides Mohave Electric Cooperative willing to provide retail electric service on the Havasupai Reservation, it would cost millions of dollars to pay for construction, operation and maintenance of the additional power lines and substations that would be necessary to deliver power to the reservation.

Option 2 was ruled out because the current rate schedules of the Bureau's electric power utility are set near or at the maximum levels that residents can afford to pay for electricity. A substantial increase in electric power rates will only cause a spiral effect which will diminish the customer revenue base and increase power rates to a level that only a few, if any, customers can pay. Also, this option is politically indefensible.

Option 3 is out of the question because the Western Regional Office does not have appropriated funds from another program, such as Trust Services, that can be used to cover any of the costs associated with the electric power utility. Option 3 was recommended by the Office of Facilities Management and Construction and would be acceptable to the Western Regional Office only if the Central Office would be receptive to providing Trust Services program funds to cover the operation and maintenance costs of the electric power system.

Option 4 is the best option because funds required for operation and maintenance of the electric power system have historically been provided by the Bureau's facilities program, and the Bureau's facilities program has funding authority for construction, operation, and maintenance of electric utility systems for the benefit of Indians. Although P.L. 107-110, enacted on January 08, 2002, precludes any hold back of education facilities operation and maintenance funds beginning October 1, 2002, it does not provide authority or a basis for the Bureau's Office of Facilities Management and Construction to abandon its role and responsibility as a funding source for the electric power system. Finally, Option 4 is the best option because it allows for costs to be allocated on the basis of what customers and the government can afford to pay.

HAVASUPAI TRIBAL COUNCIL
PO Box 10 • Supai, Arizona 86435 • (520) 448-2731

September 25, 2002

Neil McCaleb
Assistant: Secretary
Bureau of Indian Affairs
Mail Stop 4140 MIB
1849 C Street, NW
Washington, D.C. 20240

RE: ELECTRICAL POWER- HAVASUPAI CANYON

Dear Assistant Secretary McCaleb:

The Havasupai Tribe strongly endorses the establishment of a Bureau line item for the BIA- operated Havasupai electrical power utility so that recurring power line maintenance and operations costs can be paid.

Our home, Supai village, is at the bottom of the Grand Canyon. The Village is also home to facilities operated by the Indian Health Service and the BIA.

We are a financially poor tribe. The tribal government is unable to subsidize residents' electricity bills. Each year we face the prospect that the whole BIA electrical system will be shut off due to insufficient funds. In fact, at any given time, twenty percent or more of our homes have electrical service turned off due to non-payment. Our people just cannot afford to pay higher electrical rates.

The establishment of a separate Bureau budget line item for the Havasupai electrical power utility is the only way to avoid the annual threat of a system-wide shutdown. We support this concept as a means of resolving this annual expense.

Please contact me if you have any questions.

HAVASUPAI TRIBAL COUNCIL,

Agnes Chamberlain

Agnes Chamberlain, Chairwoman

Cc: Robert McNichols, Superintendent, BIA Truxton Canon

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
P.O. BOX 10
PHOENIX, ARIZONA 85001

TAKE PRIDE IN AMERICA

IN REPLY
REFER TO:

Law Enforcement Services
(602) 379-6958

October 2, 2002

MEMORANDUM

To: Regional Director, Western Regional Office
Bureau of Indian Affairs

From: Commander, Dist III

Subject: Havasupai Electricity

In support of the line item proposal for electricity to the Havasupai Tribe, Supai, Arizona.

The Truxton Canon Agency, Bureau of Indian Affairs Law Enforcement Program provides Law Enforcement Services to the Havasupai Tribe. We have a detention center and Police sub-station which serves the Havasupai Tribe for which a power supply is vital for the following reasons:

1. Communications in the Police Sub-station

2. Heating and cooling systems for the sub-station and Jail facilities.

3. Every day operations for kitchen services for inmates housed at the facility.

4. Every day operations for the sub-station which serves the community.

These are vital functions, any interruption would be detrimental to the Public safety and services being provided to the Havasupai Nation.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245

IN REPLY REFER TO
OIE:00

MEMORANDUM

RECEIVED-WRO-CIA
2002 SEP 30 A 7 51
AREA DIRECTOR

DATE: September 24, 2002

TO: Director, Western Regional Office

FROM: Director, Office of Indian Education Programs

SUBJECT: Support of Request for Havasupai Line Maintenance Funding

The Havasupai Tribe and its members are one of the most economically distressed tribes in the country. The unique location of the tribe contributes to the economic conditions and creates a lack of opportunities for the tribe to improve its status. This location also provides a logistical nightmare for provision of a Bureau-funded educational program and other federal programs.

Havasupai Elementary School is one of the lowest achieving Bureau-funded schools and has been for the past several years. Despite repeated attempts by OIEP to stop the downward trends of state assessment scores, the school continues to perform poorly. On this year's Annual Report, Havasupai Elementary School reported 100% of their students were scoring in the partially proficient range in Language Arts and Mathematics. Ninety-eight percent of their students were reported to be partially proficient in Reading.

The Havasupai Tribe retroceded the school to the Bureau in March 2002. The OIEP must now make a concerted effort to reverse the poor performance of the school and provide a quality educational opportunity to the students. The first and foremost step must be to attract a highly qualified staff. The second step is to have that staff develop and implement a curriculum based on Arizona State Standards for Education.

Even if OIEP accomplishes those steps, success cannot be achieved at Havasupai Elementary School without the physical facilities being in place. A four-plex housing unit is completed and will be available for this school term. In addition, a great deal of time, effort and funding has been expended to perform needed repairs to the school facility itself. While these efforts were greatly needed, they will become useless if the utility line that brings electrical power into the canyon is not maintained.

There are many problems that exist in maintaining the seventy-eight miles of utility line in one of the remotest areas of the country. Simple maintenance is costly and major repairs can become an insurmountable burden on the budgets of Agencies and offices responsible for this task. The school O&M budgets cannot sufficiently provide for the maintenance costs even when combined with other federal entities now residing in the canyon.

For that reason, OIEP fully supports the efforts of the Western Regional Office in obtaining permanent funding for the maintenance of the utility line. This funding is necessary for ensuring that an uninterrupted electrical power supply is provided to the Havasupai village in order for the Bureau to fulfill its Trust responsibilities. OIEP believes this matter to be of utmost importance to the success of the Havasupai Elementary School students who, in turn, will provide future success of the Havasupai Tribe as a whole.

William A. McLaughlin, Jr.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Public Health Service

Phoenix Area Indian Health Service
Two Renaissance Square
40 North Central Avenue
Phoenix, Arizona 85004

SEP 2 6 2002

Mr. Neil McCaleb
Assistant Secretary for Indian Affairs
Bureau of Indian Affairs
Mail Stop 4140 MIB
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. McCaleb:

The Phoenix Area Indian Health Service (PAIHS) is in support of the Bureau of Indian Affairs'(BIA) establishment of a budget line item to cover the costs of electric power line maintenance, and related costs, to Supai, Arizona. We understand that the entire Havasupai Reservation is in jeopardy of losing its commercial electric service due to the BIA's inability to secure a permanent source of funding.

The Indian Health Service is dependent on the BIA to provide commercial electric service to our clinic and staff quarters at Supai. We understand that the rates we are currently paying are in line with prevailing rates in that region of the State; however, due to the remoteness of the canyon village, the collections fall short of covering the full costs associated with providing this service.

Our cost for electricity is secondary to our concern for the potential, impact upon the health status of the Canyon's residents. Refrigerators keep perishable foods from spoiling, stoves and ovens heat food and kill harmful pathogens, hot water heaters are essential to bathing and clothes washing, and good lighting helps prevent injuries from falls. Many households will not be able to afford to pay 50% more for electricity. Loss of service may very well translate into an increase in the frequency of gastrointestinal, skin, and ectoparasitic (lice) diseases, as well as fall-related injuries.

Thank you for giving the Phoenix Area Indian Health Service an opportunity to comment on this particular BIA budget proposal.

Sincerely,

Don J. Davis, M.P.H.
Director

RECEIVED-BIA-PHX
2002 SEP 26 P 4: 13
AS-IA/DIRECTOR

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Office of Facilities Management & Construction
Albuquerque Plaza Office Tower
201 Third Street, NW
P.O. Box 1248
Albuquerque, New Mexico 87103

IN REPLY REFER TO:

105 - 10

~~100~~
200
220

SEP 24 2002

Memorandum

To: Director, Western Region

From: Director, Office of Facilities Management and Construction

Subject: Supai Canyon Electrical Power

This is to inform the Western Regional office that the Office of Facilities Management and Construction (OFMC) supports your effort to establish the recommended line item budget which is now being proposed for the Supai Canyon Electrical Power Maintenance.

We appreciate your attention to this current funding problem.

RW Collier Jr

cc: Ken Ross, Education Facilities Specialist, OFMC

RECEIVED-WA-PHX
2002 SEP 26 P 1:33
AREA DIRECTOR

MEC SOF EXH 21

For Record:

November 5, 1968

ELECTRIC POWER - HUALAPAI AND SUPAI RESERVATIONS

It has been the policy of the Bureau where economically feasible, to have a private utility supply electric power to the reservation areas. Heretofore there has been little if any problem in this regard since in the areas adjacent or close to the reservation, there has been only one utility company involved.

However, on the Hualapai and Supai Reservations the area is surrounded by franchise areas involving three separate utilities namely, Arizona Public Service Company to the east, Citizens Utilities on the west or north, and Mohave Electric Cooperative on the south.

Basically, Arizona Public Service Company serves Coconino County which encompasses the Frazier Well - Supai areas. They have no electric systems nearby and their proposal to provide service to the areas would cost approximately $450,000 for the Supai line and $200,000 for the Frazier Well line. If the construction costs were borne by Arizona Public Service their guaranteed annual minimum would be $106,800/year.

Mohave Electric Cooperative serves electric power to the Peach Springs area. They are interested in providing power to the two reservations provived they can get clearance from the Arizona Corporation Commission. However, since the Commission has issued Certificates of Necessity and Convenience to Citizens Utilities for the area west of Coconino County line, and since Arizona Public Service has the right to serve (through Grandfather Rights) the area east of Coconino County line, Mohave Electric Cooperative cannot get approval from the Commission to serve the Frazier Well - Supai area. A tentative cost of construction estimate provided by Mohave Electric Cooperative indicates they can supply service to the two areas for approximately $300,000 which is considerably less than the proposal by Arizona Public Service Company.

Citizens Utilities has expressed their interest in serving the load but they would be faced with similar problems in the Mohave Electric Cooperative, Arizona Public Service franchise areas. However, they are still willing to submit a proposal.

Since the Indian tribes and reservations are not bound by decisions of the Corporation Commission they have several alternatives open to them.

1. Finance through R.E.A. to build, maintain, and operate their own system through a tribally owned utility.

2. Pass a resolution and petition the State of Arizona through the Corporation Commission to have one of the three utilities serve the reservation on a <u>least cost basis</u>.

3. Wait for BIA funding to build the facilities and take service from Mohave Electric Cooperative on a primary meter basis at Route 66.

It is recommended that the initial course of action be alternate #2 since it would provide the most reliable service at the least first cost to the Government.

It should be pointed out that the item placed in the construction budget in the amount of $50,000 is only a temporary measure to provide electric service to the Supai Village.

Victor E. Lund
General Engineer, PAO

Refers to small generating plant which is now
hwy Mesa

MEC SOF EXH 22

Hualapai Tribal Utility Project

DOE First Steps Program

Jack Ehrhardt -
Hualapai Planning Director

WHO WE ARE

- ~1 MILLION ACRES IN NW ARIZONA
- 108 MILES OF THE GRAND CANYON
- 2500 Members
- Peach Springs Community
- ~240 electric customers

ECONOMIC SITUATION

- Very Rural- Little opportunity for commercial development
- Route 66 passes through Peach Springs
- River Runners Tourism Enterprise
- Hualapai Lodge
- Grand Canyon West Tourism Enterprise
- Hunting and Fishing
- Timber

Energy Situation

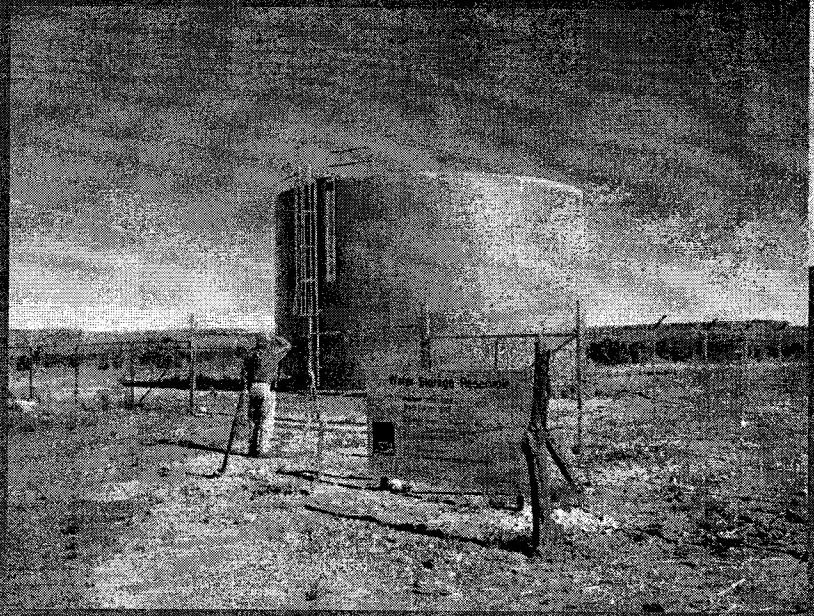
- Mohave Electric Serves Hualapai
- 75-mile Powerline to Havasupai - BIA
- No Power at Grand Canyon West
- No Power to most of Reservation
- WAPA Allocation Sold to NTUA
- Electric Load ~ 800 kilowatts
- Energy Resources:
  - Solar
  - Wind

Energy Projects

- Earthship - Natural Resources Office
  - Passive Solar
  - Photovoltaics
  - Water Conservation

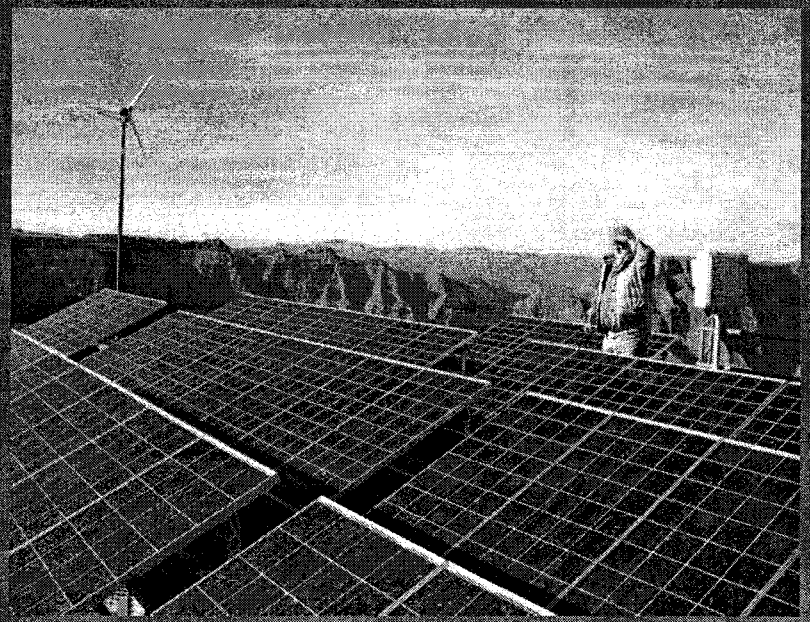
Solar Water Pipeline

- Water for Grand Canyon West
- 26 Miles
- Upgrade Underway



Guano Point

- 2.5 kilowatts for lights, appliances, and evap cooling



Energy Projects

- USDA-RUS High Energy Cost Rural Communities
  - Grand Canyon West Power Project
- BIA Mineral Assessment Program
  - Wind Assessment
- DOE First Steps Toward Renewables Development on Tribal Lands
  - Tribal Utility Feasibility Study

GCW Power Project

- $2 Million Grant - Rural Utilities Service
- 12 kV underground power distribution system
- Solar Hybrid Power Plant
  - Photovoltaics or Thermal
  - Bio-diesel Backup
  - Wind
- RFP for Design-Build is out - due 10-25

BIA Wind Assessment

- DOE 20-meter tower at Peach Springs
  - Community Power Project
  - Low Class 3
- BIA 50-meter assessments
  - Peach Springs - Community Power - 2-5 MW
  - Blue Mountain - Wind Farm 5-10 MW
  - Grand Canyon West - Integration with Solar Hybrid system
  - Wind Energy Marketing to Arizona Power Authority, State Facilities, WAPA, APS, Others

Tribal Utility

- DOE First Steps
  - Feasibility of Tribal utility to operate power system at Grand Canyon West
  - Feasibility of tribal take-over of Reservation utility system

Grand Canyon West

2003 Land Use Plan - Summary

GCW DESTINATION RESORT
The 375-room Resort will offer a variety of recreational facilities, a restaurant, conference capacity, and sports amenities. It is aimed at capturing a greater market share of overnight Grand Canyon travel.

NEW AIRPORT TERMINAL
The New Terminal will be funded by the FAA. Public areas include a staging area, food court, cultural center, theater, gift shop, and ER station. Non-public areas will include air terminal operations and central parking.

CORPORATE CONFERENCE
The Corporate Conference Center will be located near the New Airport Terminal. This Center is aimed at capturing business from over 4 million trade show attendees that visit Las Vegas annually.

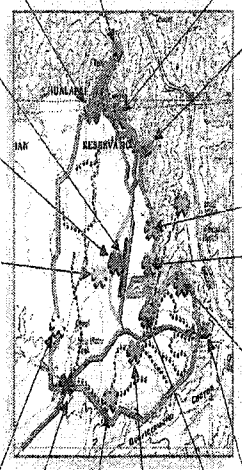
GRAND CANYON GOLF COURSE
It is anticipated that a designer of international prominence will create this signature golf course. This unique course has been planned to work in conjunction with corporate groups utilizing the Conference Center.

SHUTTLE SYSTEM
All visitors arriving at GCW via car, bus or air, will converge at the Air Terminal. From this location, a looped shuttle system will transport visitors to any of the locations within GCW. Specialty buses will also be utilized.

RESIDENTIAL COMMUNITY
A sense of community will be developed at GCW for employees and their families. Over 35 homesites and 96 apartment units will be established, as well as a community center, parks, and public services.

GCW ENTRANCE/RETAIL
The entrance to GCW will incorporate a gas and convenience store, retail shopping, gate control and parking. Visitors of GCW, either arriving or departing, will be able to diversify their experience as they stop and shop.

GUANO POINT
Guano Point is one of GCW's three primary vistas. It offers dramatic 360 degree panoramas of the North Rim and the Colorado River.



RV PARK
The RV Park will provide 150 lots for overnight travelers. It occupies a private and isolated portion of GCW.

CAMPSITE & HIKING TRAILS
Overnight campers and hikers will enjoy the breathtaking scenery of GCW.

AMPHITHEATER AT THE RIM
The Amphitheater is planned as a remote rim development and will host musical performances, corporate presentations, and special events. It will be located at the rim and affords guests an incredible view.

EAGLE POINT
Named after a rock formation that resembles an eagle in flight, this site will host a Glass Walkway, an Eagle Point facility, and an Indian Village that celebrates Native American architecture.

HEALTH & WELLNESS SPA
The wellness spa is planned as a rim development and promotes GCW as a place of natural healing and scenic wonder. The spa will feature a wellness program designed by an internationally-acclaimed spa expert.

RETREAT CLUSTERS
Retreat cluster lodging provides a versatile alternative to the Destination Resort. Clusters of private units will be built at the rim, and utilized for special interests such as family gatherings, weddings, company retreats etc.

RIM DEVELOPMENT (tbd)
A location at the rim has been selected for a potential development, yet to be determined. The site is remote, with full visual access to the Inner Canyon. A variety of development strategies may be considered.

QUARTERMASTER VIEWPOINT
Quartermaster, like Guano and Eagle Point, is a primary viewpoint at GCW. The site overlooks a dramatic bend in the Colorado River near River Mile 265.

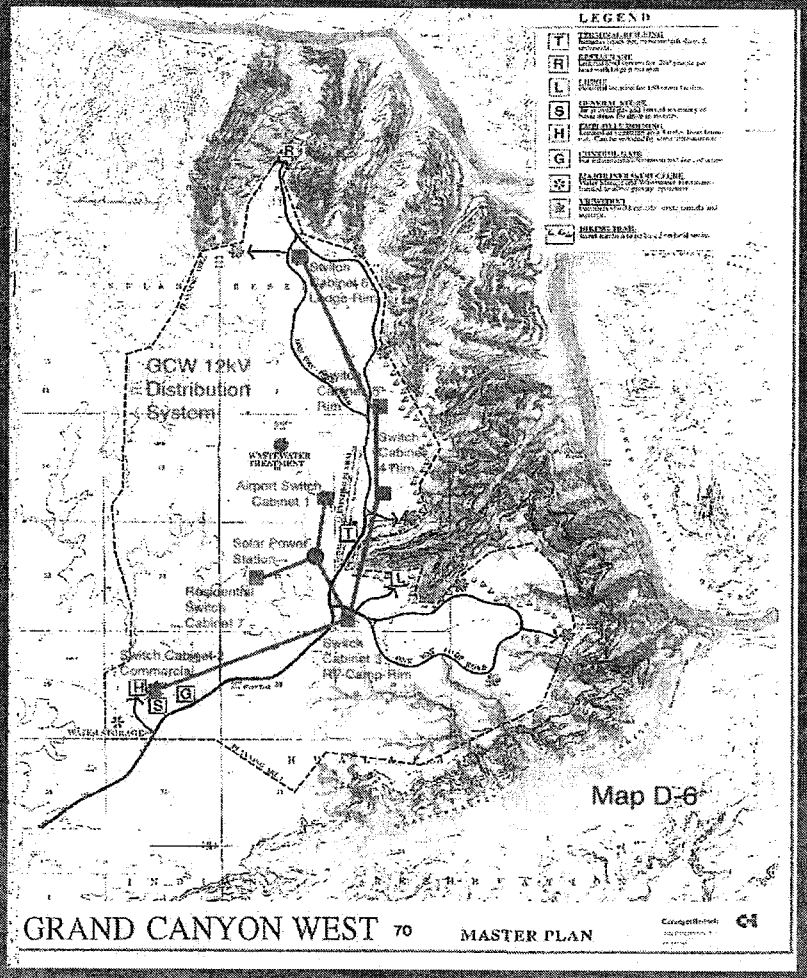
TRAMWAY OPERATION
The Tramway Operation will provide a passive connection between the rim and the river, offering guests an intimate view of the Inner Canyon. It will also support the lifting of Havasupai River Running guests out of the Inner Canyon for return travel connections.

Map D4

- Currently 150,00 tourists annually
- 9000 acre development
- No Overnight accommodations
- Diesel Gensets

GCW Power Project

- 5 miles of 12kV Underground Distribution Mini-grid
- Solar Hybrid Power System
  - PV or Thermal
  - Wind
  - Bio Diesel
  - Hydrogen



Tribal Utility GCW

- Feasibility Study
  - Organizational Options
  - Operate and Maintain GCW Power System
  - Sell Power to Grand Canyon Resort Corporation
  - Provide expansion
  - Showcase advanced renewables technology in a pristine international setting
- Implementation Plan

System Takeover

- Feasibility study for take over of Reservation electric service
  - System condition and value study
    - Relation to Havasupai
  - Power Resources
    - WAPA Allocation
    - Purchase Power
    - Wind
  - Organizational Options
  - Rates and Policies
  - Implementation Plan

Project Team

- Jack Ehrhardt - Infrastructure planning
- Leonard Gold - Utility Options and Rates
- Ken Saline - Local Utility Interface
- Dean Suagee - Culture and Sustainability
- Mark Randall - GCW Coordination
- Tribal Environmental Review Commission - Oversight

MEC SOF EXH 23

Plant Management

November 21, 1973

Memorandum

To: Robert A. Dudley, Acting Chief,
Division of Facilities Engineering

From: Area Director

Subject: Special Appropriation Supai Power System

At the present time, electric energy is supplied to the Havasupai Indian Reservation at the bottom of the Grand Canyon by means of a diesel generating station and an overhead-underground electric distribution system owned and is operated by the Bureau of Indian Affairs.

The diesel generating plant is located at Long Mesa overlooking the Supai Village. It is approximately seventy miles from Route 66 the nearest major highway. The plant was designed to supply a maximum of 450 KVA with four generating units of 150 KVA each. One unit is used as standby during peak load operations. Due to the remote location and the poor road system, supply of diesel fuel and other items is a considerable burden on the Truxton Canon Agency. Diesel operators for the plant are almost non-existant due to the reluctance of people living in a remote area.

Diesel fuel for the plant is purchased in Kingman, Arizona in 5,000 gallon tankers and is transported a distance of 120 miles to the plant site by bureau owned vehicles. Cost of fuel and operations is considerable because of the factors mentioned above.

It is estimated that with the increase in electric energy required by the building project in Supai (50 new all electric homes) the peak of 450 KVA will be reached in the winter of 1975. This will require a selection of one of several options to continue

to supply the electric energy required for the Havasupai Reservation. These are as follows:

1. Increase plant capacity - by adding additional building area, new generators, increased step-up transformer capacity (2400 delta to 2410/4160 wye) $150,000

2. Bureau of Indian Affairs to construct 70 miles of overhead electric distribution facilities from Mohave Electric Cooperative, Inc. electric facilities to Long Mesa. Estimated 1975 cost $700,000

3. Mohave Electric Cooperative, Inc. to construct the overhead distribution line by an REA loan at low interest rate. Low interest rate is available in special instances. Estimated 1975 $700,000

Option No. 1 although the least expensive has several disadvantages - there are still maintenance and operating problems. Diesel fuel is getting to be prohibitive in cost resulting in extremely high annual expenditures. Damage to the plant by fire is extremely high due to none availability of fire fighting equipment and water. Fuel oil will be in critical shortage due to the current energy crisis. Roads are impassible in bad weather for as long as two months making fuel deliveries and maintenance problems critical.

Option No. 2 will put the Bureau in the power business which is inadviseable since we would require additional operating and maintenance personnel unless the system is sold to a utility.

Option No. 3 is the most adviseable since the local power utility has agreed to install the power line if REA funds at low interest become available. They would require a minimum annual charge to cover their costs of annual operations and maintenance, energy charges plus a return on investment.

It should be noted that Options Nos. 2 and 3 have the additional advantage of supplying electric energy to the Hualapai Reservation which will result in developing the reservation for tribal enterprises.

Many reports and memorandums have been written regarding supply of electric power to the Hualapai and Havasupai Reservations. Previous requests have been made to construct the power line and the item has been placed on the Major Alteration and Improvement backlog.

It is estimated that if funds should become available as early as 1975 it will take at least two years to design and construct the

line. Thus the plant will be in a critical operating period for at least two years with the present equipment.

It is requested that consideration be given to make funds available for constructing the electric overhead power line in the amount of $700,000 by means of a special appropriation or a REA low interest loan to the Mohave Electric Cooperative, Inc. Kingman, Arizona.

/Sgd/ Curtis Gologanoh
Assistant Area Director

SURNAME

cc: Supt., Truxton Canon Agency
Mohave Electric Cooperative, Inc.

VLund:sji

Fite		McCausland	
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Kenimer		Gardiner	
Rogge		Invocato	
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Plant Management

February 12, 1974

Mr. A. Carpenter
General Manager
Mohave Electric Cooperative, Inc.
P.O. Box 711
Kingman, Arizona 86401

Dear Mr. Carpenter:

This is in regard to load data on the Long Mesa Generating Plant that may be required for your feasibility study for serving the Havasupai-Hualapai Reservations. The data was obtained for a 30-day period from January 7 - February 5, 1974.

Total KWH consumption	187,733
KWH/day	6,258
Peak load KW	450

Data taken for the 30-day period, January - February 1974, would apply for five (5) months of the year (November - March). Estimated average loading for the seven (7) month period (April - October) is approximately two-thirds (2/3) of the load data given.

Scheduled Additions

12 houses	All electric		1974
13 houses	"	"	1974 - 1975
Store-P.O. Complex	"	"	1974 - 1975
New Supai School - 4 classrooms	"	"	1976 - 1977
New Quarters - 1 duplex	"	"	1976 - 1977

Estimated peak load 1977 (Havasupai) 800 KW

If there is any additional information that you might require, please contact this office.

John B. Bartlay
ACTING ASST Area Director

cc: Trux, Canon

VLund:nc

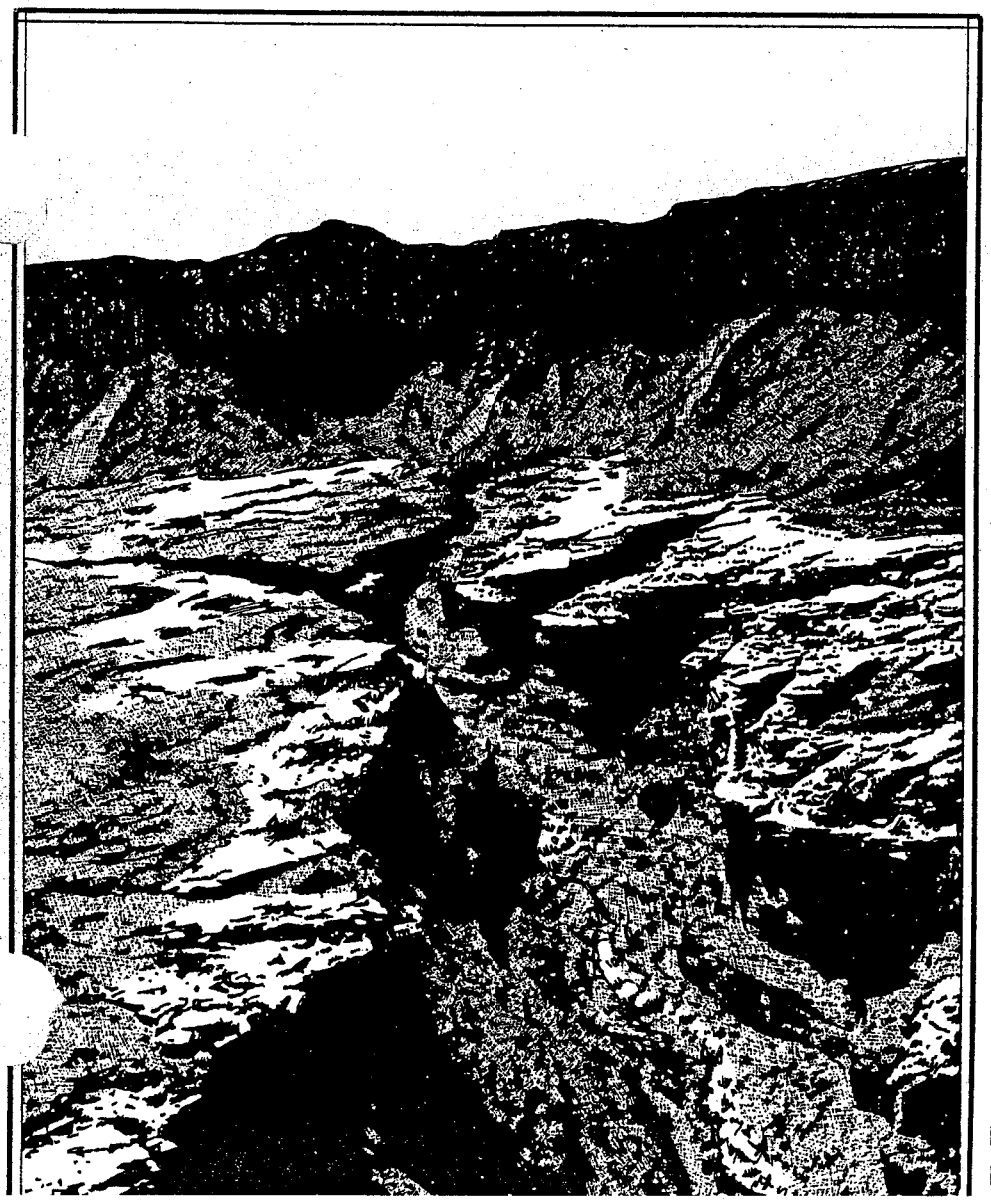
MEC SOF EXH 24

DRAFT ENVIRONMENTAL STATEMENT

INT DES 79-42

THE SECRETARIAL LAND USE PLAN FOR THE ADDITION TO THE

HAVASUPAI INDIAN RESERVATION



DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

DRAFT

ENVIRONMENTAL STATEMENT

INT DES 79-42

THE SECRETARIAL LAND USE PLAN FOR THE ADDITION TO THE HAVASUPAI INDIAN RESERVATION

Prepared By
U.S. Department of the Interior
Bureau of Indian Affairs
Phoenix Area Office

With the Assistance of

Office of Arid Lands Studies
University of Arizona, Tucson

Date 26 JUL 1979

Acting Ass't Area Director
Phoenix Area Office
Bureau of Indian Affairs
Department of the Interior

(X) Draft ( ) Final Environmental Statement

Department of the Interior, Bureau of Indian Affairs, Phoenix Area Office

1. Type of Action: (X) Administrative ( ) Legislative

2. Brief Description of Action: Public Law 93-620 provides for an 185,000 acre addition to the Havasupai Indian Reservation in northern Arizona. In accordance with this law the Secretarial Land Use Plan for the Addition to the Havasupai Indian Reservation was filed in 1975. This plan includes 20 divisions, each addressing a separate type of action for developing or preserving the reservation addition.

3. Summary of Environmental Impact and Adverse Environmental Effects: Primary impacts center around the possibility of the increased soil erosion which may be associated with a few of the development projects (e.g. agriculture and grazing), as well as the potential for destruction of archaeological sites. The latter are especially threatened by the location of particular campsites. In addition, several important social/economic impacts, most of them positive, should result from implementation of the plan. Similarly, other types of impact may be produced, depending on the time framework and scale of execution of various parts of the plan.

4. Alternatives Considered:
   A. No Action

5. Comments Have Been Requested From the Following:

Federal
- Dept. of Agriculture
- Dept. of Defense
  - Corps of Engineers
- Dept. of Health, Education & Welfare
  - Public Health Service
    - Indian Health Service
- Dept. of Housing & Urban Development
- Dept. of Transportation
- Advisory Council on Historic Preservation
- Environmental Protection Agency
- Dept. of Interior
  - Bureau of Land Management
  - Bureau of Mines
  - Heritage Conservation & Recreation Service
  - Bureau of Reclamation
  - Fish & Wildlife Service
  - Geological Survey
  - Mining Enforcement & Safety Administration
  - National Park Service

State
- State Historic Preservation Officer, Arizona
- Arizona State Museum, Tucson, Arizona
- Arizona State Clearinghouse

Other
- The Havasupai Tribe of Arizona
- The Hualapai Tribe of Arizona
- University of Arizona, Office of Arid Land Studies

6. Date Statement Made Available to CEQ and the Public: Draft: 26 JUL 1979
   Final:

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CHAPTER I

DESCRIPTION OF THE PROPOSED ACTION

I. DESCRIPTION OF THE PROPOSED ACTION

PUBLIC LAW 93-620

On January 3, 1975 Public Law 93-620 was signed providing for an enlargement of Grand Canyon National Park, as well as the adjacent Havasupai Indian Reservation. The Reservation formerly consisted of 518.6 acres at the bottom of the Havasu Canyon, and a 2,540 acre parcel of largely unused canyon bottom land in Cataract Canyon. Public Law 93-620 added approximately 185,000 acres to the Reservation in addition to 95,300 acres within Grand Canyon National Park which were designated as a permanent traditional use area of the Havasupai Tribe. Principal portions of Public Law 93-620 which pertain to the Havasupai Indian Reservation are as follows:

SEC.10 (a) For the purpose of enabling the tribe of Indians known as the Havasupai Indians of Arizona (hereinafter referred to as the "tribe") to improve the social, cultural, and economic life of its members, the lands generally depicted as the "Havasupai Reservation Addition" on the map described in section 3 of this Act, and consisting of approximately one hundred and eighty-five thousand acres of land and any improvements thereon, are hereby declared to be held by the United States in trust for the Havasupai Tribe. Such map, which shall delineate a boundary line generally one-fourth of a mile from the rim of the outer gorge of the Grand Canyon of the Colorado River and shall traverse Havasu Creek from a point on the rim at Yumtheska Point to Beaver Falls to a point on the rim at Ukwalla Point, shall be on file and available for public inspection in the Offices of the Secretary, Department of the Interior, Washington, District of Columbia.

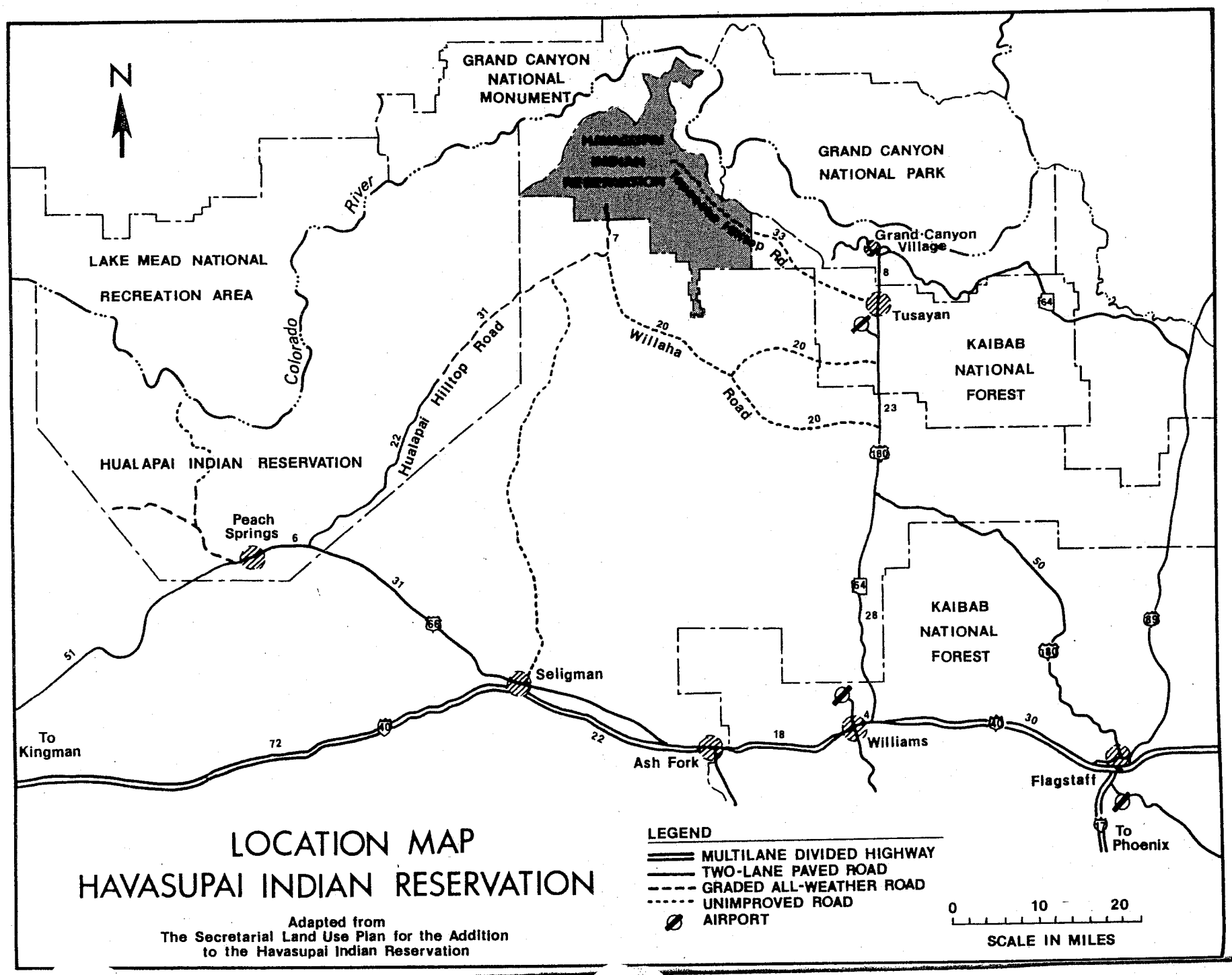
(b) The lands held in trust pursuant to this section shall be included in the Havasupai Reservation, and shall be administered under the laws and regulations applicable to other trust Indian lands: *Provided*, That—

(1) the lands may be used for traditional purposes, including religious purposes and the gathering of, or hunting for, wild or native foods, materials for paints and medicines;

(2) the lands shall be available for use by the Havasupai Tribe for agricultural and grazing purposes, subject to the ability of such lands to sustain such use as determined by the Secretary;

(3) any areas historically used as burial grounds may continue to be so used;

(4) a study shall be made by the Secretary, in consultation with the Havasupai Tribal Council, to develop a plan for the use of this land by the tribe which shall include the selection of areas which may be used for residential, educational, and other community purposes for members of the tribe and which shall not be inconsistent with, or detract from, park uses and values; *Provided further,* That before being implemented by the Secretary,



LOCATION MAP
HAVASUPAI INDIAN RESERVATION

Adapted from
The Secretarial Land Use Plan for the Addition
to the Havasupai Indian Reservation

Fig. I-1

such plan shall be made available through his offices for public review and comment, shall be subject to public hearings, and shall be transmitted, together with a complete transcript of the hearings, at least 90 days prior to implementation, to the Committees on Interior and Insular Affairs of the United States Congress; and Provided further, that any subsequent revisions of this plan shall be subject to the same procedures as set forth in this paragraph;

(5) no commercial timber production, no commercial mining or mineral production, and no commercial or industrial development shall be permitted on such lands: Provided further, that the Secretary may authorize the establishment of such tribal small business enterprises as he deems advisable to meet the needs of the tribe which are in accordance with the plan provided in paragraph (4) of this section;

(6) nonmembers of the tribe shall be permitted to have access across such lands at locations established by the Secretary in consultation with the Tribal Council in order to visit adjacent parklands, and with the consent of the tribe, may be permitted (i) to enter and temporarily utilize lands within the reservation in accordance with the approved land use plan described in paragraph (4) of this section for recreation purposes or (ii) to purchase licenses from the tribe to hunt on reservation lands subject to limitations and regulations imposed by the Secretary of the Interior; and

(7) except for the uses permitted in paragraphs 1 through 6 of this section, the lands hereby transferred to the tribe shall remain forever wild and no uses shall be permitted under the plan which detract from the existing scenic and natural values of such lands.

(c) The Secretary shall be responsible for the establishment and maintenance of conservation measures for these lands, including, without limitation, protection from fire, disease, insects, or trespass and reasonable prevention or elimination of erosion, damaging land use, overgrazing or pollution. The Secretary of the Interior is authorized to contract with the Secretary of Agriculture for any services or materials deemed necessary to institute or carry out any such measures. Any authorized Federal programs available to any other Indian tribes to enhance their social, cultural, and economic well-being shall be deemed available to the tribe on these lands so long as such programs or projects are consistent with the purposes of this Act. For these purposes, and for the purpose of managing and preserving the resources of the Grand Canyon National Park, the Secretary shall have the right of access to any lands hereby included in the Havasupai Reservation. Nothing in this Act shall be construed to prohibit access by any members of the tribe to any sacred or religious places or burial grounds, native foods, paints, materials, and medicines located on public lands not otherwise covered in this Act.

(d) The Secretary shall permit any person presently exercising grazing privileges pursuant to Federal permit or lease in that part of the Kaibab National Forest designed as the "Raintank Allotment", and which is included in the Havasupai Reservation by this section, to continue in the exercise thereof, but no permit or renewal shall be extended beyond the period ending ten years from the date of enactment of this Act, at which

time (1985) all rights of use and occupancy of the lands (15,000 acres) will be transferred to the tribe subject to the same terms and conditions as the other lands included in the reservation in paragraph (b) of this section.

(e) The Secretary, subject to such reasonable regulations as he may prescribe to protect the scenic, natural, and wildlife values thereof, shall permit the tribe to use lands within the Grand Canyon National Park which are designated as "Havasupai Use Lands" on the Grand Canyon National Park boundary map described in section 3 of this Act, and consisting of approximately ninety-five thousand three hundred acres of land, for grazing and other traditional purposes.

(f) By the enactment of this Act, the Congress recognizes and declares that all right, title, and interest in any lands not otherwise declared to be held in trust for the Havasupai Tribe or otherwise covered by this Act is extinguished. Section 3 of the Act of February 26, 1919 (40 Stat. 1177; 16 U.S.C. 223), is hereby repealed.

The study prescribed in paragraph (4) in the subsection of the Law was completed in 1976, and was entitled Havasupai Plan: The Secretarial Land Use Plan for the Addition to the Havasupai Indian Reservation. This environmental impact statement (EIS) is designed to assess the environmental effects on the Havasupai Indian Reservation and adjacent lands which will result from implementation of the Land Use Plan. This statement is in compliance with Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, and with Bureau of Indian Affairs guidelines (30 BIAM, Supplement 1 of Bureau of Indian Affairs Manual).

PROPOSED ACTION

The Havasupai Indian Reservation lies adjacent to the Grand Canyon National Park in northwestern Arizona. The Reservation is situated to the south and west of the Park, while the Hualapai Indian Reservation lies to the west and the Kaibab National Forest to the east. The Land Use Plan, again, applies to the entire 185,000 acre addition to the Reservation. The area around Supai Village in Havasu Canyon which was included in the pre-1975 boundaries, falls under separate land use planning arrangements, not to be considered in this statement.

There are 20 divisions and a general statement in the Secretarial Land Use Plan, each encompassing a separate prepared action. The plan, in its entirety, is as follows:

This plan includes 20 divisions, each addressing a separate type of action for developing or preserving the reservation addition. These divisions include: Agriculture, Cultural Resources, Domestic Water, Energy, Fencing, Grazing, Law Enforcement, Residence, Revegetation, Stock Water Development, Support Facilities, Transportation and Communications, Flight Restrictions, Public Access to Adjacent National Park Lands, Roads, Telephone and Radio, Trails, Visitor Use, Waste Management, and Wildlife Management (refer to plan map inside back cover).

LAND USE PLAN FOR ADDITION TO HAVASUPAI INDIAN RESERVATION

The following sections describe the development options as contained in the Havasupai Land Use Plan. Except for minor changes in the interest of clarity, the language and narrative is that of the Land Use Plan to which subsequent chapters of this statement are addressed.

General

It is evident that the Grand Canyon and Havasu Creek are unmatched for their beauty. The Havasupai people have always admired their homeland and deeply lament misguided efforts to develop or alter it. For decades they feared the commercial developments of the South Rim (hotels, lodges, etc) would be brought farther westward, toward Havasu Canyon, and that they would be unable to prevent it. Now, however, Congress has placed 185,000 acres between Havasu Canyon and Grand Canyon Village in the hands of the Havasupai and they feel the integrity of these lands is assured under their protection.

Agriculture

The Havasupai Tribal Council designated approximately 6700-plus acres of Pasture Wash as a gardening area. This area lies near the southwest corner of the Reservation and is split from the area in Pasture Wash to the north which is designated in the Land Use Plan as a residential settlement area. Here the Havasupai people historically carried on Hopi-style dry gardening into the 1950's. This land will be designated as agricultural in order that the Tribal Council may make provisions for those members of the Tribe who desire to garden this area again. The Havasupai Tribal Council will develop a land use code to govern both individual and tribal farming in the area, as well as small personal garden plots anywhere on the reservation but will primarily be located on the downhill side of earthen catchment dams for stock water.

Such crops as potatoes, beans, and some types of corn may be grown on the upper reservation by using the seasonal rainfall of late summer. Artificial irrigation methods are not anticipated due to a lack of water supply. Such small scale gardening will necessitate the erection of small fences to protect the crops from animals. The major part of Havasupai farming will continue to be located in Havasu Canyon (one-eighth to one-quarter acre per household in Supai).

Cultural Resources

Confirmation of Havasupai title to these lands provides tribal protection to the numerous archaeological sites on the reservation, which shed much light on the early life of the Havasupai and their Cohonina ancestors, and on that of the neighboring Anasazi and the earlier Desert Culture. The Havasupai will neither allow building upon or destruction of such sites.

Any cataloging of archaeological and cultural resources will be carried out under Tribal auspices and would be kept confidential to protect the sites. Such cataloging would be made available to the Secretary only to assure that they are being protected; it would not be made available for research purposes except with the specific, written permission of the Havasupai Tribal Council.

Domestic Water

The lands surrounding Havasu Canyon and its tributaries are arid, semi-desert uplands. Water has always presented the major problem in utilizing these lands. Providing domestic water occupies a place of very high priority in the Havasupai Plan.

In years past, individual Havasupai families gathered and melted snow, hauled water on horseback from lower springs and caught rain water from their cabin roofs to support wintertime life on the uplands. During the drier summer months they returned to the well-watered lower elevations of Havasu Canyon and several other springs to the east of this. The Havasupai will continue to follow these practices for the provision of domestic water and will probably have success in years of normal precipitation. Atmospheric water is undependable, however, and the Havasupai feel they must investigate other alternatives also.

One alternative would be the location of underground water sources for domestic use. Preliminary surveys indicate only a 25 percent probability of locating even minor underground sources.* The general trend of underlying strata on the Havasupai Reservation is into Havasu Canyon, which drains these strata and makes location of any underground water unlikely. Only the extreme eastern portion of the reservation lies outside the immediate Havasu drainage basin; on this area the major trend of the strata is a slight southerly dip. It appears the likeliest locations of pooled underground water will be somewhere in the Pasture Wash area or toward the southeastern boundary of the reservation in the vicinity of Rock Tank.

Within a short distance of the Grand Canyon's rim on the north boundary of the reservation, the presence of springs below the rim of the canyon indicates the presence of minor, northerly-flowing aquifers and a short, northerly-dipping geology. As a second alternative, the Tribe will investigate the possibility of tapping these aquifers without significantly interfering with existing springs below the upper rim along the northern boundary of the reservation.

*E. G. DeWilde, Jr., "Preliminary Report on Water Availability for the Havasupai Reservation Expansion," February 1975.

W. J. Breed, G. Billingsley, and S. Imsland, "A Preliminary Survey of the Ground Water of the Havasupai Reservation, Coconino County, Arizona, June 10, 1975.

A third alternative for supplying domestic water would be to tap the abundant resources of Havasu Canyon. Havasu Creek's output varies neither seasonally or annually. Getting a fraction of its water back to the uplands would be an expensive but possible proposition, comparative in scope to the transmission of water from the North Rim of the Colorado River to Grand Canyon Village on the South Rim.

A fourth alternative might be to treat stock water from cattle tanks and trick tanks with alum and chlorine to render it suitable for human consumption.

Of the alternatives discussed, the Havasupai consider the possibility of tapping northerly-flowing aquifers as the most viable. A second priority in terms of the action plan, would be to explore likely underground sources more completely to assess the amount of domestic water potentially available in the Pasture Wash and Rock Tank area.

Energy

In past years, Havasupai families utilized dead pinyon and junipers for heating and cooking fuel; this process will continue on all parts of the reservation. However, dependable sources of electricity are desirable at several locations outside Havasu Canyon for domestic use, water distribution, and for operation of a clinic or school.

One expensive but possible solution for supplying this energy would be with small, local generators such as the Havasupai Tribe presently operates for supplying power to Havasu Canyon. Such stations could be constructed elsewhere to supply the upper portions of the reservation.

Another possibility which has been under investigation for the past five years is the installation of a powerline from a commercial supplier. The line would probably run across the Hualapai Reservation and onto the Havasupai Reservation from the southwest and connect with the powerlines at Long Mesa. A spur line would run to Hualapai Hilltop. This alternative appears far more acceptable than the use of several local stations, for it permits a higher available output to the users at a lower final cost; it would also avoid the noise and service requirements of small, local stations.

The barrier of Havasu Canyon makes it unlikely that a powerline supplying the western half of the reservation would be available to the eastern half. Therefore, the Tribe would investigate the extension of a spur line from a commercial source to Pasture Wash, Topocoba Hilltop (and possible Moqui Tank at some future date). The nearest commercial source is Arizona Public Service located on the South Rim of the Grand Canyon.

The Tribe also wishes to investigate the feasibility of using wind and solar energy. The technology for low-profile wind generators for individual family units exists and is rapidly improving. The Tribe will also look into

the use of individual and solar power units. Wind and solar power would allow the location of communities and homes independent of the need to transmit power to them over a distance.

Fencing

The Havasupai Tribe anticipates retaining the approximate 15,000 acres of Pasture Wash between the Havasupai Drift Fence and the east reservation boundary as a separate multiple purpose unit, maintaining the Havasupai Drift Fence as a cross fence.

Other cross fencing will begin at canyon heads within the 15,000 acres and either meet the reservation boundary fence or cross the shortest distance to another canyon head in order to minimize the erection of fences in the area. All fences, to the extent possible, will be constructed to permit the passage of wildlife while regulating the movement of livestock.

The extreme eastern portion of the Havasupai Reservation presently forms a portion of the Rain Tank allotment which is under grazing permit to a private rancher until January 2, 1985, unless it is voluntarily relinquished. The Havasupai Tribal Council will be engaged in efforts to negotiate such a relinquishment to the satisfaction of everyone concerned at the earliest possible date so that they may fence this boundary completely and restore the area to the complete use of the Havasupai people and to prevent loss of Havasupai livestock and trespass.

Because of the oblique terrain of the Canyon, and the staggered boundary line location at some isolated areas of the Havasupai Reservation Addition, it is impossible to carry out straight line fencing. Convenience fences will follow the contour of the Canyon so that full use may be made of the land base by the Tribe and its neighbors.

Grazing

The Havasupai Tribe recognizes that the lands included in their reservation are presently marginal for grazing purposes. However, they need to make every reasonable use of these lands to support their livestock.

There is every reason to believe (Report 2210) the lands of the upper reservation could safely support productive increases in both water storage capacity and available forage for livestock production.* Therefore, it is planned that all suitable areas (98,148 acres) of the upper reservation will be subject to controlled livestock grazing, being broken into grazing districts; the boundaries of these districts shall follow natural boundaries as much as possible. Approximately seven miles of fencing will be required where no natural boundaries exist.

*See Report 2210, "Management Plan Havasupai Allotment," Kaibab National Forest and Grand Canyon National Park, undated (prepared approximately 1968).

The Havasupai Tribal Council will develop and implement a grazing plan. When sufficient stock water is available, they will separate the cattle and horses and manage them separately; their intention is to manage both herds as Tribal units, though animals may be individually owned in these Tribal herds. Such Tribal control of grazing and watering patterns will prevent haphazard use of the range with possible degradation and will also control the number of animals allowed on the range and their location.

The Havasupai people have long shown a distinct preference for the cow-calf type grazing operation, but ranching practices in similar areas indicate that a yearling type operation might also succeed well in such rough terrain. Forage for livestock is more abundant during certain seasons. The Tribe will purchase calves for grazing during such periods with a complete round-up and sale at the end of these periods. This would take advantage of seasonal forage while protecting parts of the range from year-long exposure to grazing. Certain breeds or cross-breeds of livestock not presently used will be examined also for their special suitability to this range.

Law Enforcement

In the past, enforcement of littering and defacement regulations has been all but impossible on the Havasupai Reservation, due to the failure of the Havasupai law code to apply to non-Indians. The Havasupai Tribal Council is presently in the process of revising the Civil code so it applies to all persons within the Havasupai Reservation. Enforcing this code will necessitate the stationing of several Havasupai enforcement officers or rangers where they can monitor access and be easily available to others. Cooperative enforcement will be worked out between the Tribe and National Park Service for management and enforcement on the Havasupai Traditional Use Area.

Residence

Traditionally, the Havasupai people lived outside Havasu Canyon during the winter months from October to March. They anticipate that families will return to this pattern; additionally, some families may elect to establish permanent residence on the upper reservation.

At present the Havasupai Tribe includes approximately sixty families, of which many have expressed the desire to live in individually isolated locations on all parts of the upper reservation. Their homes would be self-constructed or cooperatively built cabins or traditional earth-covered log houses and wickiups.

The eventual formation of small settlements and groups of homes in several areas is anticipated. The Havasupai have designated four residential areas for this purpose; these are Pasture Wash, the south boundary of the reservation directly south of Hualapai Hilltop, Moqui Tank, and the area just east of Topocoba Hilltop, all of which are shown on the Land Use Plan Map. The boundaries of these areas are fairly approximate, and their designation is not a statement that groups of houses will be placed on any of them; it is merely a guarantee that settlements of homes will not be

permitted to develop outside these designated areas. The Havasupai do not envision tract-type housing on any part of the upper reservation. In addition, the tribe will develop an ordinance to govern proper disposal of refuse and waste for all parts of the reservation.

Revegetation

Annual assessments will be made by the Bureau of Indian Affairs Agency Superintendent, pursuant to Section 10(b) and 10(c) of P.L. 93-620 and 25 CFR 151, of the forage, range conditions, and water availability in relation to the livestock and wild game birds to establish and maintain a stable balance and prevent any degradation of the area. Game and livestock herd levels will be adjusted to the prevailing range condition.

Where it is feasible and seems justified, the Havasupai Tribe wishes to improve the forage situation. In some places the infiltration of woody and less desirable species and the spread of junipers has degraded the available range, promoted serious erosion, and nearly eliminated certain native grasses. Where juniper removal is carried out, it will be preceded by an archaeological and cultural resources inventory of the area. The removal will be in well-watered locations, such as the bottom of washes, where immediate reseeding to productive grasses would be most successful. Removal of plant species from an area should be carried out only if it can be demonstrated that these species are detrimental to the area and removal would result in an improvement of the range, forage, and wildlife.

The Havasupai Tribe intends to restore certain food plants, for example, wild oat (Avena fatua) and Whitestem Stickleaf (Metzelia Albicaulis) that have become relatively scarce on the upper reservation; such plants could be reintroduced in areas protected from livestock grazing or in areas unsuitable for grazing but well suited to the growth of the food plant. Areas considered suitable for reintroduction include Tenderfoot Mesa and the Great Thumb.

A recent examination of natural forage on the Great Thumb Mesa area has shown it to be surprisingly productive of nourishing grasses, more so than any other area of the reservation. For this reason, it is important to protect this naturally productive area from degradation so that it may continue as a stable, producing source of forage for the livestock and wildlife of the region. The Great Thumb Mesa holds special significance to the Havasupai people who wish to maintain this area as undisturbed as possible.

Stock Water Development

The need for adequate and permanent stock water on the Havasupai Reservation is apparent, and its development will benefit both Havasupai stock and wildlife of the area.

The Havasupai envision that stock water development will consist primarily of improving the existing 25 earthen catchment tanks and building 2-3 additional tanks on Tenderfoot Mesa. The Havasupai Tribal Council also hopes to include exploration for stock water from drilled wells and limited spring development. An option available to the tribe is the use of "trick tanks" with which an artificial drainage is created

such as metal or concrete and allowed to flow into a closed tank to minimize evaporation. Water lots will be constructed around water and will be used rotationally as water is available.

The Great Thumb Mesa will be designated as a special grazing zone wherein water developments will be limited to repair and improvement of the existing six water catchment reservoirs and natural catchment basins.

Support Facilities

Support facilities for the four residential areas will be developed as needed and resources become available. The first area with sufficient residents to warrant health treatment facilities would be scheduled to have it located there; other areas could then draw upon these. Inasmuch as the residential area south of Hualapai Hilltop is separated from the other three by Havasu Canyon, it will be necessary to locate separate emergency treatment facilities there.

At present, Havasupai children attend school 300 miles and more away from home after the sixth grade. The Havasupai people wish to set aside a school site on the upper reservation; the Pasture Wash area will be the location of this site. This area is expected to bear the greatest concentration of Havasupai families and lies closest to the school system at Grand Canyon, where the Havasupai hope to send their high school children. Eventually, it should become possible for all Havasupai children to attend school close to home, whether this is on the upper or lower reservation.

As the residential areas develop, the need for commercial facilities will become apparent. These facilities will be located at Hualapai Hilltop and either in Pasture Wash or in the vicinity of Topocoba, and will be intended primarily to serve the Havasupai themselves.

Transportation and Communications

Most travel within the Havasupai Reservation will be on foot or horseback along non-motor trails. The repair and maintenance of the extensive system of existing trails is therefore essential to Havasupai life. Access to Havasu Canyon will continue to be by foot or horseback. Supplies will continue to be brought on horseback, or, by helicopter, if they are too heavy or bulky for horse packing.

Flight Restrictions

In the interest of privacy and respect for the peace and quiet of certain special areas, the Havasupai Tribe feels no flights except emergency flights should be permitted over the Great Thumb Mesa, Long Mesa, and Wi Gasala. In addition, no flights except for helicopter landings should be permitted over Havasu Canyon at an altitude below 6500 feet. The tribe would also like to limit flights over Havasu Canyon to certain times of the day. Non-emergency helicopter landings would be restricted to three locations on the reservation with tribal permission: Hualapai Hilltop, Long Mesa, and Supai Village. For special needs, the tribe will permit helicopter landings on

the area above Havasu Falls. The Tribe will relax these restrictions only for emergencies and scientific investigations and surveys as authorized by the Havasupai Tribal Council or the Secretary.

Public Access to Adjacent National Park Lands

Public access to the Havasupai Traditional Use Area within the adjacent Grand Canyon National Park will be available onto those portions of it above the rim of the Grand Canyon over routes designated by the Tribe and the Secretary of the Interior. Public access to lands below the rim will be limited to three routes: The Havasu Creek Trail below Beaver Falls, the Great Thumb Deer Trail, and the Apache Point Trail off the east side of Great Thumb Mesa /see maps in accompanying plan/. The Tribal Council would prefer to maintain some scrutiny over the use of the Great Thumb Deer Trail to protect delicate areas and to promote visitor safety, as this area is both remote and hazardous.

On the west side of Havasu Canyon, public access to lands below the rim within the Traditional Use Area will be from the Colorado River. The Tribe does not feel any trails from the upper reservation in this area into the canyon is safe or desirable for public use.

The Secretary or his authorized representatives will be permitted access to any part of the Havasupai Reservation or the Havasupai Traditional Use Area on adjacent National Park lands in order to ascertain that provisions of this plan are being adequately carried out. The Havasupai Tribal Council has stated its strong wish that neither the Secretary nor his authorized representatives employ motorized access to the Great Thumb Mesa.

Roads

The Havasupai see an eventual need for a maximum of three paved, all-weather roads leading to the reservation. Two of the roads, located outside the reservation are: the one to Hualapai Hilltop from Highway 66 (presently under construction and programmed for completion by the Interior Department during FY 1981); and the Willaha Road which would tie Hualapai Hilltop Road to Highway 180 (the highway to Tusayan and Grand Canyon Village).

The third paved road, located partially within the reservation, leads to Topocoba Hilltop from Pasture Wash. The Tribe feels it may be advisable to leave that part of the Topocoba Road between the east reservation boundary and Arizona Highway 64 as graded, graveled road. The preferable connection with Highway 64 would be at Tusayan rather than at Grand Canyon Village. This road would connect the Pasture Wash residential area (potentially the largest) with suppliers at Grand Canyon and Flagstaff; it would allow ready access to Grand Canyon Village for Havasupai children who would attend public school there; and it is an already improved road.

These roads would be low-speed, two-lane routes located over existing dirt roads which follow the existing terrain wherever possible, and for the most part, would be unfenced, open-range roads, to avoid interference with livestock and wildlife movement.

The Topocoba Road would re-open the Topocoba access route to Havasu Canyon at Topocoba Hilltop, a route which the Havasupai have stated they wish to restore as the principal route. The Tribe will review the possibility of relocating the final few miles of this road. The Tribe prefers a paved road to follow the top of the ridge south of Topocoba Wash, ending at a broad area above the existing Topocoba Hilltop and to the south of it. If this relocation should prove unworkable, the Tribe would like to end the paved surface approximately a mile to the east of Topocoba Hilltop. No vehicular traffic would be permitted further west than this along the existing Topocoba Road, thus preventing any motor travel onto the Great Thumb Mesa.

In addition, five other roads need to be upgraded into improved, graveled, all-weather roads. These are the Pasture Wash Ranger Station Road, the Long Mesa Road, the Pasture Wash-Moqui Tank Road, the Pasture Wash-Rock Tank Road, and the road to the Topocoba residential area. These roads, all shown on the Proposed Land Use Plan Map, are important for local residents to obtain supplies, move livestock, and visit one another. These would be low-speed roads, intended primarily for local, Havasupai use. The one exception will be the Long Mesa Road, if the Tribe should locate a wilderness camping area on Long Mesa.

A minimal amount of relocation might also be carried out on the Long Mesa Road, if it should prove feasible, to connect Long Mesa with the Hualapai Hilltop Road by staying within the reservation. The only other case of possible relocation would be, if it should prove desirable, to divert the Wi Gasala Road to follow an older, existing route along the east boundary of the Hualapai Reservation. Such relocation and diversion of the Long Mesa and Wi Gasala Roads would be carried out to avoid right-of-way problems.

It is the Havasupai Tribe's intention to offer only limited access into the reservation and to control the number of visitors. As a means to this end, the Tribe wishes to minimize the number of entry points into the reservation. Vehicle traffic into that portion of the reservation lying east of Havasu Canyon will be restricted to two entries: the present Tusayan-Topocoba Road for the public, and a second entry point, primarily for Havasupai use, on the road from Rock Tank south to the Anita Road. On the west side of the reservation, access will be by the Hualapai Hilltop Road and the Long Mesa Road. Limited access will also be allowed on the Wi Gasala Road. In the case that a diversion to the Hualapai boundary road is established, the present south entrance to Wi Gasala will be closed off.

The Tribe wishes to have the Wi Gasala (Tenderfoot Mesa) Road and the Moqui Tank-Sagebrush Point Road as graded, dirt roads. The balance of existing dirt roads will be kept primitive, with a relatively low amount of maintenance. The Tribe wishes to limit non-Tribal use of such primitive roads. The same limitation also applies to any foot trails not specifically listed.

The Havasupai Tribe intends to prohibit all vehicle traffic north of Topocoba, except for authorized emergency needs. All visitation to Manakacha Point and the Great Thumb Mesa will be by backpacking or on horseback only. Further motor use of this area is to be ended. Public off-road vehicle travel on all parts of the Havasupai Reservation is prohibited.

Telephone and Radio

The Havasupai people hope to establish some means of communicating between the upper and lower reservation and between the scattered settlements of the upper reservation for emergency purposes. This may be accomplished with a few telephone lines to central locations or by means of microwave relay stations or battery-powered, two-way, citizen-band radios located at central sites such as Topocoba, Moqui, Hualapai Hilltop, and Supai Village.

Trails

The Havasupai Tribe designated two existing trails which they wish to maintain as public access and transportation routes to Supai. These are Topocoba Trail and the Hualapai Trail. In addition, they wish to maintain five other trails for their own use and for the restricted use of the public; these are Moqui Trail, Kirby Trail, Manakacha Point Trail, Great Thumb Trail, and the Whitewall Bend Trail, all of which are shown on the Proposed Land Use Plan Map. The Havasupai wish to restrict all other non-designated trails to their own use.

Visitor Use

During the slack month of December 1975 alone, 49,952 visitors entered the Grand Canyon National Park's south entrance. The proximity of the Havasupai Reservation to the National Park Service tourism complex at the South Rim makes much potential business available to the Havasupai; however, the Havasupai do not advertise to attract such business and have no plans for such advertising in the future. All the visitation they care to accommodate is available to them already, and they will continue to limit the number of visitors permitted to enter the canyon at any one time.

There will be, in the interest of visitor safety and control, a limited number of designated access routes into Havasu Canyon as previously mentioned. Other trails into Havasu Canyon will be used only with Tribal permission or the accompaniment of Havasupai guides, in the interest of safety and protection of delicate areas.

In Havasu Canyon the Tribe maintains a cafe, two small lodges, and three Tribal campgrounds. These Tribal campgrounds, with waste management improvements, could bear a maximum load in excess of the limit the Tribe presently enforces. Presently the Tribe enforces a daily limit of 170 persons during the summer months. The visitor use area could bear up to 200 persons daily. Whatever level the Tribe adopts will be reassessed annually to assure that no degradation to either the environment or the visitors' experience occurs.

Visitors will be instructed that they are to remove all materials they bring into the canyon with them; they are to introduce no trash. They will not be permitted to disturb natural or archaeological features. They should be able to enjoy the area without damaging it. They will be expected to respect the privacy of Havasu Canyon as the Havasupai people's home.

Presently Havasu Canyon bears the entire load of visitation, and the Havasupai people view this load as somewhat intense under present conditions. All lodges, pack animals, campgrounds, and stores are based in the canyon.

Since P.L. 93-620 provides access to and temporary use of lands within the reservation for recreation purposes to non-members, the Tribe feels that it would be wise to follow the lead of the National Park Service and attempt to base certain operations on the canyon rim, where the environment is not so heavily used, and where they can be maintained more easily and cheaply.

Basic, rustic, overnight campground facilities located at Hualapai Hilltop would improve conditions as well as provide a storage place for cars and other personal belongings for those going to Havasu Canyon. Location on the rim would make short day trips to Havasu Canyon possible for those who wish to spend only a day in the area.

Location of overnight facilities to serve the Topocoba access is still somewhat more complicated, since the Topocoba Trail to Supai Village is too long to make day use feasible. A camp consisting of simple shelters and possibly a camp kitchen should be located somewhere along the trail; the three possible locations are: (1) to the east of Topocoba; (2) part way down Topocoba Trail; or (3) near Havasu Springs.

The Tribe may organize horseback packing trips and permit backpacking along designated trails outside Havasu Canyon. It is the Tribe's wish that camping outside the canyon be limited to three wilderness-type, primitive campsites. One would be located on Long Mesa overlooking Supai Village; one a half mile back from the rim near Manakacha Point; and one a quarter to a half mile back from the rim near the base of Gatagama Point on the Great Thumb Mesa (see Land Use Plan Map). These camps are all located within easy walking distance of the rim along existing trails and offer a variety of views which, the Tribe feels, should amply satisfy the most avid outdoorsmen's wishes to view the spectacular scenery of Havasu Canyon and of the wilderness of the Grand Canyon at one of its most remote points. Camping outside these areas will be strongly discouraged for several reasons, including fire control, public safety, and environmental protection. Camping at the Great Thumb site will be available only seasonally, as this particular site will be closed during the winter from October through March. Backpackers will be welcome to hike and visit other areas within reach of these campsites along the designated trails, but will be expected to base themselves at the designated sites. Tribal Rangers will be strategically stationed on the upper reservation to assure proper enforcement of the protection of this natural area.

Waste Management

Disposing of sewage in Havasu Campground, which has borne a heavy volume of visitor use for many years, promises to be a difficult problem. The Havasupai Tribe will use chemical enzymes in privies to reduce both the volume and odor of the wastes. Eventually the problem of disposal still arises, though in a minimized form. The Havasupai Tribe will also investigate the installation of a small treatment station for Havasu Campground, a

solution which one study* indicates could be very costly and which would have to be examined very carefully to avoid all odor and minimize maintenance problems. Some form of chemical toilets will also be considered. In no case will raw sewage be allowed to escape into Havasu Creek.

Outside Havasu Canyon, privies will be the first choice for disposing of human waste at individual homes. Other choices to be examined will include composting toilets, incinerating toilets, biological toilets, and oil-flushed toilets. None of these alternatives require the use of water; the composting toilet, like the privy, requires neither water or power for its operation. For settlements which grow large and compact enough, the Havasupai will investigate the installation of waterless disposal systems or the installation of septic tanks and leach fields, if water should be available. The use of a leach field in highly fractured or permeable soil will be accompanied by the laying of a suitable absorption bed where this is indicated to prevent rapid escape of waste water and possible pollution of ground water sources.

The satisfactory disposal of solid, inorganic waste has caused the Havasuapi increasing concern in recent years on the lands of the lower reservation. The problem arises from the ease of transporting containers into Havasu Canyon and the annoyance of bearing the same empty containers out. A large volume of cans, boxes, and scrap paper build up in Havasu Campground and elsewhere in Havasu Canyon as a result of some visitors' individual carelessness. The Tribe will compact and transport solid inorganic wastes out of Havasu Canyon. National Park Service experience does indicate, however, that a good clean-up program will significantly discourage the deposit of new trash.

The Tribe proposes to separate solid waste into combustibles and non-combustibles. Combustibles will be reduced in volume by means of a proper incineration device, which will serve all of Havasu Canyon. Remaining solid waste will then be separated into recyclable and non-recyclable materials, both of which will be compacted with a gas- or electric-powered trash compacter. These blocks of solid waste will then be stored in a suitable facility until such time as the weight and volume justifies the use of a helicopter lift to transport the material to the nearest road vehicle pickup point on the upper reservation. If it should prove unfeasible at times to have trash flown out, it will be necessary to have individuals pack trash out by horse. All such transport will prove expensive, and the Havasupai Tribe will continue to appeal to their visitors to take out the materials they carry in and leave nothing behind. This would solve much of the problem without expense or complication.

Solid wastes which have been taken to the upper reservation can then be taken to a sanitary land fill. Insofar as possible, recyclable materials

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*Pope, Evans, and Robbins, Consulting Engineers, "Study of Water Supply and Sanitary Waste Disposal at Havasu Canyon Campground," National Park Service, June 1973.

will be reclaimed. There are several suitable sites for land fills on the reservation, but one land fill on each side of Havasu Canyon should prove sufficient. These land fills will be properly maintained for sanitation. Disposal of solid waste generated outside Havasu Canyon should be a relatively minor problem to be handled by the use of the same sanitary land fills.

Wildlife Management

The Havasupai people have traditionally used several food animals; these include the mule deer, pronghorn antelope, jackrabbit, cottontail rabbit, and porcupine. All of these shall be considered permissable species for the use of the Havasupai; because they feel the existing game herds cannot bear public hunting, the Havasupai Tribe will restrict public hunting on the reservation.

The Tribal Council will conduct a survey of wildlife on the reservation and will develop a wildlife management plan based on this survey to guide in maintaining and improving existing levels and to prevent any diminution in numbers through overhunting or indiscriminate hunting. The Tribal Council will then authorize annual resurveys by the U.S. Fish and Wildlife Service, by the Arizona State Game and Fish Department, or by trained rangers from their own Tribe. If a game survey should show the presence of more game than the Havasupai themselves can use and more than the range can bear without degradation, then the Tribal Council will first consider the sale of live game species for restocking elsewhere. Should the Tribal Council choose to permit public hunting in such a case, it will develop a plan and set of regulations to govern such public hunting and submit said plan to the Secretary for approval.

There will be no hunting of desert bighorn sheep on the reservation or the Havasupai grazing rights area: the Havasupai Tribal Council intends for these lands to be a sanctuary for them. If it is determined that the presence of the exotic burro is harmful to the bighorns, the Havasupai Tribe will cooperate with the National Park Service in efforts to control them. The numbers of certain other exotic wildlife on the area will also be controlled, such as wild dogs and cats.

The Havasupai will pursue the control of predators with extreme care. The presence of predators must be weighed against the presence of the human hunter as well. If game herds and livestock maintain stable levels in the presence of existing hunters and predators, then predator control will be deemed unnecessary. If a reduction of game herds is noted with moderate hunting levels, then the number of predators must be investigated together with existing hunting patterns to determine what causal relationship exists. In case an individual predator should become dangerous to livestock, the Havasupai can have this predator trapped or hunted, if necessary. This taking of predators is not to be taken lightly or abused, they will be taken only by methods approved by the Interior Department. Eagles, hawks, falcons and other birds of prey shall not be considered predators for the purposes of this plan.

Fish cannot be successfully stocked in some areas of Havasu Creek, the only perennial stream on the reservation, as the water is too warm and mineral-laden to support most varieties of fish. Additionally, seasonal flooding

carries stocked fish over the waterfalls of the creek and on into the Colorado River. The continued presence of helgrammites in this stream does witness to its freedom from other impurities. Any non-Havasupai fishing on the reservation would be limited to the area north of Mooney Falls (please refer to development map).

The Havasupai Tribe intends to investigate the possibilities of re-establishing vanished native animals on the area, if such restocking may be done without detrimental effect to existing species. They feel that possible diversity of natural wildlife is very important to the health of the reservation. The Havasupai Tribe has stated that, whatever decision future Tribal Councils may adopt regarding public hunting on the reservation, the entire Great Thumb Mesa north of Topocoba is always to be reserved from public hunting.

INTERRELATIONSHIP WITH OTHER PROJECTS OR PROPOSALS

The most important plan which may have interrelationships with the proposed land use plan is The Comprehensive Plan of the Havasupai Tribe, prepared by the Office of the Governor through the Arizona Office of Economic Planning and Development, filed in January, 1975. This is a plan that was prepared by the State of Arizona and has not been sanctioned or adopted by the Havasupai Indian Tribe and has no effect on the Secretarial Land Use Plan. The plan deals largely with the Supai portion of the old reservation, having been enacted prior to the acquisition of the 185,000 acres of the new reservation. The comprehensive plan is concerned with the following general topics: land use, housing, environmental services, transportation, electric power, education, and tourism. The land use, housing, environmental service, and education sections of the comprehensive plan have little or no overlap with the land use plan being analyzed herein. The other sections do have some interrelationships with the land use plan.

For instance, under the transportation section of the comprehensive plan, there is a stated desire for an interchange on Interstate 40, and a paved road leading directly north to Peach Springs. This road would be entirely off the reservation, but would give more direct access to I-40 from the reservation by means of Hualapai Hilltop road and Highway 66. At this time, an interchange has been constructed on I-40 at the desired location, but there is no road connecting it with Peach Springs, nor are there any plans in the near future by the Arizona State Highway Department to construct one. If any road is built, it will likely have to be a joint venture between the Hualapai Indian Tribe and Mohave County, and there are no plans for such a project.

In addition, the comprehensive plan states a desire for the paving of Willaha Road, running south of the reservation and connecting Hualapai Hilltop Road with Highway 180. This proposal was also made part of the land use plan.

The only overlap on both plans regarding energy pertains to the construction of electric lines on the upper reservation to provide increased and more consistent electric power to the reservation. No specifics were mentioned in the comprehensive plan, so there are no problems existing between the plans in this regard.

There are a few conflicts between the two plans pertaining to tourism, however. The Comprehensive Plan and the land use plan include similar arrangements for the improvement of facilities at Hualapai Hilltop. However, the two plans differ markedly with their treatment of Long Mesa and Topocoba Hilltop facilities. Granted, the comprehensive plan was established while the upper reservation was largely in National Park Service and U.S. Forest Service lands, and, the plan has not fully been implemented. However, it is still important to point out discrepancies between it and the land use plan here being analyzed.

Regarding Long Mesa, the comprehensive plan suggests that a "primitive" campground be established which would provide parking spaces, chemical

toilets, a fee for the use of the campground, and attendants. This seems to be in opposition to the wilderness campsite specified in the land use plan which would have little or no facilities. Likewise, the comprehensive plan proposes improvement of the trail from Long Mesa to Supai Village, and to organize packing trips along the trail. No mention of these latter items appear in the land use plan, and it is assumed that they have been dropped from consideration.

In addition, the comprehensive plan proposes a pack station at Topocoba Hilltop to take tourists on horse trips on the Topocoba Trail. This proposal has been dropped. All other aspects of the two plans appear to be compatible, and they seem to be designed to compliment each other.

A second project which is related to the Havasupai Land Use Plan is the Proposed Master Plan of the Grand Canyon Complex, Arizona, which, like the Havasupai Land Use Plan, was filed in accordance with Public Law 93-620. The Final Environmental Statement (FES 75-97) has been released by the National Park Service of the Department of the Interior. There are no obvious inconsistencies between the Proposed Master Plan of the Grand Canyon Complex, Arizona and the Havasupai Land Use Plan.

A third related project is the Proposed Wilderness Classification for the Grand Canyon National Park, which was also filed in accordance with Public Law 93-620. The Draft Environmental Statement (DES 76-28) has been released by the National Park Service of the Department of the Interior. The Havasupai Land Use Plan could affect wilderness proposals if housing, grazing, agriculture, or other proposed Havasupai projects should eventually require access across park lands. However, as stated in DES 76-28, "Any wilderness classification will be developed in conjunction with Havasupai Reservation plans to assure understanding and continuity."

GENERAL COMMENT ON THE LAND USE PLAN

At the outset of this analysis, a few notes on the land use plan are in order. First, it is a proposed plan and not an operative plan. It is only a statement of intent. It can only be considered as such and not as an analysis of an on-going program. Because of this, the plan is general in most aspects. For example, in most of the 20 parts of the plan no specific or general time framework is yet established. Inception of all the projects in a period of one year, as opposed to inception over a period of 30 years, may have different environmental impacts. Similarly, the location of many of the projects called for in the plan are not yet specified, although general areas are designated. The same is true as to various alternatives listed for particular projects called for in the plan. Specifics relating to such alternatives are not yet established. An analysis of the specifics would be possible when future determinations are made during implementation of the plan.

The plan does contain alternatives and is flexible. The flexibility allows solutions to problems such as organic and inorganic solid waste which may have otherwise resulted in an adverse impact.

Section 10 of P.L. 93-620 gives the Secretary of Interior strict responsibilities to protect the environment during implementation of the plan and thereafter to continually safeguard the environment as the Tribe uses the land.

Accordingly, this statement is an environmental analysis of a long term plan. It is not intended to be a substitute for an EIS on an active operation in which the time frameworks, specific locations and other details for implementation have been established.

MEC SOF EXH 25

Plant Management

March 14, 1968

State Board of Commissioners
Arizona Corporation Commission
1688 West Adams Street
Phoenix, Arizona

Gentlemen:

This is in regard to supplying electric service to the Hualapai and Havasupai Indian Reservations located in Mohave and Coconino Counties, State of Arizona.

For the past several years the Bureau of Indian Affairs has attempted to negotiate for electric power and energy to supply the Supai Village of the Havasupai Canyon. Preliminary negotiations have been carried on separately with the two utility companies located in the area. Mohave Electric Cooperative, Kingman, Arizona has indicated a willingness to serve the Reservations at what we feel are reasonable terms, but is reluctant to do so because they do not have a Certificate of Necessity from the Corporation Commission.

Arizona Public Service Company, who apparently has State franchise rights, supplied us with estimates in 1964 which ranged from $175,000 to $350,000 depending on the route selected. Their 1968 costs range from $500,000 to $800,000 which we believe to be in excess of reasonable costs based on other utility estimates, and our own experience in the utility field.

Depending on availability of funds, costs of construction for electric facilities on the Reservation can be borne by the Federal Government. However, we are reluctant to build these type of facilities when there are public utility companies who can provide the service required.

Before we request funds for power line construction, it is requested that you provide us with information as to the franchise rights in areas adjacent to the Hualapai and Havasupai Indian Reservations.

It should be noted that the Bureau of Indian Affairs is bound by the Code of Federal Regulations Title 25, in its applicability to State and

local regulation of the use of Indian property. This relationship is specifically covered under paragraph 1.4, Part 1, Chapter 1, Title 25 of the Code.

If you feel it necessary we will meet with your representative for clarification of any of the items mentioned above. Thank you for your consideration in this matter.

Sincerely yours,

(Sgd.) W. Wade Head

Area Director

VELund/lp

cc: Supt. Truxton Canon
Hualapai Tribal Council
Havasupai Tribal Council

SURNAME
Lund
Benham

MEC SOF EXH 26

E. T. "EDDIE" WILLIAMS, JR.
CHAIRMAN
DICK HERBERT
COMMISSIONER
MILTON J. HUSKY
COMMISSIONER

Sugar File
Pow. Folder

GEORGE S. LIVERMORE
EXECUTIVE SECRETARY

BUREAU OF INDIAN AFFAIRS
RECEIVED
APR 29 1968
PHOENIX

ARIZONA CORPORATION COMMISSION
STATE CAPITOL ANNEX
PHOENIX

April 26, 1968

United States Department of the Interior
Bureau of Indian Affairs
P. O. Box 7007
Phoenix, Arizona 85001

ATTENTION: Wade Head

Dear Mr. Head:

This will acknowledge your letter of March 14, 1968 regarding the necessity for a certificate of convenience and necessity to supply electric service to the Hualapai and Havasupai Indian Reservations located in Mohave and Coconino Counties, Arizona. The Utilities Division of this Commission advises me there are no certificates of convenience and necessity covering the areas set forth in your letter.

Your letter indicates a desire to obtain electric service from Mohave Electric Cooperative. In the event that the area described in your letter is contiguous to that area Mohave Electric Cooperative currently services it may be possible they would be able to provide the requested service pursuant to A.R.S. 40-281. I suggest that should you have any further inquiries concerning this matter that you should direct them to Mr. Robert G. Kircher, the Commission's Utilities Director who would be most happy to be of assistance in this matter.

Sincerely,

George S. Livermore
Executive Secretary

GSL/sr

Dale		McCausland	
Benham		Goldsmith	
Lund		Richards	
Perret		Gardiner	
Kenimer		Johnson	
		Potter	

MEC SOF EXH 27

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
TRUXTON CANON AGENCY
VALENTINE, ARIZONA 86437

Electrical

Truxton

SEP 1987
RECEIVED
PHOENIX AREA OFFICE
FACILITY MANAGEMENT

IN REPLY REFER TO:

Office of the Superintendent
(602) 769-2286

SEP 21 1987

Braun
Choules
Clah
Cotner
Cuellar
Gardiner
Herrington
Invocato
Johnson
McConnell
Miller

Mr. Wayne Sinyella, Chairman
Havasupai Tribal Council
P. O. Box 10
Supai, Arizona 86435

Dear Wayne:

With reference to the Memorandum of Agreement (Electrical Distribution), below are the Bureau's comments on the Memorandum of Agreement:

ARTICLE I. STATEMENT OF WORK

The Bureau has been making a concerted effort to get out of the utility business. The Bureau does not have the responsibility (nor the legal authority) to manage, operate and maintain a Tribal utility system. In fact, for this reason, we will not recommend exercising the ten year options.

ARTICLE II. B.I.A. RESPONSIBILITY

1. The buildings have been transferred to the Tribe. The Tribe will be provided with technical assistance to allow for the transfer of all other accountable items located at Long Mesa.

2. The B.I.A. will pay to Mohave Electric Cooperative, Inc. the facility charges as defined in Addendum No. 1 of the General Services Administration Contract No. GS-00S-67021.

3. Okay

4. Technical assistance will be furnished by the Bureau, pending the availability of funds. Financial assistance will depend on the Tribe's ability to secure funding through possible sources mentioned below.

ARTICLE III. TRIBAL RESPONSIBILITIES

Article III has one common item in all five (5) sections - Availability of Funds. The Tribe could apply for funding through a BIA CORE Management Grant to set up and organize the utility. The Tribe would have to assure that it would be self-supporting within three years as the CORE Grant can only be funded for three years for the same purpose. If CORE funds are granted, the Tribe could perform those services under a P.L. 93-638.

There are other sources of funding the Tribe can pursue to set up and manage their electric distribution system. Sources include HUD, Community Development Block Grants, Economic Development, Administration Grants, Energy Assistance Grants, Farmers Home Administration Grants and Loans, Foundation Grants, etc. The Tribe can also lobby Congress for supplemental appropriations for this purpose. The Bureau cannot pursue any of these funding sources. If the BIA does accept the responsibility of managing the utility, there will be no incentive for the Tribe to pursue other funding or the desire to ever take it over themselves.

1. Okay

2. Reimbursement to the Tribe for costs such as labor and materials will depend wholly on available funds (CORE Grant, Self Determination Grant, or other sources).

   In my opinion, the funds we have been using to operate and maintain the Havasupai Electric distribution system have been misdirected. Facility Management funds are allocated to the Area and agency for the purpose of operating and maintaining facilities owned by the United States, not tribally owned facilities.

   This section as written, would require the Bureau to reimburse the Tribe for meters and other materials in the distribution system, but the Bureau would have no way to get reimbursement as the proposed agreement indicates. The rates set by the Bureau could not exceed the rates paid to Mohave Power Company. A CORE Grant could be used to purchase and install meters if it will strengthen Tribal Government.

3. The management board would be a very good tribal system and should be spelled out in the proposed (93-638), however, exhibit II should not restrict the Tribe. The Havasupai Tribe, even if they do operate a utility company, does not come under the jurisdiction of the Arizona Corporation Commission.

4. Payment should be made for power consumed as read at the Long Mesa Master Meter. There is much evidence of power theft by jumping meters in the past.

   The Tribe needs to deal with customers who tamper with their meters, etc. The Tribe's Law and Order Code should contain laws dealing with such violations.

   Past Studies indicate that most excess technical losses are due to theft.

ARTICLE IV. RATES

Limiting technical loses at 4% is not applicable. If the Bureau is operating the system, it is not a "for profit" business. The actual technical loss should be billed along with energy usage. The Bureau does not have funds to pay the difference between the Long Mesa Master Meter charges and the collections received from the users. Technical losses should be prorated among the customers, regardless as to who manages the system.

If the above paragraph is not acceptable by the Tribe, the Tribe can agree to pay any shortages between the customer billings and the charges at the Master Meter.

2. The Bureau must fulfill their contractual responsibilities to Mohave Electric Cooperative. This includes the payment of the facility construction charges and electric usage passing through the Master Meter at Long Mesa. Ideally, the Tribe should manage, operate, and maintain the total system from Long Mesa Master Meter on through to Supai. The Bureau should submit one bill to the Tribe each month based on the Master Meter reading at Long Mesa. The Tribe should set their own electric rates, submission of bills to customers, issuance of cut-off notices, collection of payments, maintenance of lines, etc.

The Bureau should set a rate schedule which is comparable to the industry standards (which has been done) and continue to use that rate established until the Tribe formally proposes an alternative rate which will be sufficient to meet the charges to the Long Mesa Master Meter. The rate change can then be mutually agreed upon. In no case, should a rate be approved that will not, at least, recover the energy costs at the Long Mesa Master Meter.

ARTICLE V. EMPLOYMENT

All Sections seem okay with one exception:

Indian Preference should follow the Tribe's approved Personnel Procedures Manual.

ARTICLE VI. OPERATIONS

Article VI sounds like a disclaimer so the Tribe can pull out of the operation if they so desire.

ARTICLE VII. FURTHER RESPONSIBILITIES OF THE PARTIES

1. Okay

2. Okay

ARTICLE IX. TERM OF AGREEMENT

Same response as No. 1 under Article II.

ARTICLE IIX. PRESENT DISPUTES

The Agency feels this should be treated as a seperate issue. The waiver of arrearages as suggested in Article IX is not legal without following specific procedures.

Article IX also suggests the Bureau owes the Tribe sums of money for the installation of electrical service materials to customers in Supai. If the Bureau ordered such installations, the Tribe should present purchase order numbers, contract numbers, etc. and submit itemized invoices against these orders.

Article IX also indicates that the Bureau owes the Tribe indirect costs on the Long Mesa Power Plant. Again, the contract number and documentation showing the negotiated indirect rate should be submitted with invoices for payment.

It should be noted that the BIA did not make the decision on their own to do away with the diesel generating plant at Long Mesa. The Havasupai Tribal Council and the Chairman at that time, Reed Watahomigie, requested, supported and pursued a more secure, consistent and reliable provider of electricity. It was only after the contract with Mohave Electric Cooperative and the 2% loan from Rural Electrification Administration were approved that the Tribe began objecting to the changes.

ARTICLE X. Miscellaneous

1. Okay

Once the issue of responsibility is clarified, it is the Tribe's responsibility, not the Bureau's, for electric distribution. Then the Bureau will be in a position to really assist the Tribe in working out the problems in the system and organize it to operate smoothly.

If it should be (incorrectly) determined that it is the BIA's responsibility to manage, operate and maintain the Havasupai electric distribution system the agreement should be discarded. There is no reason to make an already difficult task even more confused and complicated. If the BIA must operate the system, let's do it. We do not need a signed agreement to authorize a Tribe to contract a Bureau Program. The Tribe has the legal and regulatory authority to contract if they so desire and that is what the agreement really does.

Because the Agency cannot accept the agreement as presented, may I suggest the following options:

1. The Tribe inform the BIA through Council action they will assume all responsibilities for electrical distribution from Long Mesa and will pay the Bureau according to the Master Meter reading at Long Mesa. The Bureau will provide Technical Assistance for the Tribe to seek funding.

2. The Tribe should carry their appeal to court and allow a legal decision to guide the outcome.

3. The Tribe work out an agreement directly with Mohave Electric Cooperative using the BIA only for Technical Assistance.

After your careful review, please forward us your response.

Sincerely,

George E. Keller
Superintendent

cc: Facility Management/PAO

Ward & Blue

Attorneys
601 N. Humphreys St.
P.O. Box 789
Flagstaff, AZ 86002
(602) 774-2773

Roy Ward

Martha Blue

Tuba City, Navajo Indian Reservation, AZ

RECEIVED JUL 1989 TRUXTON CANON AGENCY VALENTINE, ARIZ.

Rough Draft

June 30, 1989

Rough Draft

George Keller
Superintendent
Truxton Agency
Valentine, AZ 86437

Re: HTC Electric

Dear Superintendent Keller:

Enclosed is a counterproposal consisting of a draft contract and notes. From the notes, you will see the thought and initial planning the Tribal Council has put into the project. Our concern is that the Tribe is agreeing to take over a bag of worms and shouldn't be footing the expense involved in the transfer.

Please call. I will be in Supai Wednesday, July 5, 1987.

Sincerely,

Martha Blue

Martha Blue

mao

MB:mao

Enclosures

cc w/encl: Clark Jack, Jr.
Tom Moore

Rough Draft

DRAFT

TRANSFER AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS
AND
THE HAVASUPAI INDIAN TRIBE
HAVASUPAI INDIAN RESERVATION
SUPAI, COCONINO COUNTY, ARIZONA

PUBLIC LAW 86-121

THIS AGREEMENT is made this _____ day of _____, 1989, between the UNITED STATES OF AMERICA, DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS (referred to as the "BIA") and THE HAVASUPAI TRIBE (referred to as the "Tribe") acting through the Tribal Council as authorized by Resolution No. _____ adopted _____, a certified copy of which is attached.

WHEREAS, the Tribe desires an economical, efficient, reliable, capable and maintenance-free electrical power distribution system on the Havasupai Tribal lands;

WHEREAS, the Havasupai Tribal Council determines that it is in the best interests of the Tribe to ultimately, itself, and acting through the Havasupai Tribal Utility Authority ("HTUA"), to assume responsibility for the operation of the Supai Electrical System system under the terms and conditions of this Agreement;

WHEREAS, the BIA is authorized to transfer the complete electrical power distribution system, with or without a money consideration, and under such terms and conditions as are appropriate, having regard for the tribal contributions made and the maintenance responsibility undertaken, the special health

needs of the Indian people;

WHEREAS, the Tribe's concern with the needs of reservation residents, economic development, and the safety and welfare of those residents dictates such an undertaking; and

WHEREAS, in regards to obligations undertaken and to services to be performed by each of the parties and the rights and the privileges granted by the respective parties, it is mutually understood and agreed to as follows:

ARTICLE I
TRANSFER

1. The BIA transfers, assigns and conveys to the Tribe without money consideration under the terms and conditions of this Agreement, all the rights, title and interest in the BIA operated electrical power distribution systems to and on the Havasupai Tribal lands now in place or hereafter added on the update and extension of the system. All materials, supplies, property and equipment provided for and used in such facilities are set forth in Attachment A which is incorporated by reference. Upon completion of system update to 14.2 volts and extension of electrical lines to Hualapai Hilltop, the BIA shall provide an additional attachment of materials, supplies, property and equipment which shall be incorporated by reference.

2. The Tribe accepts such transfer under the terms and conditions of this Agreement as the property of the Tribe, and agrees to keep the facilities operational.

3. The BIA transfers as well all the accounts receivable due the BIA from customers of the Supai Electric System which are set forth in Attachment B incorporated by reference and which total $133,000 plus or minus.

4. Long Mesa. The BIA made non-operational the Long Mesa electrical power generating plant. The BIA transfers the Long Mesa electrical power generating plant, including but not limited to, the buildings, generators, fencing, and equipment within the fending at the Long Mesa station to the Tribe. (Wrong page)

5. The BIA pays the indirect costs due on the Long Mesa contract of $12,188.32 to the Tribe at the end of 1989 as well as the electrical hookup bills outstanding set forth in Attachment C.

6. The Tribe, through HTUA, agrees to levy and collect service charges sufficient to operate and maintain the system, and will enforce ordinances governing the proper use of the utility. The Tribe also agrees to enforce appropriate ordinances to assure continued operation of individual facilities belonging to the individual home owners and to support HTUA in its operation and maintenance of electrical distribution system and community facilities which serve new houses.

ARTICLE II
UPGRADE AND EXTENSION OF ELECTRICAL SYSTEM

1. The BIA agrees to provide funds to upgrade the electrical system to a 14.2 volt three phase power system with new transformers and controls from Long Mesa into Supai Village

and supply as well as to appropriately upgrade the system throughout the village, which includes but is not limited to replacing 28 or so transformers. In addition, the BIA will extend the electrical system to Hualapai Hilltop as a 14.2 three phase power system subject to the following:

a. The evaluation of the upgrade and extension of the system described above shall be completed no later than ~~July 15, 1989 by the BIA.~~ Dec ~~20,~~ The Tribe will review same and either accept it or request changes in the system evaluation and prospectus of the work no later than August 31, 1989. need to get whole system end of Jan to review

b. The Tribe shall be able to review and accept a list of bidders, as well as the bid proposal, with the bidding date to occur no later than _____ and the construction to begin no later than _____. Further, the Tribe can be present at the opening of the bids and have input as to the award for same. Further, the Tribe may appoint a supervisory compliance officer during the upgrade and extension of the system. Any such further specification and conditions for the upgrade and extension of system are set forth in Attachment D which is incorporated by reference.

ARTICLE III
MOHAVE CONTRACT

1. The BIA contract with Mohave is marked Attachment E and incorpora will pay, to Mohave Electric Cooperative, Inc., that portion of the electric billing on account #29-740-00, D-8 Long Mesa Power

Transformer which consists of the facilities charges as defined in Addendum No. 1 of the General Services Administration Contract No. GS-00S-67021 and the Tribe shall pay, subject to conditions herein, Mohave's energy charges in Schedule "L" (Large Power) marked as Exhibit "2" to the forementioned GSA Contract, commonly referred to as energy charges include but are not limited to the base rate, wholesale power adjustment, and primary service credit. The BIA agrees to be the guarantor/secretary of said payment by the Tribe under the terms and conditions set forth in Attachment F which is incorporated by reference. Facility charges include, but are not limited to, the costs of construction, property tax, operation and maintenance and depreciation charges, and Arizona sales tax.

2. The BIA agrees to exercise the two ten (10) year options under its contract with Mohave Electric Cooperative, Inc. GS-00S-67021 Electric Utility Contract.

ARTICLE IV
BIA ASSISTANCE

1. BIA agrees to provide technical assistance and training to the Tribe upon request by the Tribe in technical lineman work, meter reading and maintenance, computer training, operation of a utility program and shall, as well, pay the expenses of three or more tribal members to receive service training at Colorado River Indian Tribe ("CRIT"). Further, the Bureau will assist in educating electrical consumers on energy efficient use.

2. BIA will pay for the salary and training of one position of meter reader for a period of time not to exceed one (1) year. Further, the BIA will provide funds for purchase of an IBM personal computer compatible software meter reading system appropriate for the operation of utility program on a reservation the size of Havasupai.

ARTICLE V
TRIBAL RESPONSIBILITIES

1. Subject to applicable Federal and Tribal laws and regulations, the Havasupai Tribal Council shall establish a management board to operate, maintain and promote the electric utility system, and other utilities as designated by the Tribe, on the Havasupai Indian Reservation with such purposes, duties and powers as set forth in Attachment G which is attached and incorporated in this Agreement as if fully set forth herein. This management board shall be composed of three persons of certain qualifications. It shall be referred to as Havasupai Tribal Utility Authority ("HTUA") appointed by the Tribal Council to serve staggered terms at the discretion of the Council.

2. The Tribe, commencing _____, shall read electric meters (all types); set up a Management Board no later than _____; set and remove electric meters, perform electric installation and maintenance operations on the underground electric system, including grounding, after the system has been upgraded; shall make out reports as necessary for operation of system; establish and maintain an accounting

system for power customers; educate customers as to energy efficient electrical use and submit vouchers to and receive payment from the Supai electrical power customs and pay same to Mohave for power consumed as read at the meters in Supai or in tribal lands.

3. The administrative rules and regulations governing the terms and conditions for service and the operation of the electrical system shall be adopted no later than _____. Said rules and regulations may be amended by the Tribe after appropriate notice and public hearing in Supai, but in no event shall the rates for energy be less than that charged by Mohave in the contract between the BIA and the Tribe.

4. The Tribe, through HTUA, shall establish an elderly-disabled-emergency fund provided that other Federal and State programs have been exhausted, mandatory fines charged by HTUA for tampering with equipment, levelized payments, withholding (under certain circumstances) up to 15% of a tribal employees gross paycheck to meet or defer electrical energy bills, and other systems designed to enhance the collectability of current monthly energy charges as well as to streamline the administrative costs and time for the operation of the energy system.

ARTICLE VI
RATES

1. Until the upgrade to Supai and installation of the extension to Hilltop, the rate charged shall be 8 cents per KWH

on customer's invoices. The difference between actual collection by the Tribe and Mohave's bill for energy charges shall be borne by the BIA by disbursement to the Tribe until the upgrade and extension is in place.

2. After the extension and upgrade, the rates would be adjusted by the Tribe so that it is never less than the energy charge by Mohave which is approximately 7-1/2 cents for residential customers, but said condition is not intended to limit the regulatory power of the Tribe, as the Tribe will establish varying residential and non-residential rates depending on the overall operation of HTUA.

3. The Tribe may establish different rates for residential and non-residential as well as non-resident customers.

4. The BIA agrees to provide the Tribe promptly with any notices of Mohave's proposed rate revisions and to technically assist the Tribe in any proceeding to oppose a Mohave rate change.

5. Nothing herein is intended to affect the status of the BIA as the guarantor to Mohave.

ARTICLE VII
TERM OF AGREEMENT

1. The term of this Agreement shall be through and including December 31, 1992. Thirty (30) days prior to that date, the Tribe has the option to terminate this contract if it determines that it cannot efficiently operate and maintain the system. In the event that the Tribe makes such determination,

the Tribe will need to pay, within one hundred twenty (120) days after written notice of same, the amount that it has collected on the arrearages assigned by the BIA to the Tribe Plus the amounts set forth in ARTICLE I, Paragraph 4, regarding indirect costs and electrical hookup bills. In the event that the Tribe exercises its option, and on the BIA's reassumption of the operation of the program, the Tribe understands that the BIA may subcontract operation of same.

ARTICLE VIII
DISMISSAL OF APPEAL

The customers will be receiving a rate reduction until _____ when the Tribe sets the rate. This offsets any alleged overcharges during the BIA's operation of the electrical system. Further, the payment set forth previously for the Long Mesa credit, the payment of the amounts owed for installation for electrical service consisting of materials and labors to customers in Supai set forth in Attachment H, resolve the special issues the Tribe agrees to dismiss any and all appeals or protests against the United States of America, Department of Interior, Bureau of Indian Affairs, concerning past management of the electrical system on the Havasupai Indian Reservation.

BE IT RESOLVED by the Havasupai Tribal Council that the Chairman of the Tribe is hereby authorized to execute this Agreement for the transfer of the electrical distribution system for Indian homes in the Village of Supai, Supai, Arizona,

Havasupai Indian Reservation, which is on file in the Chairman's Office and the Tribal Utility Authority.

IN WITNESS WHEREOF, the parties have subscribed their names.

FOR THE HAVASUPAI INDIAN TRIBE:

_____	_____
Date	Chairman, Havasupai Tribal Council, having been duly authorized to enter this Agreement on behalf of the Havasupai Indian Community as evidenced by the attached copy of a resolution passed by the Havasupai Tribal Council

FOR THE BUREAU OF INDIAN AFFAIRS:

_____	_____
Date	Superintendent, Truxton Canon Agency

FOR THE BUREAU OF INDIAN AFFAIRS:

_____	_____
Date	Area Director, Phoenix Area Bureau of Indian Affairs

Ward & Blue

Attorneys
601 N. Humphreys St.
P.O. Box 789
Flagstaff, AZ 86002
(602) 774-2773

Roy Ward

Martha Blue

Tuba City, Navajo Indian Reservation, AZ

JUL 19 9 TRUXTON CANYON AGENCY VALENTINE

ATTACHMENT AND MISCELLANEOUS NOTES MEMO

June 30, 1989

. Various attachments will have to be prepared by the respective parties:

Attachment A - Transfer items (BIA)

. needs a specific inventory list
. additional list when upgrade done

end of Feb

Attachment B - Arrearages

. current arrearage list (BIA)

end of Feb. Jan pd

Indirect plus look up

Attachment C - Labor and materials

. see appeal plus 2 others (Tribe)

Attachment D - Upgrade

. specifications for same (HTC)

end Nov.

Attachment E - Mohave contract

. exists

Attachment F - Guarantor

. to be drafted by Martha

Attachment G - HTUA

. to be drafted by Martha

Attachment H - same as attachment C

. HTUA develop regulations and provision that you can add other utilities to it as assigned by Council.

. The three members must be current on their electrical bills, must be of a certain age and educational qualifications.

. Describe the HTUA Director position.

. The elderly, disabled, low-income means guidelines exhaust Federal and State remedies first, look at other Federal regulations, not available to people in the household employed, define "elderly" and have a different definition for elderly with a slight disability or disabled.

. There's disputes and grievances against tribal employees managing the utility system.

. Approved rates set by the Council with the Director of the utility program and the comptroller.

Billings and Collections:

. All customers who are current on their bills at the time of the tribal takeover will not pay a deposit.

. Customers not current on their bills at the time of the tribal takeover will need to pay a deposit, depending on their amount of arrearages with the BIA. If their arrearages are under $1,000 they ought to pay a deposit of $135, if under $3,000 they'll have to pay $270 deposit and if over $3,000 they'll have to pay $405 deposit. These figures are calculated on a levelized billing for the average consumer (roughly approximated at this point).

. People will be given the option of levelized or monthly payments. Education of customer mandatory. we will help with [illegible] co. est.

. There will be two separate bills - one for the arrearages for the BIA and the other for the current billings. All customers with arrearages to the BIA must sign a promissory note in favor of the Tribe at the time their service is continued.

. Non-residential rate shall be 2x's the residential rate at least.

. On the BIA arrearages, those below $3,000 have to pay 5% of that, those above $3,000 have to pay 10% to continue electrical services. Monthly payment, based on a declining balance, is under $1,000 - $10, under $2,000 - $20, under $3,000 - $30, under $4,000 - $40, under $5,000 - $50. If for 12 months those payments are made on time without a late due notice, etc., then the remaining balance would be reduced by 5% each 12 month period. This is directed to complete the collections as far as possible within a 5-year period. This also means that these monies will be accounted for separately in the event the Tribe (unlikely) exercises its option not to continue the program.

. For current customers who pay on time, they will receive a 13th month at one-half no charge and if the system works, then thereafter, they'll receive the full credit for the 13th month if they're current. (Late payments will not be tolerated.)

. If a current bill is not paid then the Tribe is authorized to withhold an amount toward electric not to exceed 15% gross.

. Each household will have to sign a customer agreement with the Tribe which will include every working member of the household obligating himself or herself to the utility bill rather than the present situation.

. The meter reader shall wear coveralls decorated with embroidery and bead work. The Havasupai meter reader shall be provided with a small moped to fulfill his or her responsibilities.

. On the BIA arrearages, there will be a 60-day cutoff period. On current tribal bills, the cut off will be 5 days after the end of 30 days to pay bill.

. On those arrearages reflected its actually an extra 30-days because of the nature of billing cycles.

. The Tribe wants an arrangement where it could pay directly to Mohave to avoid the sales tax, but doesn't want to be stuck with the ground loss, etc.

. The Tribe is giving special consideration to everything it can set in forth to establish good paying records and habits by its customers as well as fair and reasonable rates proportionate to what people can afford to pay. At the same time, the Tribe feels that it didn't ask to be in the electrical business, therefore, the BIA should put them into the business without money coming out of the Tribe's pocket. The Tribe understands that if it doesn't take over the system, another agency will such as CRIT, and therefore, they would prefer to operate same unless it becomes totally unmanagable in their opinion. Since the Tribal Business Office has an excellent record in maintaining tribal accounts, payments and recordkeeping, this should be possible. If this is not, the Tribe does understand that the BIA will probably subcontract it out to someone else, if its reassigned by the Tribe.

Other Matters to be Adopted by the Tribe

. Although the Tribal Code covers damage to property of the Tribe, there will be specific provisions treated as a serious offense for tampering with electrical lines, meters and the like, as well as fine by HTUA. There will not be much leeway for the Judge to reduce the fine in that situation. Further, the Tribe is going to adopt a criminal provision relating to interferring with the operation of HTUA so that meter readers are not hassled or people who turn off the electricity are not hassled. A special prosecutor, perhaps me, will be appointed to handle tampering cases to see them all the way through to show that the Tribe means business when it takes over.

UNI D STATES GOVERNMENT

memorandum

SEP 20 1989

TO:

REPLY TO ATTN OF: Bill R. Coursey, Electrical Engineer

SUBJECT: Trip Report on Inspection Survey of the Supai Electrical Distribution System

TO: Director, FMCC

1. Date of Trip: August 4, 1989

2. Location Visited: Havasupai Village, Supai, Arizona

3. Persons Contacted: Jack Waymon, Facility Management Office
Truxton Canon Agency, Phoenix Area

4. Purpose of Trip: Technical support in the form of an Electrical Engineering Inspection Survey of the Suapi Electrical Distribution System was requested by the Phoenix Area. The BIA is negotiating with the Havasupai Tribe to turn the BIA owned distribution facility over to the Tribe. The purpose of the inspection survey was to determine the condition of the existing electrical distribution system and the scope of work and cost of construction to upgrade the electrical system to 14.2 kilovolt.

5. Accomplishments/Findings: A visual inspection was performed with Mr. Jack Waymon on the following areas:

a. The proposed routing for an extension of the 14.4 kilovolt distribution circuit to Hilltop was driven by car. This route is approximately 15 miles long and should present no Right-of-Way problems. The circuit extension can be installed adjacent to the all weather paved highway for the entire length of the proposed extension. An alternate route is approximately 3 miles shorter but crosses a section of the Boquillas Ranch, a recent purchase of the Navajo Nation. This routing may prove to be more expensive and time consuming, in acquiring Rights-of-Way lands, than the longer route.

b. The Long Mesa Substation is the Master Meter Point and take-off point for the 2.4 kilovolt electrical distribution circuit which provides power to the Havasupai Village. The existing substation transformer is rated at 1000 KVA, 14.4 kilovolt primary voltage and 4.16/2.4 kilovolt secondary voltage. The distribution circuit drops into the canyon utilizing 3 spans to cover the distance to the village. To convert this circuit from 2.4 kilovolt to 14.2 kilovolt should require no more than replacing the existing line insulators with the proper class insulators. The conductor and poles should be reusable.

5.C. The distribution circuits in the village area consists of 28 residential style pad mount transformers served by direct

burial cable, with cable insulation rated at 25 kilovolt. The direct burial cable was installed at depths ranging from 24 in. to 48 in., without any type of protection. The existing cable has been damaged by post hole drilling in many locations and is in an unreliable condition, according to the Truxton Canon Facility Manager.

Upgrading this section of the utility system will require replacing all 28 residential transformers, with transformers which operate at the proposed new distribution voltage of 14.2 kilovolts. To provide a reliable distribution system, it is recommended that new 25 kiolovolt cable be installed in either conduit or placed under a layer of concrete to provide a higher level of physical protection than currently exists. A system of vaults or splice boxes should be utilized at all lateral tap points along the main cable.

The buried cable will require testing to determine its present condition and if it can be reused in the upgraded electrical distribution system. The Facility Managers Office, Truxton Canon Agency has reported a discrepancy of approximately 33% between the master meter reading and the individual meter readings in the village. Some of this loss can be explained by variations in meter accuracies, meter reading accuracies, and transformer losses. However, a faulty electrical cable system is the most likely source of most of the power losses.

No scaled plans exist showing the layout of the village or the buried electrical cable. The village is approximately 1 mile long on each side of a stream. Electrical service is provided to each side of the stream and would require a minimum of 2 miles of buried cable to provide the primary electrical circuiting.

Before starting engineering design for the upgraded electrical system, an aerial mapping survey of the village will be required.

5.D. Routine replacement of the underground secondary services to each building meter should not be required. Existing building meters should be reusable but should be recalibrated during the conversion.

5.E. Existing primary fused switches and switchgear will require new fuses as a minimum and may require replacing, depending on age and condition.

6. <u>Conclusions/Recommendations:</u>

A. Present costs to upgrade the Village distribution system.

1.	New 15 KV Cable #2 AL Type EPR Conduit encased — 16,000 Lf @ $24.00 Lf	= 384,000
2.	New Manholes/Splice boxes 30 ea @ $1,500	= 45,000
3.	New Residential Transformers 28 ea @ $3,300	= 92,400
4.	Primary Switch gear	= 35,000
5.	Convert 3 Pole Structures 3 ea @ $2,000 to 14.4 KV operation	= 6,000
6.	Removals - 28 transformers	= 2,800
7.	Primary terminations 110 ea @ $55.00	= 6,050
	Havasupai Village DIstribution System upgrade - Subtotal	$ 571,250
	Remote Location Factor at 100% of Subtotal	571,250
	Present Time Total Estimate	1,142,500

B. Projected Costs to first quarter of FY 92 at (1.075) x (present time costs) = $ 1,228,188

C. Present costs to construct approximately 15 miles of 14.4 kilovolt, 3-phase, overhead electrical circuit extension to the Hilltop location at $40,000 per mile, excluding Right of Way purchases = 600,000

D. Projected costs to first quarter of FY 92 for 15 miles of 14.4 kilovolt overhead electrical circuit extension @ (1.075) x (present cost) = 645,000

E. Engineering design for the upgrade to the existing utility system is estimated to cost $74,000. Engineering design for the 15 miles of new 14.4 kilovolt overhead electrical circuit is estimated to cost $38,000.

F. Recommend programming the following to upgrade the Supai Electrical Distribution System:

1. Design construction documents for system upgrade.	$ 74,000
2. Construction of upgrade to the system.	1,228,188
3. Design construction documents for 15 miles of 14.4 kilovolt overhead electrical circuit.	38,000
4. Construction of 15 miles of 14.4 kilovolt Overhead Electrical Circuit	645,000
5. Total Electrical utility upgrade costs projected to First Quarter FY 92.	$ 1,985,188

John A. King
for
Bill Coursey

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

ASST AD-FACILITIES

DEC 5 1989

Note

To: Phoenix Area Director

From: Director, Office of Construction Management

Subject: Electric Service to Supai Village

Attached is a brief issue paper which establishes my understanding of the issue that we will be meeting with the tribal authorities to resolve.

If I have not stated the case accurately, please advise.

When a proposed revised schedule for the meeting is determined, I will reschedule my travel and participation.

Arthur M. Love, Jr.

Attachment

DEC 1989 RECEIVED TRUXTON CANYON AGENCY VALENTINE, ARIZ.

DEC 11 1989

Celebrating the United States Constitution

HAVASUPAI UTILITY TRANSFER - ISSUE PAPER

ISSUES:

(1) The feasibility of undertaking an early payoff ($1.082 million) of utility installation charges, resulting in long term savings of approximately $3.5 million for the Federal government; and (2) whether the utility should be transferred to the Havasupai Tribe.

BACKGROUND:

Electric power lines serving the Long Mesa location within the Phoenix Area were installed by the Mohave Electric Power Company at the request of the (Bureau of Indian Affairs) BIA in 1983. As a result, BIA entered into a 30-year General Services Administration (GSA) contract with Mohave Electric to pay for the installation at an annual cost of $198,000. Funding to cover the installation costs has been provided under Operations and Maintenance (O&M) contingency funds. However, these costs are not incorporated into the O&M formula for allocation.

The power supply serves not only the BIA facility at the location but is also used by the Tribe and individual households. Although BIA charges user fees, the extent of collecting receipts is unknown. (It should be noted that in September 19, 1989 the Solicitor's Office issued an opinion (attached) stating that charges to users should not be imposed until regulations are promulgated.)

Costs for the installation under the existing contract are estimated at $4.554 million (assuming 23 additional years under the life of the agreement). Estimates indicate early payoff costs of $1.082 million, if paid by January 1, 1991 -- an overall savings of $3.472 million over the annual payments (see attached memorandum).

Estimates for upgrading of the system range from an estimated $1.1 million to $1.9 million, and this work is also under consideration. The Havasupai Tribe has expressed interest in establishing a tribal utility authority to manage the utility if a transfer of ownership occurs.

ASSOCIATED ISSUE:

The FY 1990 Senate Report added on "$65,000 for the Truxton Agency to purchase a microwave transmitter to repair and improve the telecommunications system from the Supai Village to Long Mesa."

- BIA and Tribal or other private use of this utility and its possible transfer to the Tribe may also be considered.

FURTHER ACTION STEPS:

- Obtain any available additional information to assist in the consideration of the most viable option toward early payoff, upgrading of the system, and transfer to the Tribe.

RECOMMENDATIONS:

- A final decision by OCM regarding whether an early payoff of the utility installation is warranted.
- A final decision by OCM regarding the transfer of the utility to the Tribe.
- Decisions on the above may require funding to be authorized by OCM.

1-5-90

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
TRUXTON CANON AGENCY
VALENTINE, ARIZONA 86437

IN REPLY REFER TO:

Office of the Superintendent
(602) 769-2286

Martha Blue, Attorney at Law
601 N. Humphreys
Flagstaff, AZ 86002

Dear Martha:

Enclosed please find comments, as discussed on November 8, 1989 in the village of Supai, on the counter proposal received from you dated June 30, 1989.

Page one The year on the second line may need to be changed to 1990

Article I

Sec. 1 No comment

Sec. 2 No comment

Sec. 3 The exact figure (amount) will be ready upon signing.

Sec. 4 Although we feel this has already been done, we are gathering paper work to make the transfer official.

Sec. 5 This is being investigated to varify the existence of a valid claim.

Sec. 6 No comment.

Article II "Upgrade and extension of Electrical System"

Sec. I In process

Attached is a trip report with an estimate of upgrade and extension costs. This needs to be formally accepted by the Tribe. We would support a tribal coordinator for completion of Section 1a and 1b. This person can become involved in all phases allowable in the survey and construction of the upgrade in Supai and the Hilltop project. A pre-award conference would be held with the Contracting Officer to listen to tribal recommendations prior to the construction of the upgrade and extension. We would work with the Tribal representative during the construction phase, but the Contracting Officer would have final authority on contract award and enforcement.

Article III "Mohave Contract"

Sec. I The Bureau may have some concern about the wording in "Facilities Charges", specifically, "operation and maintenance" charges. The Agency has established a "line man" position in the branch of Facility Management. When the Tribe takes over this position, funding for the same can go to the Tribe under a 93-638 contract. This, plus the accounts receivable and costs generated through the tribal billing should pay all O&M costs. The Bureau understands that, at least though the first year of Tribal operation. We will work closely to insure success. Hopefully, the "Arizona State Tax" will not be under a third party pay and will not be a factor.

Sec. 2 At the present time, we are asking Congress for funds to pay the entire construction cost loan. If this is not accomplished, we intend to continue to pay the annual assessments.

Article IV "BIA Assistance"

Sec. 1 The entire program of training should be spelled out as to number of participants, types and length of training.

Sec. 2 Mentioned in Article III Sec. I - we would hope that the existing computers the tribe has will handle any additional software that is needed for this program, especially after the telecommunication system is improved.

Article V "Tribal Responsibilities"

Sec. I We would provide technical assistance to Martha Blue in drafting this material - she may call on Duane Yellowhawk, Tribal Operations, Jack Wayman, Facilities Foreman, or any other employee at the Agency. We can request technical assistance from the Area Office and the Albuquerque Facilities Manager. If the need is demanding and we can isolate expertise outside the Bureau, we may contract for this or the Tribe can contract it.

Sec. 2 The last sentence should read "the reading on the master meters which are located on tribal land." We feel the tribe will need to adjust their rates to allow for the electrical loss of at least 4%.

Sec. 3 No comment

Sec. 4 No comment

Article VI "RATES"

Sec. 1 Our figures show (depending on the time of year) that we could charge 11 cents per KWH. We figure that there is a 33% delinquency rate and paying 7.5 per KWH and collection 11 cents per KWH will compensate for the expense to operate.

Sec. 2 No comment

Sec. 3 No comment

Sec. 4 After the Tribe is the customer of Mohave Electric, Mohave Electric will notify the Tribe of any proposed changes. Until that time, the Bureau will notify the Tribe upon receiving notification. It should go without saying we will always support the Tribe to the greatest extent possible.

Sec. 5 After the Tribe assumes operation they will be completely responsible to Mohave Electric for all costs and guarantees.

Article VII "Terms of Agreement"

Sec. 1 The short time involved does not seem to give the arrangement a fair trial. The time limit should be extended and any return to the Bureau should be in as good condition as when turned over to the Tribe.

Article VIII "Dismissal of Appeal"

Refer to response under "Attachment C"

Attachment and Miscellaneous Notes

Attachment "A" Jack Wayman will have the responsbility to furnish this inventory list.

Attachment "B" Same as "A"

Attachment "C" Jim Williams Agency Self-Determination Specialist and Jack Wayman will work closely with Tribal Attorney to originate this to a conclusion

Attachment "D" Phoenix Area Office Facilities Management through the Agency will keep the Tribe updated and provide documents to facilitate the upgrade

Attachment "E" No comment

Attachment "F" No comment at this time

Attachment "G" No comment

Attachment "H" (what is this?)

The only other question I have is on page 2 of the Attachments. If the Tribe will charge the consumer a deposit, we must be sure the consumer has received credit for any deposit that shows on our records.

Sincerely,

Superintendent
Truxton Canon Agency

WARD & BLUE
ATTORNEYS

601 NORTH HUMPHREYS STREET
POST OFFICE BOX 789
FLAGSTAFF, ARIZONA 86002

ROY B. WARD TELEPHONE (602) 774-2773 MARTHA BLUE

March 19, 1990

George Keller, Superintendent
United States Department of the Interior
Bureau of Indian Affairs
Truxton Canon Agency
Valentine, AZ 86437

Re: Proposed Transfer Agreement re Electrical Power Distribution System

Dear George:

My response to your comments are as follows:

Article I - Transfer

. Section 3. We would like a figure below which the arrearages will not fall as from what you've told us, the arrearages are rising.

. Section 4. The transfer would need to be official before the signing of this Transfer Agreement.

. Section 5. The Tribe is of the opinion that it has provided enough verification of the existence of a valid claim that this indirect cost allowance must be allowed as part of the Transfer Agreement.

Article II - Upgrade and Extension of Electrical System

. Section 1. Your comments are satisfactory, although we would need to add a time period within which the extension would need to be accomplished. See later reference to Article VI, Section 5.

Article III - Mohave Contract

. Section 1. As I recollect, the bills are broken into facility charges which is payment for the construction of the line and operation and maintenance charges. We would like to add that the Tribe would receive funding under a 93-638 contract for a line man position in the branch of Facility Management. It is our understanding that subsequent communications have established training at Crit for tribal people. Further, it's my recollection that there's an Arizona tax under both components of the bill. While the Tribe is willing to take over the operation of the electrical system in Supai upon the completion of the

upgrade, it is not willing to have BIA step aside as guarantor of the payments until the extension is completely finished and operable.

. Section 2. Your comment is fine.

Article IV - BIA Assistance

. Section 1. Your proposal is agreeable and I understand that there's been further work along those lines between Tom Moore and your department.

. Section 2. See previous comment.

Article V - Tribal Responsibilities

. Section 1. We would appreciate it if the Area Office or yourselves could promptly obtain statutory enactments as well as policies and regulations and the like for tribal utility authorities. Our request for same have not been particularly fruitful. We would be particularly interested in material of Papago, Navajo and any other small or tribal utilities. We would like to receive those as soon as possible. We would also like you to isolate expertise outside the Bureau, provide information about that person's expertise, the cost and the like as we may request the Bureau to contract for this, provided that there's tribal involvment as the Tribe has specific ideas of how they want this to work.

. Section 2. Your comment is not quite clear. We would read the master meters located within the Reservation and would understand that our rate adjustment needs to be four percent (4%). However, we're going to have to add on some provision that if the system that you install still creates engergy losses (the present system has energy losses which can be measured in the ground by using volt meters) then the Bureau may have to pay for what energy loss exceeds the four percent, provided that the Tribe monitors illegal tax.

. Section 4. We want to do the withholding up to twenty-five percent (25%) if need be.

Article VI - Rates

. Section 1. Your comment is fine.

. Section 4. Your comment is fine.

. Section 5. After the Tribe assumes operation for not

only the upgraded Supai lines, but the extension to Hilltop, will they be responsible to Mohave Electric?

Article VII - Terms of Agreement

. Section 1. We will need to define as to what "good condition" means and it needs to include "subject to ordinary wear and tear." Perhaps that time does not give their arrangement a fair trial, however, with extensive discussions with the Tribal Council, they have serious reservations of taking over a system where one out of three consumers are in arrears, the Tribe feels that it could only work with the following:

.. Sixty day notice given the first year after the Tribe assumes operation of the entire system, including the extension to Hilltop (we realize that that may occur later than when the upgrade to Supai occurs).

.. For five years thereafter, upon sixty days notice.

.. After that, the Tribe would have to give a six month notice.

The reason is that you do have Crit that you can refer the operation of the program to and that subsequent tribal administrations may not be as effective in dealing with arrearages as the present administration intends to be. The specter of your problems with the arrearages will haunt tribal administrations for some time to come, but as time passes, the arrearage situation from the date of tribal contral could slowly accrete, as have tribal loans.

As an aside, the Tribe intends to have customers sign a document that they've received the regulations and that they've read them and that if they don't read very well, they understand that the regulations are available to listen to on tape in the Havasupai language at the tribal offices. You can see that the Tribe has given a great deal of thought to making this work.

Miscellaneous

Further, we need to add a provision about non-liability of the Tribe for accident, injury or death relating to the installation of the extension to Hilltop or the upgrade of the system to Havasupai. Tribal Council is extremely concerned about the dangerous conditions which Wayne has indicated exsits because of the inadequacy of the present line. They are very worried about damage to individuals residing and/or visiting in Supai.

Further, the Bureau knows that the Tribe will be requiring new customer deposits of customers who are in arrears and I assume that the deposits for your customers who are in arrears have already been applied to their bill?

Sincerely,

Martha Blue

Martha Blue

MB:mao

cc: Havasupai Tribal Council

MEC SOF EXH 28

MEC SOF EXH 29

OCT 2 4 1988

SURNAME
Cotner 10/24

Acting
Phoenix Area Director
Attention: Facilities Management

Supai Electric Distribution System

Superintendent, Colorado River Agency
Attention: Electric Utility Branch

The Truxton Canon Agency is reorganizing the Supai Power System as an independent utility. A Committee is being formed to prepare a study on the organization, rates, billing procedures, and other operational items.

We request that you assign an individual with general knowledge of the Project's electrical system and operation to the Supai Electrical System Committee.

The report and recommendations are scheduled to be completed by the end of the year.

If you have any questions, please contact Bill McConnell at (FTS) 261-2293, or (Comm.) (602) 241-2293.

RAYMOND H. ALBERT

Braun
Clah
Cotner
Gardiner
Herrington
Invocato
Johnson
McConnell

HCotner:ne 10/24/88

cc: Supt., Truxton Canon Agency 10/27/88

OCT 1988
RECEIVED
PHOENIX AREA OFFICE
FACILITY
MANAGEMENT

MEC SOF EXH 30

MOHAVE ELECTRIC COOPERATIVE, INC.

30 YEARS SERVICE TO RURAL MOHAVE COUNTY

June 7, 1976

JUL 8 1976

Bureau of Indian Affairs
Phoenix Area Office
P. O. Box 7007
Phoenix, Arizona 85011

Subject: Electric Power to Hualapai and Havasupai Indian Reservations

Gentlemen:

This letter is to be attached to and made a part of the enclosed quotation for providing electric power to the Hualapai and Havasupai Indian Reservations.

The availability of funds are the major concern of putting this project together; therefore, this quotation consists of three alternatives:

1) Mohave Electric Cooperative provides 100% of the funds, or

2) Mohave provides 50% and the BIA provides 50%, or

3) BIA provides 100% or estimated $1,102,500.00, this being for the main line to Long Mesa only.

a) $15,833.00 per month, plus power and energy per Schedule A attached;

b) $12,781.00 per month, plus power and energy per Schedule A attached; and

c) $9,762.00 per month, plus power and energy per Schedule A attached.

These costs are based on amortization of these facilities over 35 years and if the contract is to be limited to 10 years, the monthly costs would be considerably higher.

Also enclosed and attached to this quotation are the following:

1) Standard Form 18
2) GSA Form 1683
3) MEC Wholesale Power Agreement
4) MEC Schedule A, Rate Schedule
5) Letter from Havasupai Tribe
6) Havasupai Resolution No. 4-75
7) Hualapai Resolution No. 13-75

MEC would welcome the opportunity to discuss this proposal and investigate other means of funding this project such as the BIA or Tribes building the line and MEC operating and maintaining them.

The inclusion of the single phase line to Hilltop will increase the above prices by approximately 19%.

As MEC has been interested in this project for some six years and has rendered assistance in providing the present facilities, it is indeed a privilege to have the opportunity to present our quotation.

I will be available at any time to answer any questions or provide any further information concerning this project.

Sincerely,

A. H. Carpenter

A. H. Carpenter
General Manager

AHC/bem
Attachments

OMB Approval No. 029-0188

STANDARD FORM 18, MARCH 1971
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.201

REQUEST FOR QUOTATIONS
(THIS IS NOT AN ORDER)

PAGE 1 OF

1. REQUEST NO. N-446
2. DATE ISSUED 6/8/76
3. REQUISITION/PURCHASE REQUEST NO.
4. CERTIFIED FOR NATIONAL DEFENSE UNDER DPS REG. 1 AND/OR DMS REG. 1 RATING:

5. ISSUED BY
Bureau of Indian Affairs
Phoenix Area Office
P. O. Box 7007
Phoenix, Arizona 85011

FOR INFORMATION CALL (Name, area code and tel. no.) (No collect calls)

6. DELIVER BY (Date)

7. DELIVERY
☐ FOB DESTINATION ☒ OTHER (See Schedule)

8. TO NAME AND ADDRESS (Street, city, state, and ZIP code)

9. DESTINATION (Consignee and address including ZIP code)
See Schedule

10. Please furnish quotations to the issuing office on or before close of business (date) 7/8/76. Supplies are of domestic origin unless otherwise indicated by quoter. This is a request for information, and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it. This request does not commit the government to pay any costs incurred in the preparation or the submission of this quotation, or to procure or contract for supplies or services.

SCHEDULE

11. ITEM NO.	12. SUPPLIES/SERVICES	13. QUANTITY	14. UNIT	15. UNIT PRICE	16. AMOUNT
	Provide electric energy to the Hualapai and Havasupai Reservation, Arizona in accordance with attached specifications, terms and conditions.				

17. PRICES QUOTED INCLUDE APPLICABLE FEDERAL, STATE, AND LOCAL TAXES.

FOR PROMPT PAYMENT ____ % 10 CALENDAR DAYS, ____ % 20 CALENDAR DAYS, ____ % 30 CALENDAR DAYS, ____ % ____ CALENDAR DAYS.

NOTE: Reverse must also be completed by the quoter.

18. NAME AND ADDRESS OF QUOTER (Street, city, county, State, including ZIP code)
Mohave Electric Cooperative, Inc.
P. O. Box 1045
Bullhead City, Az. 86430

19. SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION
A. H. Carpenter

20. DATE OF QUOTATION
7/1/76

21. SIGNER'S NAME AND TITLE (Type or print)
A. H. Carpenter
General Manager

22. TELEPHONE NO. (Include area code)
602 - 753-2128

REPRESENTATIONS AND CERTIFICATIONS

The Quoter represents and certifies as part of his quotation that: (Check or complete all applicable boxes or blocks.)

1. SMALL BUSINESS

He ☐ is, ☒ is not, a small business concern. A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.) If the quoter is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished hereunder ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

2. REGULAR DEALER-MANUFACTURER (Applicable only to supply contracts exceeding $10,000.)

He is a ☒ regular dealer in, ☐ manufacturer of, the supplies offered.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (Applicable only to quotations in excess of $10,000.)

(a) By submission of this quotation, the quoter certifies, and in the case of a joint quotation, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) the prices in this quotation have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other quoter or with any competitor;

(2) unless otherwise required by law, the prices which have been quoted in this quotation have not been knowingly disclosed by the quoter and will not knowingly be disclosed by the quoter prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly, to any other quoter or to any competitor; and

(3) no attempt has been made or will be made by the quoter to induce any other person or firm to submit or not to submit a quotation for the purpose of restricting competition.

(b) Each person signing this quotation certifies that:

(1) he is the person in the quoter's organization responsible within that organization for the decision as to the prices being quoted herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2)(i) He is not the person in the quoter's organization responsible within that organization for the decision as to the prices being quoted herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) This certification is not applicable to a foreign quoter submitting a quotation for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A quotation will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. Where (a)(2) above has been deleted or modified, the quotation will not be considered for award unless the quoter furnishes with his quotation a signed statement which sets forth in detail the circumstances of the disclosure and the head of the Agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

GPO : 1974 O - 562-780

GENERAL SERVICES ADMINISTRATION

NEGOTIATED ELECTRIC UTILITY CONTRACT

CONTRACT NUMBER

The Contractor identified below agrees to sell and deliver to the UNITED STATES OF AMERICA, hereinafter referred to as the "Government," and the Government agrees to purchase and receive from the Contractor electric power and energy at the Service Location hereinafter referred to, subject to (1) the terms and conditions set forth on the face and reverse side of this page and on any continuation pages attached hereto; (2) Technical Provisions (GSA FORM 1684); and (3) Supplemental Provisions (GSA FORM 1685).

1. SERVICE LOCATION: The Contractor shall furnish to the Government all electric energy which the Government may request during the term of this contract up to 1,000 KVA for the operation of its facilities located at Hualapai & Havasupai Indian Reservations, hereinafter referred to as "Service Location."

2. POINT OF DELIVERY: The Contractor shall make and pay for all connections between the systems of the Contractor and the Government at the point of delivery. The point of delivery is described as follows:

   Line side of Long Mesa Power Transformer

3. SERVICE CHARACTERISTICS: Electric energy to be supplied hereunder shall be alternating current Three (. phase, sixty cycles, and shall be delivered at 14.4/24.9KV volts as normal, with allowable variation of 10 percent above or below normal. The electric energy furnished hereunder shall be metered at 14.4/24.9k volts.

4. CHARGE: The Contractor shall be paid for the services herein contracted for under the Contractor's Rate Schedule(s) Per attached contract, a copy of which is attached and made a part hereof, commencing with the period in which electricity is initially furnished hereunder and continuing until this contract is terminated, except that the minimum charge, if any, specified in said Rate Schedule(s) shall be equitably prorated for the periods in which commencement and/or termination of this contract shall occur.

5. TERM OF CONTRACT: The term of this contract shall be for a period of 10 year(s) from the date that the Contractor makes electricity available and the Government is ready to receive electricity from the Contractor at the Service Location. The Contractor shall make every reasonable effort to commence to deliver electricity to the Government at the Service Location not later than the 31st day of December, 1977. The Government shall, as promptly as possible, advise the Contractor of the date it will be ready to receive electricity under this contract. The Government shall have the right to extend the term of this contract for additional periods of one year each by furnishing the Contractor with a written notice of extension thereof not later than thirty (30) days prior to the expiration of the current period; provided, however, that the overall term of this contract shall not exceed a period of ten (10) years.

6. SPECIAL TERMS AND CONDITIONS: If there are any Special Terms and Conditions to this contract they are attached and identified as follows: ATTACHED letter of exhibits
   (If none, so specify)

EXECUTION BY CONTRACTOR	DATE 7/7/76	EXECUTION BY GOVERNMENT	DATE
NAME OF CONTRACTOR *(Type or print)* Mohave Electric Cooperative, Inc. ☐ INDIVIDUAL ☐ PARTNERSHIP ☒ CORPORATION		UNITED STATES OF AMERICA ACTING THROUGH THE ADMINISTRATOR OF GENERAL SERVICES	
ADDRESS Highway 95 Bullhead City, Az.		BY	
		TITLE *(Contracting Officer)*	
SIGNATURE OF PERSON AUTHORIZED BY R. H. Carpenter TITLE General Manager		THIS CONTRACT IS EXECUTED PURSUANT TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, 63 STAT. 377, AS AMENDED.	
INVOICE FOR PAYMENT SHOULD BE MAILED TO		ACCOUNTING AND APPROPRIATION DATA	

TERMS AND CONDITIONS

INVOICES.
Invoices for payment shall be prepared and submitted in duplicate unless otherwise specified by the Government. All invoices shall contain statements of the meter readings at the beginning and the ending of the billing period, meter constants, consumption during the billing period, and such other pertinent data as may be required to substantiate the billing or such other pertinent data as may be requested by the Government.

PAYMENT OF SERVICES.
(a) All bills for payment of services under this contract shall be paid without penalty or interest, and the Government shall be entitled to any discounts customarily applicable to payment of bills by any customer of the Contractor.

(b) For purposes of charges under the contract, any demands due to faulty operation of, or excessive or fluctuating voltage on, the Contractor's system shall not be included as part of the Government's demand.

(c) Payments hereunder shall not be made in advance of services rendered. The Government shall, however, use due diligence to effect payment of all bills for services rendered under this contract within thirty (30) days from the date such bills are received.

Nothing herein contained shall be construed as binding the Government to expend in one fiscal year ending June 30 any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this contract or to involve the Government in any contract or other obligation for the further expenditure of money in excess of such appropriation.

DAMAGE AND INJURY.
The Government shall in no event be liable or responsible for damage or injury to any person or property occasioned through the use or operation of the Contractor's facilities or the action of the Contractor, its employees and agents in performing under this contract.

ACCESS TO SERVICE LOCATION.
(a) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit to enter the Service Location for any proper purpose under this contract, including use of site or sites agreed upon by the parties hereto for the installation, operation, and maintenance of the facilities of the Contractor. Authorized representatives of the Contractor will be allowed access to the facilities of the Contractor and the Government at suitable times to perform the obligations of the Contractor with respect to such facilities. It is expressly understood, however, that proper military or Governmental authority may limit or restrict the right of access herein granted in any manner considered by such authority to be necessary for the national security.

The Contractor shall, at its expense, obtain all rights of way and easements necessary to permit it to perform under this contract.

JAN 1975
RECEIVED
MOHAVE ELECTRIC
COOPERATIVE, INC.
KINGMAN

Havasupai Tribal Council
HAVASUPAI RESERVATION
SUPAI, ARIZONA
86435

PHONE
PRESCOTT EXCHANGE
SUPAI NO. 1
602-448-2961

January 16, 1975

Al H. Carpenter
Mohave Electric Cooperative
3160 Shangri-La
Kingman, Arizona
86401

Dear Mr. Carpenter -

As a result of many meetings with Bureau of Indian Affairs personnel, state officials, Havasupai tribal members, a considerable volume of correspondence and a number of resolutions, you are well acquainted with the power problems on the Havasupai reservation.

The Bureau of Indian Affairs generating plant on Long Mesa only barely serves the needs of the Havasupai community now. During this calendar year twelve or thirteen new homes will be built in Supai, and in about three months our new store and warehouse, now under construction, will be completed. The store will be modern with walk-in freezer and refrigerator and refrigerator display cases. A new school to accomodate children through sixth grade is in the planning stage now. Other installations will probably be built within the next few years. All of this means more people will be using more electricity, and in the not too distant future, the plant on Long Mesa will prove to be totally inadequate. There will be need for power on the recently acquired area enlarging our reservation once planning for use is completed.

Mr. Carpenter, I am asking, in behalf of the Havasupai tribe, that Mohave Electric Cooperative use every means available to it to provide us with the commercial power that will assure reliable, dependable and consistent use of all the facilities in our community.

Sincerely yours,

Leon Rogers

Leon Rogers, Chairman
Havasupai Tribal Council

See

THE THREE BEAUTIFUL WATERFALLS
IN THE DEEP CANYON HOME OF
THE BLUE-GREEN WATER PEOPLE,

RESOLUTION NO. 4-75
OF THE GOVERNING BODY OF THE
HAVASUPAI TRIBE OF THE HAVASUPAI RESERVATION
(A FEDERALLY CHARTERED INDIAN CORPORATION)
SUPAI, ARIZONA

WHEREAS, the Havasupai Tribe has become dependent on electricity, and

WHEREAS, the recent passage of bill S.1296 which adds considerable land area to the Havasupai reservation, will occasion even more demand on an already overtaxed Bureau of Indian Affairs generating plant on Long Mesa, and

WHEREAS, the solution of problems resulting from an inadequate power supply would appear to rely on bringing electricity to Long Mesa from a commercial source, and

WHEREAS, the only feasible source at this time appears to be Mohave Electric Cooperative, Inc.,

NOW, THEREFORE, BE IT RESOLVED that the Havasupai Tribal Council in behahl of the Havasupai Tribe requests that Mohave Electric Cooperative provide electrical power to the Havasupai reservation by means of a powerline built from the Peach Springs area to Long Mesa, and

BE IT FURTHER RESOLVED that the Havasupai Tribal Council requests any and all appropriate agencies to assist Mohave Electric Cooperative in its efforts to make this a reality.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Havasupai Tribal Council, do hereby certify that the Tribal Council of the Havasupai Tribe is composed of seven (7) members, of whom 4, constituting a quorum, were present at a Special meeting held this 14 of January 1975; and that the foregoing resolution was duly adopted by the affirmative vote of 4 to 0 against; pursuant to the Constitution and Bylaws approved March 27, 1939 and amended July 22, 1967, June 18, 1968 and September 23, 1972.

Leon Kaye
Chairman, Havasupai Tribal Council

ATTEST:

W. Curtis Sinyella, Acting
Secretary, Havasupai Tribal Council

RESOLUTION NO. 13-75
OF THE GOVERNING BODY OF THE
HUALAPAI TRIBE OF THE HUALAPAI RESERVATION
(A FEDERALLY CHARTERED INDIAN CORPORATION)
PEACH SPRINGS, ARIZONA

WHEREAS, the Hualapai Tribe is interested in developing the east sided of their Reservation, and

WHEREAS, any development is dependent on some sources of dependable power, water, and sewage treatment, and

WHEREAS, the only source of power at the present time is through Mohave Electric Coop. , and

WHEREAS, the Havasupai Tribe has received an addition of 185,000 acres of land through the enactment of the "Grand Canyon bill" which creates an additional Power need if any developments are to take place at Hilltop or any other area to be developed under the terms of the act, and

WHEREAS, the Havasupai Tribe by enactment of Resolution No. 4-75, and accompanying letter of January 16, 1975 has requested the Mohave Electric Cooperative to provide electrical power to Supai

NOW, THEREFORE, BE IT RESOLVED that the Hualapai Tribal Council endorses the Havasupai request and further request that the line be routed across Hualapai reservation to provide electricity to the Frazier Well area.

BE IT FURTHER RESOLVED that Hualapai Tribe will authorize granting a right-of-way across the Hualapai reservation without charge based on the length of loan not to exceed 30 years, further that a detail of easement be considered at a later date.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hualapai Tribal Council, hereby certify that the Hualapai Tribal Council of the Hualapai Tribe is composed of nine (9) members of whom 6 constituting a quorum were present at a regular meeting thereof held on this 1st day of March, 1975, and that the foregoing resolution was duly adopted by the affirmative vote of 6 members pursuant to authority of Article VI, Section 1 (a) & (b) of the Revised Constitution and Bylaws of the Hualapai Tribe approved October 22, 1955.

CORPORATE SEAL:

Chairman, Hualapai Tribal

Attest: Marjorie Quasha

MAR 1975
RECEIVED
FULTON CANYON
AGENCY

MEC SOF EXH 31

JUL 8 1976

ARIZONA PUBLIC SERVICE COMPANY

P. O. BOX 21666 · PHOENIX, ARIZONA 85036

July 8, 1976

Bureau of Indian Affairs
Phoenix Area Office
P.O. Box 7007
Phoenix, Arizona 85011

Subject: Request for quotation number N-446-Electric Service to the Hualapai and Havasupai Indian Reservations, Arizona

Gentlemen:

In reference to your request for quotation number N-446 Arizona Public Service Company is pleased to provide the following response.

APS will extend 2-phase (2Ø) 69 kv past the Frazier Well area to the Supai area. Delivery to the Supai load would be at 4 kv through an open delta 3-phase (3Ø) 69/4 kv substation. A 1-phase (1Ø) 40/12 kv substation would be installed in the Frazier Well area for 1Ø service over a 12 kv 1Ø line. The estimated cost of these facilities is $1,507,400. A breakdown of this estimate and a map of the proposed route are provided as Attachments 1 and 2.

The Bureau of Indian Affairs would be asked to pay APS a non-refundable contribution equal to the actual cost of these facilities which is estimated to be $1,507,400 plus any taxes as a result of the contribution. The rate for electric service would be according to Attachment 3 initially and would be applied separately to each delivery point. In addition there would be a monthly facilities charge of approximately $6,000.00.

Service would be provided under the terms of an APS wholesale power agreement. Both the San Carlos Indian Irrigation Project and the Colorado River Indian Irrigation Project recently began taking service from APS under this type of agreement. In both cases the agreements were signed by the Bureau of Indian Affairs.

Please note that the above information is not a firm quotation but instead is provided only as an estimate of providing service to the Hualapai and Havasupai Indian Reservation.

If you should have any questions regarding the information provided please contact me.

Sincerely,

Dale Tarkington
Customer Contracts Engineer

BUREAU OF INDIAN AFFAIRS
RECEIVED

DRT/jlbw

JUL 8 1976

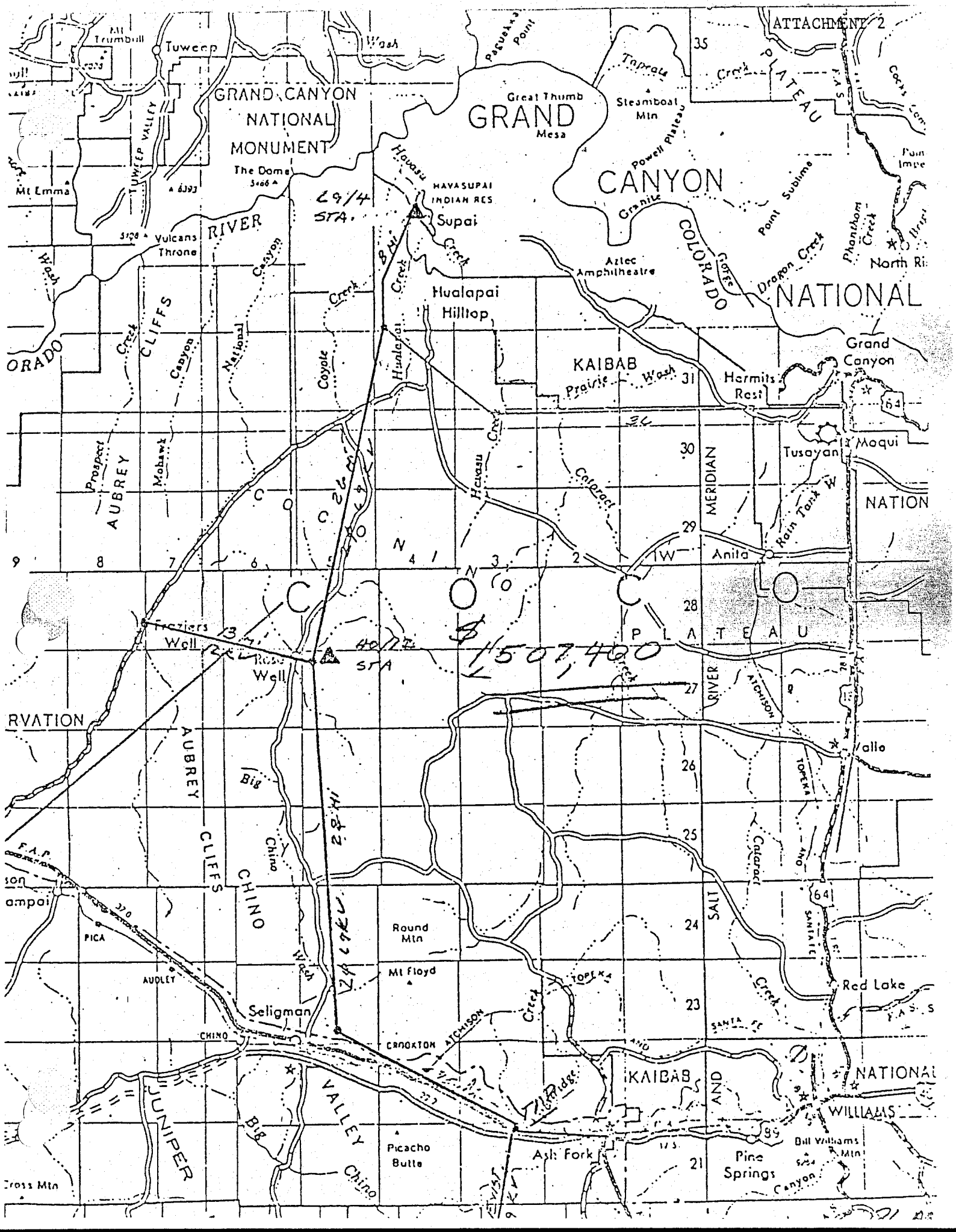
SERVICE TO HUALAPAI AND HAVASUPAI RESERVATIONS

Construction Costs:

1) 69 kV line, 2Ø OHGW (includes impact statement costs, right-of-way, survey, and engineering)		
77 miles @ $16,960/mile	$1,305,900	
2) 12 kV line, 1Ø (includes right-of-way, survey, and engineering)		
13 miles @ $10,000/mile	130,000	
3) 1Ø substation, 40/12 250 kVa (Frazier Well area)		
1 @ $12,000	12,000	
4) Open delta substation, 69/4 1000 kVa (Supai)	16,500	
5) 4 kV metering (Supai)	4,000	
6) 69 kV reclosure (Ashfork tap)	39,000	
TOTAL COST		$1,507,400

This plan will give approximately 3.3 percent voltage drop at Havasupai.

ATTACHMENT 2



RATE*

BASE MONTHLY RATE:

(a) $750, plus
(b) Demand charge
$4.13 per kw of billing demand, plus
(c) Energy charge:
$0.009 per kwh

BASE MONTHLY MINIMUM:

(a) $750, plus
(b) Demand charge

MONTHLY ADJUSTMENTS:

The Energy charge of the base monthly rate shall be adjusted in accordance with Exhibit I attached hereto.

* APS would retain the right to unilaterally file with the Federal Power Commission for a change in rates.

Exhibit I

Fuel Cost Adjustment Clause

(1) The billing[a] for service rendered during the billing month shall be increased or decreased by an adjustment amount per kilowatthour of sales (to the nearest 0.0001¢) equal to the difference between the fuel cost per kilowatthour of sales for that month and the base period, calculated as follows:

$$\text{Adjustment Factor} = \frac{F}{S} - 0.7356¢/\text{Kwh}$$

Where "F" is the expense of fossil and nuclear fuel in the current period; and "S" is the Kwh sales in the current period, as defined below.

(2) Fuel costs (F) shall be the cost of:

(i) Fossil and nuclear fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants; plus

(ii) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in paragraph (2) (iii) below; plus

(iii) The net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction) when such energy is purchased on an economic dispatch basis. Included therein may be such costs as the charges for economy energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the utility to substitute for its own higher cost energy; and less

(iv) The cost of fossil and nuclear fuel recovered through inter-system sales and specific deliveries[b] including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.

(3) Sales (S) shall be all Kwh's sold, excluding inter-system sales. Sales shall be equated to the sum of (i) generation, (ii) purchases, (iii) interchange-in, less (iv) energy associated with pumped storage operations, less (v) inter-system sales referred to in paragraph (2) (iv) above, less (vi) total system losses.

(4) The total system losses referred to in paragraph (3) above shall be modified to reflect the level of losses associated only with wholesale sales for resale.

(5) The adjustment factor developed according to this procedure shall be further modified to allow the recovery of gross receipts and other similar revenue based tax charges occasioned by the fuel adjustment revenues.

Fuel Cost Adjustment Clause

(6) The cost of fossil fuel shall include no items other than those listed in Account 151 of the Commission's Uniform System of Accounts for Public Utilities and Licensees. The cost of nuclear fuel shall be that as shown in Account 518, except that if Account 518 also contains any expense for fossil fuel which has already been included in the cost of fossil fuel, it shall be deducted from this account.

Footnotes:

a/ Billing under this clause will preliminarily be based on the billing months' sales multiplied by the adjustment factor determined from the second preceding month. The billing thus determined will be corrected to the adjustment factor determined for the billing month. Such correction will be made two months after the preliminary billing.

b/ Specific deliveries are intended to include fuel costs for deliveries for which the rate is tied to fuel costs of specific plants or units.

MEC SOF EXH 32

JUL 1 9 1976

Dale Ed McCausland
Goldsmith
Lund Drost
Kenimer Gardiner
McConnell Invocate
Clah

CITIZENS UTILITIES COMPANY

ADMINISTRATIVE OFFICES · HIGH RIDGE PARK · STAMFORD, CONNECTICUT 06905 · 203/327-9900

July 15, 1976

ELECTRIC
KINGMAN, ARIZ.
LAKE HAVASU CITY, ARIZ.
NOGALES, ARIZ.
KAUAI, HAWAII
WALLACE, IDAHO
NEWPORT, VT.

GAS
NOGALES, ARIZ.
JUNTA, COLO.

TELEPHONE
BULLHEAD CITY, ARIZ.
KINGMAN, ARIZ.
LAKE HAVASU CITY, ARIZ.
ALTURAS, CAL.
BURNEY, CAL.
ELK GROVE, CAL.
FERNDALE, CAL.
RIO VISTA, CAL.
SUSANVILLE, CAL.
BIG RUN, PA.
NEW BETHLEHEM, PA.

WATER
RIVIERA, ARIZ.
SUN CITY, ARIZ.
TUBAC, ARIZ.
FELTON, CAL.
FERNDALE, CAL.
GUERNEVILLE, CAL.
INVERNESS, CAL.
JACKSON, CAL.
LOS ALTOS, CAL.
MONTARA, CAL.
NILES, CAL.
NO. SACRAMENTO, CAL.
SANTA ROSA, CAL.
WEST SACRAMENTO, CAL.
WALLACE, IDAHO
ADDISON, ILL.
KOKOMO, IND.
BRIMFIELD, OHIO
WESTERVILLE, OHIO
LAKE HERITAGE, PA.
NAZARETH, PA.
ROYERSFORD, PA.
WEST LAWN, PA.

John Artichoker, Phoenix Area Director
Bureau of Indian Affairs
P.O. Box 7007
Phoenix, Arizona 85011

Attention: Branch of Facility Management

Dear Mr. Artichoker:

In response to your request of June 8, 1976 we are pleased to furnish an outline of the principal terms of an agreement under which we would provide electric service to existing and future installatins on the Hualapai and Havasupai Indian Reservations, Coconino County, Arizona. These are stated in Exhibit No. 1 enclosed.

Service would be provided to the present 650 KVA load and to future loads up to 1000 KVA as outlined in your specifications. Additional deliveries above 1000 KVA will be possible from the proposed facilities.

Our proposal provides for the supply of electric utility service directly to the individual meters on the Reservation, rather than providing primary power at a single delivery point on the line side of Long Mesa power transformer. It is our understanding through discussions with your office that this is a satisfactory alternate to that outlined in the specification.

We have at our disposal helicopter service enabling us to maintain facilities promptly on a regular and emergency basis, thereby providing service to the customers in a reliable manner.

We are available to meet with you at any time, and should indeed be pleased to supply the Indian Reservation power requirements. We look forward to hearing from you.

Very truly yours,

H. Gordon Stewart
Vice President

HGS/bh
cc: S. Moore, Mgr., Citizens Utilities Co., Kingman, Ariz. (w/encls.)
C. Pitrat, Superintendent, Truxton Canon Agcy., Valentine, Ariz. (w/encls.)

Exhibit No. 1

CITIZENS UTILITIES COMPANY
Mohave County Electric Division

Bureau of Indian Affairs
Service to Hualapai and Havasupai Indian Reservations

Outline of principal terms of a proposed agreement under which Citizens would provide residential and commerical electric utility service under Arizona Corporation Commission approved tariffs to customers at the Hualapai and Havasupai Indian Reservations, Coconino County, Arizona.

1. New Facilities To Be Provided by Citizens

   1.1 Single circuit, 3 phase, 24.9 KV transmission line, 66 miles in length.

   1.2 Single circuit, 3 phase, 12 KV distribution line, 30 miles in length.

   1.3 Substation facilities 12-24.9 KV, 2.5 MVA capacity.

2. Ownership of Existing Distribution Facilities To Be Transferred

   2.1 Ownership of existing distribution facilities from Long Mesa into Havasupai Village to be transferred to Citizens at no cost to Citizens. These facilities include overhead primary, underground primary, distribution transformers, service connections and customer meters.

   2.2 Citizens will maintain facilities covered under Items 1 and 2.1.

3. Advance To Be Provided by the Bureau of Indian Affairs

   3.1 Actual cost of construction, including overheads and interest during construction, incurred in furnishing facilities described in 1, estimated to be 1,000,000.

4. Payment For Service

   Projected revenues from the sale of energy at Citizens rates on file with the Arizona Corporation Commission are not sufficient to carry the cost of operation, maintenance, depreciation, property taxes and other costs which will be incurred by Citizens. In consideration of the ownership and operation of the new facilities, the Bureau of Indian Affairs

would be required to guarantee minimum annual revenues from the service area consisting of the sum of the following two items:

4.1 The amount of $105,000. This sum to be adjusted to reflect changes in taxes and other direct costs associated with the facilities described under Item 1.

4.2 Revenues derived from sales to the ultimate customers who will be billed for service furnished to them in accordance with Citizens applicable rate schedules and any successor rate schedules approved by the Arizona Corporation Commission. Copies of applicable rate schedules are attached.

5. Refunds

5.1 The amount advanced by the Bureau of Indian Affairs under Item 3.1 shall be refunded to the Bureau annually in the amount of 20% of the annual revenues collected under Item 4.2 which are in excess of Item 4.1. The total amount of refunds shall not exceed the amount of the advance.

5.2 At such time, as amounts advanced are fully refunded, the minimum provided for in 4.1 shall be diminished annually by the amount that would have been refunded under Section 5.1, but in no instance shall this exceed the amount provided in 4.1.

ELECTRIC RATES

CITIZENS UTILITIES COMPANY
KINGMAN, ARIZONA

Schedule No. D-1-F

Cancelling Schedule No. D-1-E

FILED BY: S. Moore

DISTRICT: Mohave County, Arizona

RESIDENTIAL SERVICE

Applicability

Applicable to all residential customers for all domestic service but not to hotels, rooming houses, public buildings, commercial houses or other services not strictly residential service. A residence is a single occupancy dwelling housing the customer and/or his or her immediate family and accommodating not more than two persons as roomers.

Territory

All points in the Company's service area where facilities of adequate capacity and the required phase and suitable voltage are adjacent to the premises served.

Rate

A Service Charge of 70¢ per meter per month, plus an energy charge as follows:

			Effective 5-1-76
First	30 KWH Per Meter Per Month	7.32¢ Per KWH	8.379¢
Next	70 KWH Per Meter Per Month	5.60¢ Per KWH	6.659
Next	150 KWH Per Meter Per Month	3.88¢ Per KWH	4.939
Excess	KWH Per Meter Per Month	1.71¢ Per KWH	2.769

The minimum monthly charge under this schedule shall be $5.35 per month.

The rates stated herein shall be increased by the applicable proportionate part of any taxes or governmental impositions which may be assessed on the basis of gross revenue of the Company and/or the price of or revenue from the electric energy or service sold and/or the volume of electric energy generated or purchased for sale and/or sold hereunder.

The rates stated herein shall be subject to such adjustment as may be necessary to reflect any increase or decrease in cost to the Company of power and energy either generated or purchased after June 30, 1972.

ELECTRIC RATES

CITIZENS UTILITIES COMPANY
KINGMAN, ARIZONA

Schedule No. D-1-F
Page 2

FILED BY: S. Moore

DISTRICT: Mohave County, Arizona

RESIDENTIAL SERVICE (Cont'd.)

Special Conditions

(a) Service under this Schedule will be supplied at 115/230 volts, single phase, 60 cycle, alternating current.

(b) Single phase motors of an aggregate capacity of five horsepower or less may receive service or be combined with residence lighting, heating and refrigeration service under this Schedule, provided in case of combination of service the total energy used is measured through one meter.

(c) Standby service shall not be rendered under this Schedule.

(d) Service is rendered under this Schedule subject to the Company's Rules and Regulations on file with and approved by the Arizona Corporation Commission.

ELECTRIC RATES

CITIZENS UTILITIES COMPANY
KINGMAN, ARIZONA

Schedule No. L-1-E

Cancelling Schedule No. L-1-D

FILED BY: S. Moore

DISTRICT: Mohave County, Arizona

SINGLE PHASE COMMERCIAL SERVICE

Applicability

Applicable to all Commercial Service including stores, public buildings, offices, hotels, rooming houses, restaurants, shops and other commercial and industrial institutions taking service under this Schedule on January 5, 1974 or new customers with a total single phase load of 5 KW or less.

Territory

All points in the Company's service area where facilities of adequate capacity and the required phase and suitable voltage are adjacent to the premises served.

Rate

A Service Charge of $1.18 per meter, per month, plus an energy charge as follows:

		Effective 5-1-76
First	1,000 KWH per Meter per Month @ 5.03¢ per KWH	6.089¢
Next	1,000 KWH per Meter per Month @ 4.46¢ per KWH	5.519
Excess	KWH per Meter per Month @ 2.17¢ per KWH	3.229

The minimum monthly charge under this schedule shall be $5.35 per meter.

The rates stated herein shall be increased by the applicable proportionate part of any taxes or governmental impositions which may be assessed on the basis of gross revenue of the Company and/or the price of or revenue from the electric energy or service sold and/or the volume of electric energy generated or purchased for sale and/or sold hereunder.

The rates stated herein shall be subject to such adjustment as may be necessary to reflect any increase or decrease in cost to the Company of power and energy either generated or purchased after June 30, 1972.

SINGLE PHASE COMMERCIAL SERVICE (Cont'd.)

Special Conditions

(a) Service will be supplied at 115/230 volts, single phase, 60 cycle alternating current.

(b) Standby service shall not be rendered under this schedule.

(c) Service is rendered under this schedule subject to the Company's Rules and Regulations on file with and approved by the Arizona Corporation Commission.

(d) No service will be provided under this rate schedule after January 5, 1974 to customers with a load in excess of 5 KW except that customers receiving service under this rate schedule on January 5, 1974 may continue to receive such service so long as service is provided at the same location or to new customers occupying structures served under this rate schedule prior to January 5, 1974.

ELECTRIC RATES

CITIZENS UTILITIES COMPANY
KINGMAN, ARIZONA

Schedule No. C-1-G

Cancelling Schedule No. C-1-F

FILED BY: S. Moore

DISTRICT: Mohave County, Arizona

COMMERCIAL COOKING AND HEATING SERVICE

Applicability

Available to all commercial users for cooking, space heating, baking, water heating and other heating uses and to refrigeration when such refrigeration use is incidental to and used in combination with a permanently connected cooking and/or water heating installation of not less than 2000 watts and such refrigeration connected load does not exceed one-fourth horsepower for each 2000 watts of permanently connected water heating or cooking load taking service under this Schedule on January 5, 1974.

Territory

All points in the Company's service area where facilities of adequate capacity and the required phase and suitable voltage are adjacent to the premises served.

Rate

			Effective 5-1-76
First	250 KWH per Meter per Month @	3.32¢ per KWH	4.379¢
Next	250 KWH per Meter per Month @	2.16¢ per KWH	3.219
Next	4,000 KWH per Meter per Month @	1.71¢ per KWH	2.769
Excess	KWH per Meter per Month @	2.16¢ per KWH	3.219

The minimum monthly charge under this schedule shall be $10.70 per meter per month.

The rates stated herein shall be increased by the applicable proportionate part of any taxes or governmental impositions which may be assessed on the basis of gross revenue of the Company and/or the price of or revenue from the electric energy or service sold and/or the volume of electric energy generated or purchased for sale and/or sold hereunder.

The rates stated herein shall be subject to such adjustment as may be necessary to reflect any increase or decrease in cost to the Company of power and energy either generated or purchased after June 30, 1972.

COMMERCIAL COOKING AND HEATING SERVICE (Cont'd.)

Special Conditions

(a) Service under this schedule will be supplied at 60 cycles, 115/230 volts, single phase or 230 volts, three phase, at the option of the Company.

(b) Single phase motors, the service to which is permitted under the availability clause, electing to receive service under this tariff shall, except at the Company's option, receive service through the same meter with which the service is combined.

(c) Standby service shall not be rendered under this schedule.

(d) Service is rendered under this schedule subject to the Company's Rules and Regulations on file with and approved by the Arizona Corporation Commission.

(e) No service will be provided under this rate schedule after January 5, 1974 except that customers receiving service under this rate schedule on January 5, 1974 may continue to receive such service so long as service is provided at the same location or to new customers occupying structures served under this rate schedule prior to January 5, 1974.

ELECTRIC RATES

CITIZENS UTILITIES COMPANY
KINGMAN, ARIZONA

Schedule No. DD-1-C

Cancelling Schedule No. DD-1-B

FILED BY: S. Moore

DISTRICT: Mohave County, Arizona

DUSK TO DAWN LIGHTING RATE

Availability

Available in the Company's service area in Mohave County to public agencies for lighting streets, alleys, thoroughfares, public parks, playgrounds and other public property on a contractual basis at any location where the Company has secondary overhead facilities or underground facilities available to render such service. Available to parties other than public agencies for uses similar to the foregoing on a contractual basis.

Monthly Rate

	Effective 5-1-76	Per Lamp, Per Month: Served From Overhead Facilities	Per Lamp, Per Month: Served From Underground Facilities	Effective 5-1-76
8,000 Lumen, Class A	$ 5.18	$4.55	$ 5.69	$ 6.32
8,000 Lumen, Class B	6.73	6.10	7.24	7.87
8,000 Lumen, Class C	8.45	7.82	8.96	9.59
12,000 Lumen, Class A	6.01	5.11	6.26	7.16
12,000 Lumen, Class B	7.72	6.82	7.98	8.88
12,000 Lumen, Class C	9.45	8.55	9.69	10.59
20,000 Lumen, Class A	7.45	6.00	7.14	8.59
20,000 Lumen, Class B	9.17	7.72	8.87	10.32
20,000 Lumen, Class C	10.89	9.44	10.59	12.04

Class A - Luminaire mounted on an existing Company distribution pole.

Class B - Luminaire mounted on a 30' Class 6, wooden treated pole installed for this purpose.

Class C - Luminaire mounted on a 30' metal pole installed for this purpose.

Luminaire to be photocell controlled and mounted on an 8' or less bracket.

Tax Cost Adjustment

The rates stated herein shall be increased by the applicable proportionate part of any taxes or governmental impositions which may be assessed on the basis of gross revenue of the Company and/or the price of or revenue from the electric energy or service sold and/or the volume of electric energy generated or purchased for sale and/or sold hereunder.

Fuel and Energy Cost Adjustment

The rates stated herein shall be subject to such adjustment as may be necessary to reflect any increase or decrease in cost to the Company of power and energy either generated or purchased after June 30, 1972.

DUSK TO DAWN LIGHTING RATE (Cont'd.)

Contract Period

All dusk to dawn lighting installations for public agencies will require an agreement for service.

All dusk to dawn lighting installations for other than public agencies will require a contract for service as follows:

Five years initial term for installations on existing facilities.

Five years initial term separate contract, or longer at the Company's option, for installations requiring an extension of facilities.

Special Provisions

1. Overhead extensions beyond 150 feet, and underground extensions beyond 100 feet will require specific agreements providing adequate revenue or arrangements for construction financing.

2. The customer is not authorized to make connections to this lighting circuit or make attachments or alterations to the Company-owned pole.

3. Should a customer request a relocation of a dusk to dawn lighting installation, the costs of such relocation must be borne by the customer.

4. The customer is expected to notify the Company when lamp outages occur.

5. The Company will use diligence in maintaining service; however, monthly bills will not be reduced because of lamp outages.

6. This schedule of rates will apply to service rendered at standard voltages in accordance with the Rules and Regulations of the Company.

7. Service is rendered under this schedule subject to the Company's Rules and Regulations on file with and approved by the Arizona Corporation Commission.

CITIZENS UTILITIES COMPA
KINGMAN, ARIZONA

SCHEDULE NO. -1-A Oct 23, 75 DC

FILED BY: S. Moore

DISTRICT: Mohave County, Arizona

IRRIGATION RATE

APPLICABILITY

Applicable for agricultural irrigation pumping service to an farm consumer adjacent to the three phase lines of the Compa and where the customer has executed a three-year contract fo service is supplied at one point of delivery and measured t one meter.

AVAILABILITY

Throughout the Company's service territory in Mohave County Arizona, at all points where facilities of adequate capacit the required phase and suitable voltage are adjacent to the premises served. On this service, Company retains the righ temporarily interrupt or reduce service to irrigation pumps one or more daily periods at the time or times of its syste peak, not exceeding a total of six hours during each twenty-hour period.

CHARACTER OF SERVICE

Alternating current, 60 Hertz, three phase, 240 or 480, 2400 12500 volts as may be selected by the customer subject to availability at the premises. Measurement of service is at secondary voltage.

MONTHLY BILL

Rate

2.2812¢ per KWH for first 275 KWH per KW of demand

1.8812¢ per KWH for all additional KW

Minimum

$1.08 for the first KW plus 87¢ for additional of the highest KW establi during the 12 months ending with the current month, or the minimum KW spe fied in the Agreement for Service, whichever is the greater, but not mo than an amount sufficient to make th total charges for such 12 months equ to $10.44 for each of such highest K plus $2.52 but in no event less tha $136.32.

Approved for Filing
MEMO DATED
JAN 19 1976

DATE EFFECTIVE: AUTHORITY:

PURCHASED POWER AND FUEL CLAUSE

This rate stated herein shall be subject to such adjustment as may be required to reflect any increase in cost to the seller, or fuel generated energy, either generated or purchased after August 15, 1975.

TAX CLAUSE

The rates stated herein shall be increased by the applicable proportionate part of any taxes or governmental impositions which are or may in the future be assessed on the basis of gross revenues of the Company and/or the price or revenue from the electric energy or service sold and/or the volume or energy generated or purchased for sale and/or sold hereunder.

POWER FACTOR

The customer agrees to maintain unity power factor as nearly as practicable. In the event that the power factor for any month is less than 85%, the customer will pay an additional charge of 20¢ per kilovar of reactive demand in excess of 50% of the KW demand established for that month. Kilovars of reactive demand may at Company's option be measured or calculated by multiplying the kilowatts of measured demand by the ratio of kilovar hours to kilowatt hours for the month.

DETERMINATION OF KW

The average KW supplied during the 15-minute period of maximum use during the month as determined from readings from the Company's meter, or at Company's option by test.

CONTRACT PERIOD

Three years, or longer at Company's option.

RULES AND REGULATIONS

Service is rendered under this schedule subject to the Company's Rules and Regulations on file with and approved by the Arizona Corporation Commission.

Approved for Filing
MEMO DATED
JAN 12 1976
B. Paulsen

MEC SOF EXH 33

JUL 27 1976

CITIZENS UTILITIES COMPANY

ADMINISTRATIVE OFFICES · HIGH RIDGE PARK · STAMFORD, CONNECTICUT 06905 · 203/327-9900

July 23, 1976

ELECTRIC
KINGMAN, ARIZ.
LAKE HAVASU CITY, ARIZ.
NOGALES, ARIZ.
KAUAI, HAWAII
WALLACE, IDAHO
NEWPORT, VT.

GAS
NOGALES, ARIZ.
LA JUNTA, COLO.

TELEPHONE
BULLHEAD CITY, ARIZ.
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ADDISON, ILL.
KOKOMO, IND.
BRIMFIELD, OHIO
WESTERVILLE, OHIO
LAKE HERITAGE, PA.
NAZARETH, PA.
ROYERSFORD, PA.
WEST LAWN, PA.

Mr. Hollis McCutcheon
Bureau of Indian Affairs
P. O. Box 707
Phoenix, Arizona 85011

Dear Mr. McCutcheon:

As a result of our telephone conversation with Mr. Victor Lund on this date, we understand you wish an alternate proposal to that submitted by Citizens on July 15, 1976, which would not require the Bureau of Indian Affairs to advance funds for construction of new facilities required to serve the Indian Reservations. In addition, facilities on the load side of a primary delivery point at Long Mesa are to remain under jurisdiction of the Bureau of Indian Affairs for some time and therefore, transfer of these facilities to Citizens as was proposed would not be acceptable, at least initially.

In response to these points we are pleased to furnish an alternate proposal which outlines the principal terms of an agreement under which Citizens would provide electric service as requested. These are stated in Exhibit No. 1 enclosed.

The attached proposal describes conditions applicable to an arrangement whereby no advancement of funds is required by the Bureau of Indian Affairs. Our earlier proposal provided for the Bureau of Indian Affairs to advance the actual cost of furnishing facilities. We would be pleased to provide conditions for other amounts of advancement of funds that the Bureau of Indian Affairs may wish to consider.

We would propose to bill for energy usage based on a rate schedule which is to be determined. We would anticipate rates similar to our present General Primary Service - P-3-C rate schedule.

We are able to provide maintenance for the distribution facilities, which will be retained initially by the Bureau of Indian Affairs, in accordance with your specifications.

We are available to meet with you at any time, and should indeed be pleased to supply the Indian Reservation power requirements.

Very truly yours,

H. Gordon Stewart
Vice President

HGS:kp
Enclosures
cc: John Artichoker w/encls.
C. Pitrat w/encls.
V. Lund w/encls.
S. Moore w/encls.

EXHIBIT NO.

CITIZENS UTILITIES COMPANY
Mohave County Electric Division

Bureau of Indian Affairs
Service for Hualapai and Havasupai Indian Reservations

Outline of principal terms of a proposed agreement under which Citizens would provide residential and commercial electric utility service to Bureau of Indian Affairs for the Hualapai and Havasupai Indian Reservations, Coconino County, Arizona.

1. New Facilities To Be Provided by Citizens

1.1 Single circuit, 3 phase, 24.9 KV transmission line, 66 miles in length.

1.2 Single circuit, 3 phase, 12 KV distribution line, 30 miles in length.

1.3 Substation facilities 12-24.9 KV, 2.5 MVA capacity.

2. Payment For Service

Projected revenues from the sale of power and energy to Bureau of Indian Affairs will not be sufficient to meet the revenue requirements imposed by the costs of operation, maintenance, depreciation, property taxes and return of investment which will be incurred by Citizens should it construct the facilities set forth herein at an estimated cost of approximately $1,000,000. The Bureau of Indian Affairs will be required to guarantee minimum annual revenues consisting of the following:

2.1 The amount of $380,000. This sum is to be adjusted to reflect the actual cost of facilities, changes in property taxes and other direct costs.

2.2 Amounts billable under the to be determined rate for power and energy delivered, which rate shall be adjustable to reflect changes in Citizens' cost for purchase power and energy. If a retail rate on file with the Arizona Corporation Commission is utilized, 20% of amounts received from payments received from billings thereunder will be subtracted from the minimum set forth in 2.1 above.

3. Citizens will provide maintenance on a cost plus overhead basis for electric facilities within the reservations. Such maintenance shall be provided as called for by Bureau of Indian Affairs.

4. The term of the proposed agreement shall be ten (10) years from the date service is first supplied. The agreement shall be automatically renewed for additional five (5) year periods unless a party thereto gives notice of cancellation not more than thirty (30) months nor less than twenty-four (24) months from the expiration of a term or renewal term.

ELECTRIC RATES

CITIZENS UTILITIES COMPANY
KINGMAN, ARIZONA

Schedule No. P-3-C

Cancelling Schedule No. P-3-B

FILED BY: S. Moore

DISTRICT: Mohave County, Arizona

GENERAL PRIMARY SERVICE

Applicability

Applicable to general and industrial service of one hundred kilowatts or more when such service is supplied at one point of delivery and measured through one meter, but not to temporary, breakdown, standby, supplementary, or resale service.

Availability

Throughout the Company's service area in Mohave County where facilities of adequate capacity and the required phase and suitable voltage are adjacent to the premises served.

Type of Service

Three phase, 60 cycles, at one voltage subject to availability at the premises.

Demand Charge

$240.64 for the first 100 KW or less
$ 2.41 per KW for all KW in excess of 100 KW

Energy Charges

			Effective 4-1-76
First	180 KWH per KW of demand	@ 2.18¢ per KWH	3.239¢
Next	180 KWH per KW of demand	@ 1.65¢ per KWH	2.709
Excess of	360 KWH per KW of demand	@ 1.33¢ per KWH	2.389

The minimum charge shall be the demand charge.

The billing demand shall be the highest 15 minute integrated demand, adjusted to the nearest kilowatt, recorded on the Company's meter during the billing month, but not less than 75% of the highest demand billed during the preceding eleven months. Customer shall maintain at all times a power factor of 80% or greater.

The term of the service agreement to be entered into for service under this schedule will be as required by the Company in view of the anticipated demand of the Customer, but not less than 12 months.

This rate shall be subject to such adjustment as may be required to reflect any increase in cost to the seller, or fuel generated energy, either generated or purchased after June 30, 1972.

GENERAL PRIMARY SERVICE (Cont'd.)

Energy Charges (Cont'd.)

The rates stated herein shall be increased by the applicable proportionate part of any taxes or governmental impositions which may be assessed on the basis of gross revenue of the Company and/or the price of or revenue from the electric energy or service sold and/or the volume of electric energy generated or purchased for sale, and/or sold hereunder.

MEC SOF EXH 34

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
P. O. Box 7007
Phoenix, Arizona 85011

Dale Ed
Lund VL
Kenimer
McConnell
McCausland
Goldsmith
Drost
Gardiner
Investito
Clah

IN REPLY REFER TO:
Contracting and
Procurement Section

July 30, 1976

Memorandum

To: Proposal Evaluation Board
Ed Dale, Chairman, Facility Management, PAO
~~Victor Lund, Facility Management, PAO~~
D. E. Albertson, Director, Public Utilities
Management Division, GSA, Washington

From: Contracting Officer

Subject: RFQ No. N-446 for Providing Electric Energy to the Hualapai and Havasupai Reservations, Arizona

We are enclosing copies of three proposals we received in response to subject solicitation. Please evaluate and furnish this office your recommendations.

H. E. McCutchen
Contracting Officer

Enclosures (4)
Citizens Utilities Company proposals dated 7/15/76 and 7/23/76
Arizona Public Service proposal dated 7/8/76
Mohave Electric Co-op proposal dated 7/7/76
Copy GSA letter dated 4/4/76

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

HAVASUPAI RESERVATION POWER LINE

Location:

The Indian village of Supai is located on Havasupai Indian Reservation in Havasu Canyon. The canyon is situated near the west boundary of the Grand Canyon National Park in Arizona some 35 miles northwest of Grand Canyon Village and 70 miles north of U.S. Highway 66. The floor of Havasu Canyon at Supai Village is 3,000 feet above sea level, a half mile below where the access trail begins at Hualapai Hilltop. One reaches Hualapai Hilltop by turning north from U.S. Highway 66 about seven miles east of Peach Springs, Arizona, and driving 62 miles on a partially paved all weather road. The road ends abruptly at Hilltop and descent to Supai Village is made by foot or horseback along a winding, eight mile trail, down precipitous cliffs and through rugged, dry canyons.

Existing Conditions:

Electric power is presently provided by six (6) diesel engine generators with a peak load capacity of 1300 KVA. The generating plant is located on the rim of Grand Canyon (Long Mesa) at a point directly overlooking the village of Supai. Distribution facilities consist of overhead lines to the canyon floor (approximate vertical distance of 2,400 feet). Distribution in the canyon floor is by underground cable. The generators are old, unreliable and prone to frequent breakdown. Cost of operation and maintenance of the present system is $200,000 per year.

Proposed school construction, plus contemplated and needed economic development, sewage disposal system and other village improvements will create additional power demands which cannot be served by the present plant.

Proposed Construction:

Aid-in-construction funds are required for one of three utility companies to construct 70 miles of overhead transmission line extending their system to the Havasupai Reservation and Supai Village. This will provide necessary and dependable power to the new Supai School, Supai Village and other Reservation areas which will allow environmental and economic development to take place.

Project Cost Estimate

Aid-in-construction $1,230,000.

Comparison of Cost Proposals - Supai Power

	Aid-in-Construction	Annual Cost	Present Worth
Mohave Electric Coop.			
No. 1	-0-	276,696	2,262,266
No. 2	551,250	240,072	2,514,025
No. 3	1,102,500	203,844	2,769,128
Arizona Public Service	1,507,400	128,964	2,561,809
Citizens Utility	-0-	427,482	3,495,093

Annual cost includes maintenance, operation, capitalization and energy charges--Present worth analysis based on 35-year life, 12 percent annual interest.

Another alternative would be for the Bureau to build and operate the power transmission line. The line could be constructed for $1,500,000, but it is doubtful if the Government could operate the system as efficiently as one of the utility companies.

Major Alteration and Improvement projects are submitted each year by Agency priority. They are reviewed by the Area Office and given an area priority. The list is then submitted to the Washington Office where a Bureau priority is assigned. As of this date, we have had no indication as to what, if any, funds can be expected in Fiscal Year 1978.

A listing of our latest needs by project and by priority is attached.

Our Fiscal Year 1976 program was $1,244,900 and our tentative Fiscal Year 1977 program is $91,000.

MEC SOF EXH 35

Exhibit J

667

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
TRUXTON CANON AGENCY
VALENTINE, ARIZONA 86437

IN REPLY REFER TO:

Office of the Superintendent
(602)769-2241

March 26, 1982

Mr. James Uqualla, Chairman
Havasupai Tribal Council
P. O. Box 10
Supai, Arizona 86434

Dear Mr. Uqualla,

By memorandum to you from Mr. Curtis Geiogamah, Acting Area Director, dated February 11, 1982, and my letter to you dated February 17, 1982, you were advised that, because of generator failure at Long Mesa, it was necessary to energize the commercial power line to Supai.

As you requested, the following information is being provided, which was the basis for our decision to energize that line.

On the evening of February 10, 1982, we were advised by the dispatcher at the Hualapai Police Department, Peach Springs, Arizona, that a power blackout was being experienced at Supai.

In order to determine what caused the power failure, it was learned that one of the large generators at Long Mesa (Generator No. 5) had broken down. At about the same time as Generator No. 5 went out, a fuse on one of the three phases into the canyon also burned out. It was later learned that the failure of Generator No. 5 was caused by a short in the control wires in conduit and concrete, which apparently caused an overload into the phase which burned out.

To compound the problem, Generator No. 6 was consuming about 5-6 gallons of engine oil daily, which meant that that generator was also about to fail. In addition, Generator No. 1, a small unit, had blown a head gasket on February 8, 1982 and, although it had been repaired, it was still leaking water and was emitting steam out of the exhaust system. Generator No. 2, also a small unit, had been down since August, 1981, due to a broken crankshaft. While Generators No. 3 & 4 appeared to be operating properly, it was very doubtful if the Plant could continue to function much longer under these conditions.

And finally, since the new school had just been inspected and occupancy of the school was imminent, it was doubtful if the Long Mesa Plant could stand the additional load increase.

With all of these factors in mind, along with the fact that the failure of Generator No. 5 came during an extremely cold period, it was felt, that for the welfare of the Havasupai Tribal members living in Supai, a more reliable power source was needed immediately. Therefore the decision to energize the commercial power line was made.

When that decision was made, the Bureau was aware that the rate structure and right-of-way was still an unresolved issue; however, resolution of these issues can still be pursued by the Tribe. A critical factor in our decision at that time was the safety and well being of the Tribal members in Supai.

I hope the above information will answer any questions you might have; however, let me know if I can assist further.

Sincerely,

Superintendent

MOHAVE ELECTRIC COOPERATIVE, INC.

APRIL 2, 1982

DEPT. OF INTERIOR
BUREAU OF INDIAN AFFAIRS
P.O. BOX 7007
PHOENIX, AZ. 85011

RE: ACCT. #29740-00, D-8

MARCH 1982 BILLING FOR USAGE
FROM MARCH 1, 1982 to APRIL 1, 1982

	PRESENT	PREVIOUS	DIFFERENCE	MULTI	USAGE
KWH	164	65	99	1200	185,959
KW	.36		.36	1200	432

CHARGES:	185,959 KWH @ $.029 =			$5,392.81
	432 KW @ $.6.90 =			2,980.80
				8,373.61
WHOLESALE POWER COST ADJ. 185,959 @ .013092=				2,434.58
				10,808.19
ARIZONA STATE TAX @ .04				432.33
				11,240.52
FACILITY CHARGE				15,504.48
ARIZONA STATE TAX @ .04				620.18
			TOTAL DUE	27,365.18

MOHAVE ELECTRIC COOPERATIVE, INC.

A. H. Carpenter

Mr. A. H. Carpenter
Manager

AHC/ek
CC: TRUXTON CANYON AGENCY
VINCE LA POINTE
VALENTINE, AZ. 86437

P.O. Box 1045 Bullhead City, Arizona 86430 754-4115

MEC SOF EXH 36

APR 20 1 52 PM '93

Branch of Acquisition. Federal Assistance
Section IV/ Contracts & Grants/MS-211

APR 19 1993

CERTIFIED RETURN RECEIPT REQUESTED

Mr. Robert Broz, General Manager
Mohave Electric Cooperative, Inc.
P.O. Box 1045
Bullhead City, Arizona 86430

Dear Mr. Broz:

This is regarding GSA Contract No. GS-00S-67021. Negotiated Electric Utility Contract between Mohave Electric Cooperative. Inc. and the Bureau of Indian Affairs (Government).

On April 1, 1982. the Government entered into Contract No. GS-00S-67021 with Mohave Electric Cooperative. Inc. to furnish the Government all electric energy which the Government may request during the term of this contract. Said services was to supply electric energy to existing and future residential and commercial installations on the Hualapai and Havasupai Indian Reservation located in Northeastern Arizona. The term of this contract was for ten years and has since expired.

Under the Contract. the Government has the right of renewal for two additional ten year periods. The Government hereby notifies Mohave Electric of its intent to exercise this option.

Prior to exercising our option, we need to re-negotiate and amend the existing contract. The contract makes reference to construction of overhead transmission and/or distribution facilities. Construction was completed and the Government reimbursed Mohave all cost associated with the construction. Therefore, some of this language needs to be deleted.

Whereas, language in the contract relative to the monthly facility charge, allows "for Mohave to recover cost associated with the construction and operation of facilities to make electric service available to the Government, the Government upon verification of Mohave's cost of construction agrees to pay Mohave as a Facility Charge an annual amount equal to the sum of:

(1) 4.44% (percent) or the lesser of the cost of construction or $1,600,000 and/or other amount(s) concurred by the Government Contracting Officer;

(2) All state and local property taxes assessed against the facilities and Mohave constructs because of this contract;

(3) The (a) operation and maintenance expenses; (b) cost of replacement less original book value of replaced facilities and (c) cost of system improvements that Mohave constructs as a result of this contract."

Also, under provision "Interim Construction Accounting" the Government has the right to audit all construction costs related to the construction of the subject facilities.

The Government hereby notifies Mohave Electric of its intention to exercise its right under the contract to verify and audit all construction cost and monthly facility charges. This audit will be coordinated through the U.S. Department of Interior, Office of Inspector General. Mohave Electric will receive proper notification of any audit arrangements.

When the Government has obtained the audit results, the Government will propose a negotiation meeting with Mohave Electric for continued electrical services under the contract.

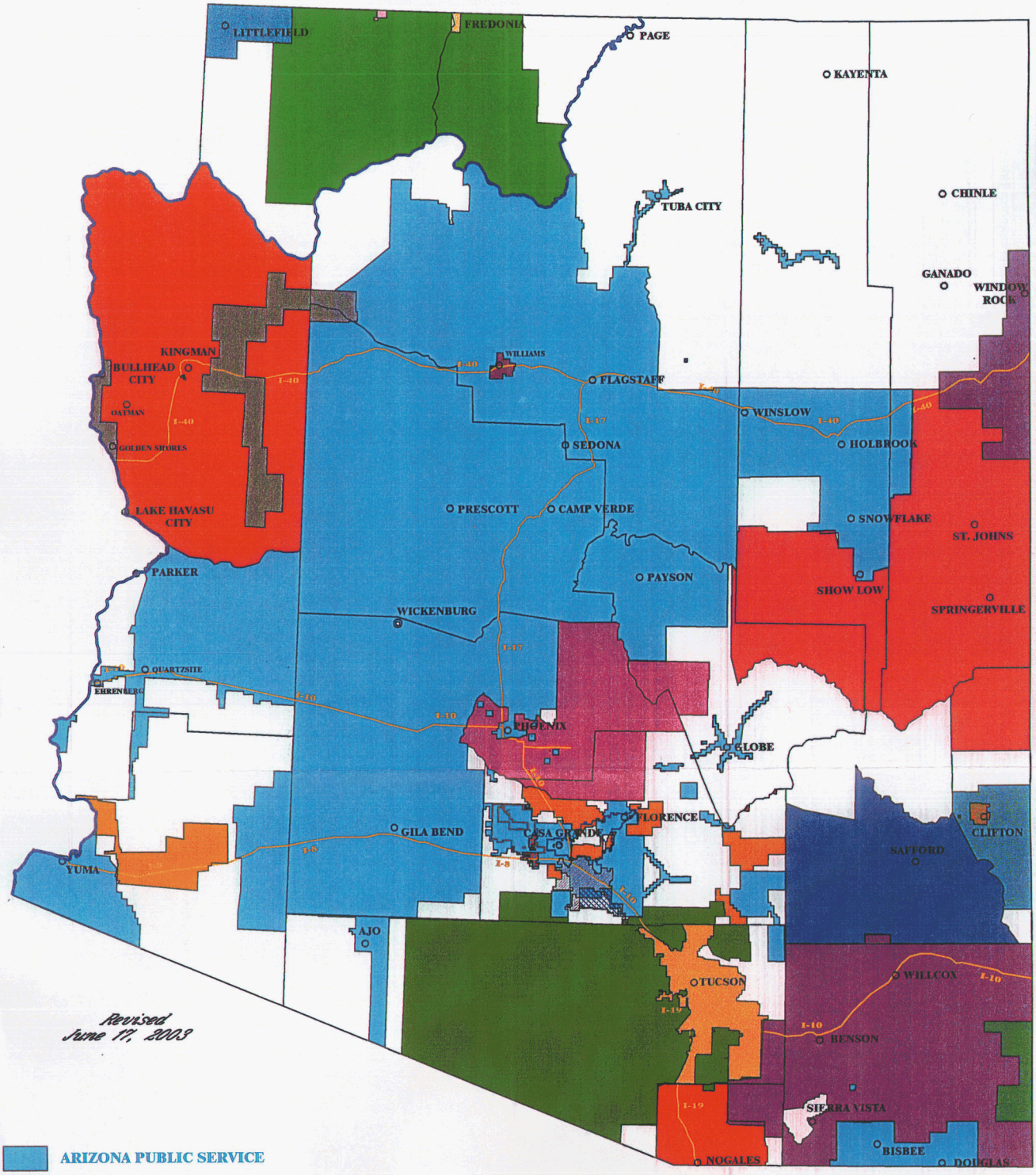
If you have any questions, please call the Rose Velarde, Contracting Officer, at (602) 379-6760.

Sincerely,

Rose M. Velarde
1420-3228-0793
Contracting Officer

cc: PAO Facility Manager/MS-220
Director, Facilities Managment and Construction Center
Attention: Mr. Richard Crissler
Facility Manager, Truxton Canon Agency
Supt., Truxton Canon Agency
Eddie Quotskuyva, Supervisory Contract Specialist

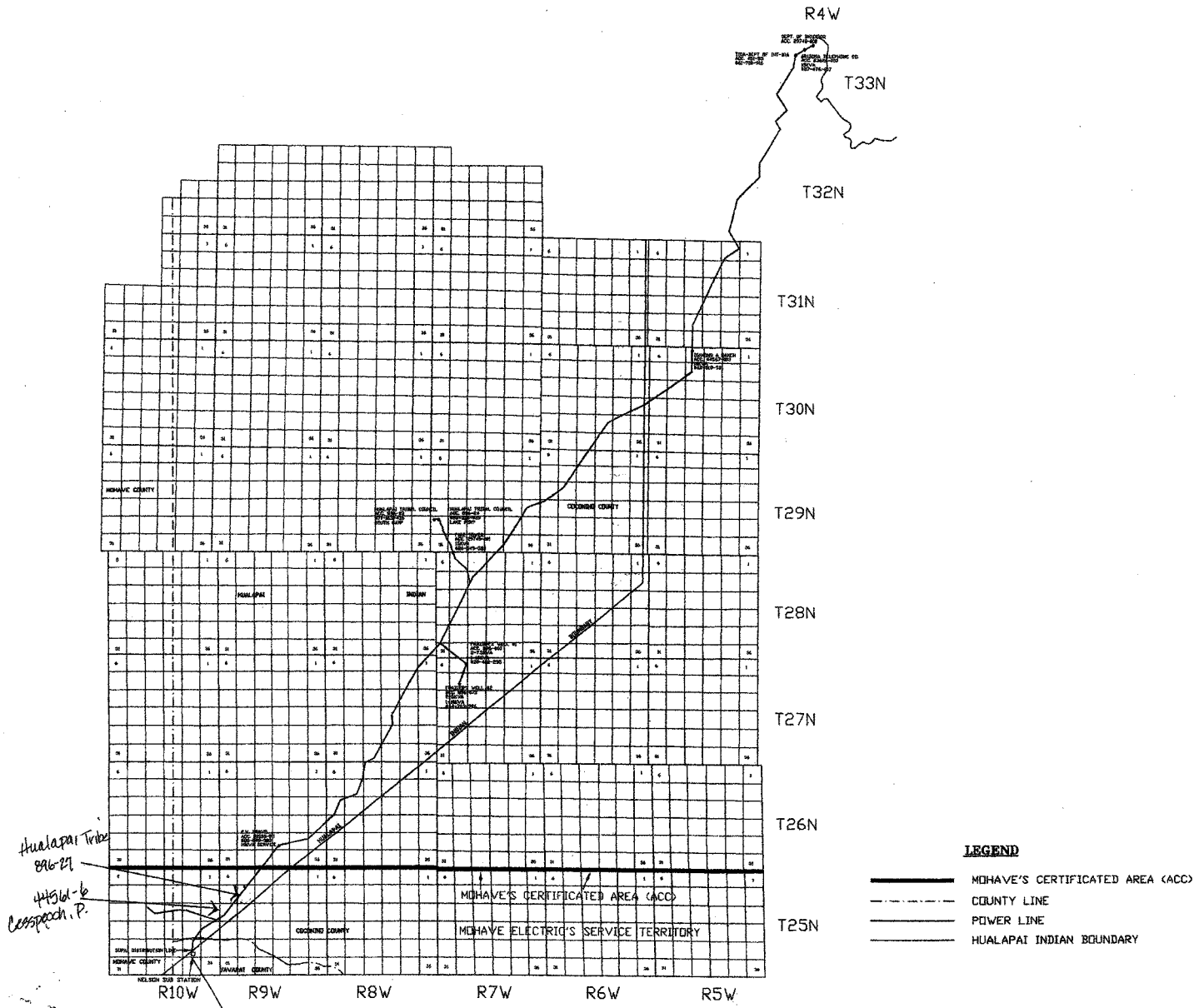
MEC SOF EXH 37



- ARIZONA PUBLIC SERVICE
- UNISOURCE ENERGY SERVICES
- CITY OF FREDONIA
- CITY OF WILLIAMS
- COLORADO CITY
- COLUMBUS ELECTRIC CO-OP
- CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC.
- DIXIE ESCALANTE RURAL ELECTRIC ASSOCIATION
- DUNCAN VALLEY ELECTRIC COOPERATIVE, INC.
- ELECTRIC DISTRICT NO. 1
- ELECTRIC DISTRICT NO. 2
- ELECTRIC DISTRICT NO. 3
- ELECTRIC DISTRICT NO. 4
- ELECTRIC DISTRICT NO. 5
- GARKANE POWER ASSOCIATION
- GRAHAM COUNTY ELECTRIC COOPERATIVE, INC.
- MOHAVE ELECTRIC COOPERATIVE
- MORENCI WATER & ELECTRIC
- NAVOPACHE ELECTRIC CO-OP
- SALT RIVER PROJECT
- SAN CARLOS IRRIGATION
- SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC.
- TRICO ELECTRIC COOPERATIVE
- TUCSON ELECTRIC POWER
- WELLTON MOHAWK

STATE OF ARIZONA - ELECTRIC

MEC SOF EXH 38



SCALE	DATE	REVISIONS AND PURPOSE	DATE	REVISION AND PURPOSE
1 INCH = NTS				

MOHAVE ELECTRIC COOPERATIVE INC.

ARIZONA 22

DWN. BY GARY FISER | APP'D. BY
CKD. BY | DATE 4-22-01

SUPAI 24.9 KV DISTRIBUTION LINE

STATE & CO.	SEC. T-R	MAP NO.
ARIZONA		
MOHAVE		

MEC SOF EXH 39

DRAFT

REPORT TO CONGRESS

ENERGY POLICY ACT OF 2005, SECTION 1813

INDIAN LAND RIGHTS-OF-WAY STUDY

U.S. Department of Energy

U.S. Department of the Interior

December 21, 2006

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Notation

The following is a list of the acronyms, abbreviations, and units of measure used in this document.

Acronyms and Abbreviations

APS	Arizona Public Service
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BPA	Bonneville Power Association
CEPC	California Electric Power Company
C.F.R.	*Code of Federal Regulations*
Cong.	Congress, Congressional
CPI	consumer price index
DOE	U.S. Department of Energy
DOI	U.S. Department of the Interior
EEI	Edison Electric Institute
EPAct	Energy Policy Act of 2005
EPNG	El Paso Natural Gas Company
Fed. Reg.	*Federal Register*
FERC	Federal Energy Regulatory Commission
FPC	Federal Power Commission
GRIC	Gila River Indian Community
HRA	Historical Research Associates
INGAA	Interstate Natural Gas Association of America
IRA	Indian Reorganization Act of 1934
NEPA	National Environmental Policy Act
MOU	memorandum of understanding
NOG	Navajo Nation Oil and Gas Company
OIWA	Oklahoma Indian Welfare Act
Pub. L.	Public Law
ROW	rights-of-way

SCE	Southern California Edison
SEC	Securities and Exchange Commission
S. Rep	Senate Report
Stat	*U.S. Statutes at Large*
U.S.	United States
U.S.C	*United States Code*
USPAP	Uniform Standards of Professional Appraisal Practices
ZR	zone rent

Units of Measure

kV	kilovolt(s)
mcf	thousand cubic feet
rod	16 and a half feet

Executive Summary

The U.S. Department of the Interior (DOI) and U.S. Department of Energy (DOE) (Departments) provide this report to Congress pursuant to Section 1813 of Public Law (Pub. L.) 109-58, the Energy Policy Act of 2005 (EPAct).

Section 1813(a)(1) of EPAct requires the Departments to jointly conduct a study of issues regarding grants, expansions, and renewals of energy rights-of-way (ROW) on tribal lands. Section 1813 requires the Departments, for the purposes of this report, to use the definition of tribal lands included in Title V, Section 503 of the EPAct. This definition mandated by Congress is as follows:

> "tribal land – means any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under the laws of the United States" (Pub. L. 1209-58, 119 STAT 765)

Any analyses within the report are limited to tribal lands as defined by Congress.

Section 1813(a)(2) requires the Departments to consult with Indian tribes, the energy industry, appropriate governmental entities, and affected businesses and consumers in the course of the study, which the Departments did. The Departments held two nationwide public meetings in March and April 2006 to solicit comments from stakeholders on the scope of the study. In addition, the Departments communicated with tribes through letters sent directly to tribal leaders and through contact with the regional offices of the Bureau of Indian Affairs (BIA).

The Departments posted the transcripts of both meetings and all comments received on a website for public review (http://1813.anl.gov). The Departments then released a draft report in August 2006 and requested written comments about the draft report and also accepted verbal comments at one nationwide and several regional public meetings held between August 24 and 30, 2006. The Departments also held a series of government-to-government consultation meetings at a tribe's request during this period.

Section 1813(b) requires the Departments to submit a report to Congress on the findings of the study including (but not limited to):

> "(1) an analysis of historic rates of compensation paid for energy ROWs on tribal land;
> (2) recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions, and renewals of energy ROWs on tribal land;
> (3) an assessment of the tribal self-determination and sovereignty interests implicated by applications for the grant, expansion, or renewal of energy ROWs on tribal land; and
> (4) an analysis of relevant national energy transportation policies relating to grants, expansions, and renewals of energy ROWs on tribal land."

Potentially, Section 1813 encompasses hundreds of tribes and many different types of energy ROWs on tribal lands over the entire course of the federal relationship with Indian tribes. To focus on the core issues in the time available to conduct the study, the Departments clarified and narrowed the terms of the study. In doing this, the Departments relied heavily on the body of comments from Indian tribes, energy companies, associations, state and local governments, and interest groups.

The Departments' intent was to address the core issues raised by Congress, and accordingly narrowed the scope to ROWs for electric transmission lines, and natural gas and oil pipelines associated with interstate transit and local distribution. The Departments selected these energy ROWs for study because of the number of interested parties that discussed these types of ROWs, the availability of information on them, and the nature of their role in delivering energy resources to consumers

The following common themes surfaced in the course of the public discussion about the study:

- Tribal sovereignty is manifested in the statutory and regulatory requirements of tribal consent in energy ROW matters
- Tribal self-determination policies are important in advancing oversight of energy ROWs and expanding energy production
- Uncertainty and lack of transparency in the valuation process is of concern
- Costs of energy ROW renewals are rising
- Trends toward shorter term lengths (in years) for energy ROWs and longer negotiation periods are appearing.

The principle of tribal sovereignty is central to understanding the statutory and regulatory requirement of consent. Sovereignty is generally defined as the authority of a government to define its relationship with other governments, commercial entities, and others. A tribe's authority to confer or deny consent to an energy ROW across tribal land derives from its inherent sovereignty — the right to govern its people, resources, and lands.

The present right of tribes to govern their members and territories flows from a historical and preexisting independence and right to self-government that has survived, albeit in diminished form, through centuries of contact with other cultures and civilizations. Most treaties include clauses intended to preserve this right of self-governance, at least with regard to tribes' internal affairs. The implication of any reduction in the tribe's authority to make that determination is a reduction in the tribe's authority and control over its land and resources, with a corresponding reduction in its sovereignty and abilities for self-determination.

The Departments find that the negotiation processes for establishing or renewing rights-of-way on tribal land could benefit from mutually agreed upon practices, procedures, and actions that would better the understanding and collaboration among the parties. These include:

- Develop comprehensive ROW inventories for tribal lands
- Develop model or standard business practices for energy ROW transactions
- Broaden the scope of energy ROW negotiations

In addition, the Departments identified a number of approaches for Congress to consider in developing appropriate standards and procedures for determining "fair and appropriate compensation" for energy ROWs on tribal lands. These are:

a. Elect to make no changes - allow ROW negotiations to continue under current laws, regulations, practices, and procedures.
b. Enact a legislative clarification of tribal consent.
c. Authorize the federal government to determine just compensation using a variety of methods for calculating just compensation (appropriately adjusted to reflect unique tribal concerns).
d. Require binding valuation for a particular impasse.
e. Authorize *case-by-case* condemnation of tribal lands for public necessity.

After careful consideration of the information presented and the alternative approaches identified, the Departments offer the following recommendations for the grant, expansion or renewal of rights-of-way in tribal lands. The Departments recommend that:

(1) Valuation of energy ROWs on tribal lands should continue to be based upon terms negotiated between the parties.

(2) In the event that a failure of negotiations regarding the grant, expansion, or renewal of an energy ROW has a significant regional or national effect on the supply, price, or reliability of energy resources, the Departments recommend that Congress consider resolving such a situation through specific legislation, rather than making broader changes that would affect tribal sovereignty or self-determination generally.

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1. Introduction

The U.S. Department of the Interior (DOI) and U.S. Department of Energy (DOE) (Departments) provide this report to Congress pursuant to Section 1813 of Public Law (Pub. L.) 109-58, the Energy Policy Act of 2005 (EPAct). Section 1813 requires the study of issues related to the grant, expansion, and renewal of energy rights-of-way (ROW) on tribal lands. In this Introduction, the Departments begin with the statutory text of Section 1813, a description of the public and tribal consultations, and a discussion of efforts to set study parameters that would best comply with the congressional mandate in Section 1813.

1.1. Statutory Language of Section 1813

Section 1813(a)(1) of EPAct requires the Departments to jointly conduct a study of issues regarding energy ROWs on tribal lands. Section 1813 requires the Departments, for the purposes of this report, to use the definition of tribal lands included in Title V-Indian Energy, Section 503 of the EPAct which amends Section 2601 of the Energy Policy Act of 1992. This definition mandated by Congress is as follows: "tribal land – means any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under the laws of the United States"

Section 1813(a)(2) requires the Departments to consult with Indian tribes, the energy industry, appropriate governmental entities, and affected businesses and consumers in the course of the study.

Section 1813(b) requires the Departments to submit a report to Congress on the findings of the study, including, but not limited to:

> "(1) an analysis of historic rates of compensation paid for energy ROWs on tribal land;
> (2) recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions, and renewals of energy ROWs on tribal land;
> (3) an assessment of the tribal self-determination and sovereignty interests implicated by applications for the grant, expansion, or renewal of energy ROWs on tribal land; and
> (4) an analysis of relevant national energy transportation policies relating to grants, expansions, and renewals of energy ROWs on tribal land."

These four elements of the study are addressed in this report in the following order.

In Section 2 of the report, the Departments analyze relevant national energy transportation policies relating to energy ROWs on tribal lands.

In Section 3, the Departments set out the statutory and regulatory framework for granting, expanding, or renewing energy ROWs on tribal land. The Departments also assess the tribal

sovereignty and self-determination interests effected by granting, expanding, or renewing energy ROWs on tribal land

In Section 4, the Departments summarize the data and information collected regarding historic rates of compensation for energy ROWs on tribal land.

In Section 5, the Departments discuss standards and procedures for determining fair and appropriate compensation for energy ROWs on tribal lands.

In Section 6, the Departments discuss the common issues raised concerning the energy ROW negotiation process. The Departments' analyze and make findings regarding these concerns with the energy ROW negotiation process. The Departments also provide a variety of approaches for resolving negotiation concerns.

In Section 7, the Departments present a range of approaches for consideration by Congress regarding procedures for energy ROW negotiations and standards for determining "fair and appropriate" compensation for energy ROWs on tribal lands.

Then, in Section 8, based on all of the information gathered during the conduct of this study and a review of the alternatives available, the Departments present a summary of their findings and provide a recommendation to Congress regarding appropriate standards and procedures for determining fair and appropriate compensation for energy ROWs on tribal lands.

Finally, in Section 9, the Departments provide a more detailed description of case studies, survey information and data submitted by stakeholders regarding historic and current rates of compensation for energy ROWs on tribal land.

1.2. Public and Tribal Consultation Meetings and Comments

The Departments began the study process by contacting interested tribes, energy companies, and associations in a series of telephone calls to determine the range of potential issues affected by the Section 1813 language and to gather information on how to structure the public consultation process. As time allowed, the Departments also met with a variety of tribes, energy companies, and associations that requested meetings.

After this pre-scoping effort the Departments held two nationwide public meetings in March and April 2006 to solicit comments from interested participants on the scope of the study. The notices of these meetings were published in the Federal Register. In addition, the Departments communicated with tribes through letters sent directly to tribal leaders and through contact with the regional offices of the Bureau of Indian Affairs (BIA). The Departments posted the transcripts of both meetings and all comments received on a website for public review (http://1813.anl.gov).

Following scoping, the Departments published a notice in the Federal Register seeking information and comments from interested participants regarding energy ROWs on tribal lands. Information and comments were due to the Departments by May 15, 2006. Upon receipt, the

Departments began reviewing the information and comments, and requested follow-up information as needed.

On August 9, 2006, the Departments published a notice in the Federal Register that announced the release of a draft report and requested written comments about the draft report. The Departments also accepted verbal comment at one nationwide and several regional public meetings held between August 24 and 30, 2006. The Departments also held government-to-government consultation meetings with interested tribes during this period. The dates and times of the meetings were published in the Federal Register and announced to tribes in a letter sent to tribal leaders.

Comments were due on the draft report by September 1, 2006. This deadline was extended to September 4, 2006, and the Departments continued to receive and review comments through the entire month of September.

Through November 2006 the Departments met in government-to-government consultation with more than 18 tribes, in addition to extensive public testimony. The Departments also received approximately 208 sets of written comments from 120 commenters, including 60 tribes, 10 tribal associations, 15 energy companies, 4 energy trade associations, 9 state or local governments, 3 interest groups, and 19 individuals or other commenters.

In the course of the public meetings, government-to-government consultations, and through submission of written comments by interested groups and individuals, hundreds of study participants raised issues related to the Section 1813 study. The Departments appreciate the extensive efforts of these commenters to provide detailed ROW information and thoughtful comments during the study process and for this final report. The Departments relied extensively on these comments to help define the scope of the report and our analysis. A list of commenters is provided as an Appendix to the report.

1.3. Scope of the Section 1813 Report

The language of Section 1813 presents a very broad field of study. Potentially, Section 1813 encompasses hundreds of Indian tribes and many different types of energy ROWs on tribal lands over the entire history of the federal relationship with Indian tribes. To focus on the core issues in the time available to conduct this study, the Departments clarified and focused the scope of the study. In doing this, the Departments relied heavily on comments from Indian tribes, energy companies, associations, state and local governments, interest groups and interested individuals.

First, Section 1813 requires "an analysis of historic rates of compensation paid for energy rights-of-way on tribal land." Given the limited time and resources available to conduct the study, as well as the confidential nature of energy ROW agreements, the Departments determined that the most feasible approach for an analysis of historic rates was to rely on case studies of energy ROWs, supplemented by voluntary surveys of tribal and energy groups conducted by others. The Departments received many comments on this approach. Tribes, tribal energy companies, and tribal associations ('tribes') commented that a case study approach would seriously limit the Departments' ability to get a full understanding of energy ROWs on tribal lands, in particular,

historic practices for obtaining an energy ROWs. Tribes also noted that this approach would fail to account for numerous ROWs that lacked documentation or compensation agreements. Energy companies, trade associations, and interest groups ('industry') were generally comfortable with a study plan that relied on case studies. Industry also favored including information from a voluntary survey of companies as a way to capture trends and emerging issues that they see in the ROW negotiation process.

After careful consideration, the Departments reaffirmed their decision to rely on voluntary case studies and survey information as the most feasible option for the timely gathering of information useful in outlining and providing insight into the core issues identified in the scoping process, while also respecting the confidentiality concerns of both tribes and private industry. The Departments acknowledge that the data included in this report do not constitute a comprehensive historical review of rates paid for energy ROWs on tribal lands. The Departments also acknowledge that the case studies and voluntary survey information may tend to focus on the more complicated or contentious examples of energy ROW negotiations. Moreover, as many tribes reported in their comments, the case studies and voluntary survey information can represent only a few of the thousands of energy ROWs on tribal lands, many of which were successfully granted, renewed, or expanded. Finally, the Departments recognize that case studies can not be statistically generalized but, nevertheless, do provide an indication as to the nature of historic compensation and the issues confronted by both tribes and industry.

Second, as stated before, the definition of tribal lands provided by Section 1813 is defined by reference to EPAct, Title V, Section 503, which amends Section 2601 of the Energy Policy Act of 1992. In conducting this study, the Departments found that it was important to clarify that this definition does not include energy ROWs on tribal fee lands, individual Indian trust allotments, or individual Indian fee lands. Federal policy regarding Indian land holding has varied over the history of the federal-tribal relationship. The majority of Indian land is now held as tribal trust land and is the focus of this study. The General Allotment Act of 1887 created tribal and individual allotted lands, many of which are still present. Many tribes have also purchased lands in fee, sometimes to recover lands lost through allotment. These lands may be held in fee, or transferred to trust status through regulations at 25 C.F.R. Part 151.

The Departments recognize that, despite limiting the definition of tribal land, the issues surrounding ROW negotiations have the potential to impact other landholders, including individual Indian allottees. However, the Departments' analyses are limited to 'tribal lands' as defined by Congress in Section 1813.

Third, clarification of the term "energy rights-of-way" was also needed. This term is not defined in Section 1813, is very broad, and could encompass many different types of ROWs. Some of the types of energy ROWs that could potentially fall within the scope of this term and require a grant of access (in the form of a grant of business lease, a facilities lease, a surface use and access agreement or a surface damage agreement) in order to lawfully be on tribal include:

- Local gas gathering pipelines from wells to transmission line tie-in points with the gas field,

- Intrastate gas transmission lines from gathering system tie-in points to processing plants,
- Intrastate and interstate gas transmission pipelines from gas processing plants to an industrial end user or gas distribution system,
- Local gas distribution system pipelines (the consumer delivery system),
- Local oil gathering lines from wells to transmission line tie-in points to a refinery,
- Intrastate oil transmission lines from gathering system tie-in points to a refinery,
- Intrastate and interstate refined products pipelines from a refinery to distribution terminals,
- Intrastate and interstate high-voltage electric power lines from a generating station to transformer stations,
- Local low-voltage electric power lines to consumers,
- Coal slurry pipelines,
- A variety of railroad lines carrying energy products across tribal lands,
- Roads that serve as corridors to energy sites and to oil and gas drilling locations,
- Roads for hauling oil from wellhead storage tanks to a refinery, and
- Roads for hauling coal from a mine to a coal-burning facility.

While all these types of ROWs pertain to energy, they are not necessarily comparable. As explained in Section 3, different types of ROWs may derive from different statutory authority. In addition, the economics, environmental impacts, tribal or federal oversight, and service requirements for each type of energy ROW are different. Because the range of energy ROWs on tribal lands is so extensive, the Departments determined that a more limited examination was required to successfully complete this report.

The Departments therefore refined the scope of the Section 1813 study to electric transmission lines and natural gas and oil pipelines associated with interstate transit and local distribution. The Departments selected these energy ROWs for study because of the number of interested participants that discussed these types of ROWs, the availability of information on them, and the nature of their role in delivering energy resources to consumers.

The Departments finally caution readers of this report that any conclusions or proposals made in this report should be understood in light of the focused study scope. Because the Departments' study focused on electric transmission, natural gas and oil pipelines, the assessments and analysis in this report were based on the law and facts surrounding these specific energy ROWs. Application of this report beyond ROWs for electric transmission, natural gas, and oil pipelines should be done with caution.

2. National Energy Transportation Policies Related to Grants, Expansions, and Renewals of Energy ROWs on Tribal Land

In Section 1813, Congress instructed the Departments to provide an analysis of relevant national energy transportation policies relating to energy ROWs on tribal lands. National energy transportation policies relating to energy ROWs on tribal land include:

- the Administration's National Energy Policy
- emergency authorities to ensure the transport of energy
- EPAct provisions relating to transmission
- EPAct Title V – Indian Energy (Title V)
- the Indian Right-of-Way Act of 1948 (1948 Act) and historical acts of Congress permitting ROWs across tribal lands

These sources provide specific policies for energy transportation on tribal lands and provide general relevant national energy policies.

2.1. Public and Tribal Comments

The Departments received a number of comments suggesting various policies and issues as relevant national energy transportation policies relating to the grant, expansion, or renewal of energy ROWs on tribal lands.

Industry generally commented that the Departments should focus on the Administration's National Energy Policy (NEP) and policies recently enacted as EPAct. Industry commented that the NEP and EPAct both find that the nation's current transmission and distribution infrastructure is aging and requires expansion to meet growing demand in the United States.[1] Industry commented that EPAct specifically addressed these issues and included provisions to encourage construction and expansions in infrastructure. An interest group commented that Congress intended Section 1221 to relieve transmission congestion and constraints that adversely affect consumers, and that Section 368 was intended to reduce siting obstacles faced by electric transmission line, natural gas pipelines, and other types of energy transportation infrastructure.[2] Specifically, discussing the policies promoted by Section 368, the interest group asserted that "siting constraints will be significantly constrained by current tribal ROW policy."[3]

One trade association noted that its members are already responding to the need to build and expand transmission infrastructure. The trade association provided data that its "Western and Southwestern shareholder-owned utilities spent roughly $6.8 billion (in 2005 dollars) on transmission between 2000 and 2005 and are planning to spend another $5.4 billion on transmission between 2006 and 2008."[4] The trade association also commented that "[b]eyond 2014, substantial additional transmission will likely be added as the nation's transmission system is upgraded and expanded to provide capacity for the next several generations, including the ability to access clean coal and wind generation."[5] However, the trade association asserted that the need to build such infrastructure, "highlights the importance of achieving tribal ROW fees that are reasonable and based on FMV [fair market value], and fee-setting processes that are efficient, prompt, predictable, and fair."[6]

Industry also commented that the underlying intent of policies to expand and improve energy transmission is to strengthen domestic energy sources.[7]

Tribes commented that EPAct shows Congress chose to address energy issues on tribal lands through EPAct Title V. Tribes commented that "Title V is an important expression of national energy policy and is the only piece of recent federal legislation that directly addresses both energy transportation needs and the specific issue of energy rights-of-way on tribal lands."[8] Tribes asserted that "any effort to limit tribal power to consent when companies seek to install or renew rights-of-way across tribal land would be directly contrary to the carefully crafted policy determinations made by Congress when it passed Title V."[9]

Tribes also commented that they already participate in energy policies such as helping domestic energy independence through the production and transmission of energy resources on tribal lands. One tribe commented that it "has been part of the energy-producing industry for over 50 years."[10] This tribe commented that the 2000 active natural gas wells on its reservation produce 22 million MCF of natural gas every year for transport to consumers in the Western United States.[11] Another tribe stated more generally that "rather than being one part of an energy supply and infrastructure *challenge* facing the U.S., the story of historical tribal land energy resource development, and more significantly the prospects for continued development, is one of consistent and positive contribution to meeting the nation's energy needs."[12]

Tribes commented that discussion of relevant national energy transportation policies should also address the lack of utility services to reservation communities. Tribes stated that a basic purpose of national energy transportation policies is to provide for the delivery of energy resources needed by communities across the country and, given that utility services to Indian households lags far behind those of non-Indian households, that these policies should be used to expand and improve utility service for reservation communities.[13] Specifically, Tribes presented data from DOE's Energy Information Administration (EIA) showing that 14.2 Indian households lacked electric service compared to 1.4 percent of all U.S. households.[14] They also cited a United States Census study reporting that 16% of Indian households use utility gas to heat their homes, compared to 51% of all United States households.[15] Tribes concluded that energy policies maintaining tribal sovereignty and promoting self-determination, as reflected in current laws and processes for obtaining energy ROWs on tribal lands, were critical for improving energy service on reservations.[16]

2.2. National Energy Transportation Policies Generally Relevant to Energy Matters on Tribal Land

2.2.1. The National Energy Policy

In May 2001, the Administration issued a National Energy Policy (NEP) which discussed many of the issues ultimately addressed by Congress in EPAct. The Administration's NEP set forth a long-term strategy to promote reliable, affordable, and environmentally sound energy for

America's future.[17] The NEP proposed meeting these goals by increasing energy conservation, increasing domestic energy supplies, increasing use of renewable and alternative energy, ensuring a comprehensive energy delivery system, and enhancing national energy security.[18]

Chapter 7 of the NEP specifically discussed policies and goals related to energy transmission. The NEP stated that, "One of the greatest energy challenges facing America is the need to use 21st-century technology to improve America's aging energy infrastructure."[19] In particular, the NEP concludes that natural gas pipelines and electric transmission lines are constrained because infrastructure has not kept up with demand.[20] The NEP further discussed a variety of constraints in each of these industries and their impacts on consumer costs and energy reliability.

The NEP described the nation's electricity transmission system as the highway system for interstate commerce in electricity. However, the NEP found that the electric transmission system is constrained because investment in transmission has "lagged dramatically" over the past decade, the siting process primarily occurs at the state level, and because of limited access to federal lands.[21] The NEP found that a constrained electric highway system cannot move energy where it is needed most and can lead to cost increases and reliability concerns.

For example, the NEP described how transmission can be used as a substitute for local generation by moving power from distant areas with surplus generation to areas of demand.[22] However, when transmission constraints limit power flows to areas of high demand, consumers in those areas will have to rely on higher-cost local generation.[23] The NEP also observed that regional shortages of generating capacity and transmission constraints can combine to reduce the overall reliability of electric supply in the country.[24] To address these various constraint problems, the NEP encouraged incentives to promote sufficient investment in transmission infrastructure, changes to the siting process to reflect the interstate nature of the transmission system, and improving access to federal lands.[25]

With respect to natural gas and oil pipelines, the NEP noted that the primary transmission infrastructure constraints were related to shortfalls in pipeline capacity, community resistance to pipeline construction, and obtaining ROW approvals from federal, state, local governments. Summarizing regulatory burdens at different levels of government, the NEP stated, "currently it takes an average of four years to obtain approvals to construct a new natural gas pipeline."[26]

The NEP, however, did not propose eliminating regulatory protections for pipelines. Instead the NEP proposed striking an appropriate balance between regulatory review and expediting approval. Citing three recent pipeline ruptures, NEP stressed that policies to ensure protection of people, environment, and the safety of the nation's energy infrastructure are an important part of the permitting process.[27] Thus, the NEP proposed legislation "to improve the safety of natural gas pipelines, protect the environment, strengthen emergency preparedness and inspections and bolster enforcement."[28] With these protections, the NEP also encouraged regulatory agencies, which includes tribal agencies, "to continue interagency efforts to improve pipeline safety and expedite pipeline permitting in an environmentally sound manner."[29]

The NEP also noted the significant role of federal lands for energy corridors, particularly in the western United States. Federal lands discussed in the NEP include lands managed by the Bureau

of Land Management, the U.S. Forest Service, the National Park Service (NPS), the U.S. Fish and Wildlife Service (U.S. FWS), the Bureau of Reclamation (BOR), and the Bureau of Indian Affairs – including tribal lands and individual Indian lands. The NEP concluded that each of these federal entities deals with ROWs from a "unique perspective."[30] The NEP noted that some of these agencies may encourage ROW development, and others like the NPS, the U.S. FWS, and the BOR may discourage ROW corridors or require that ROWs be compatible with authorized purposes.[31]

The NEP mentioned tribal lands as lands managed by the Bureau of Indian Affairs. Like other federal land managers, the NEP stated that "the BIA and tribal governments are authorized to grant rights-of-way across . . . tribal lands" for energy resources electric transmission lines and natural gas and oil pipelines.[32]

2.2.2. Principles of Eminent Domain

Generally, most electric transmission and energy pipelines have been built in the United States at the initiative of the private sector and are under rate regulation of the FERC. Pursuant to the Section 7 of the Natural Gas Act, most large natural gas pipeline projects are subject to FERC jurisdiction for siting, as well as for rate regulation. After a NEPA analysis, FERC may grant the pipeline developers a certificate, which may include eminent domain authority. Should negotiations fail to secure rights-of-way on private or state lands, the natural gas pipeline project can use this eminent domain authority to condemn enough land for a right of way. Section 7 of the Natural Gas Act's eminent domain authority does not apply to federal lands or tribal lands. By contrast, for electric transmission projects, it historically has been the states that have been the siting authorities, including the ability to grant eminent domain authority to oil pipeline and electricity project permit holders. However, with the passage of EPAct, Congress granted FERC very limited authority to grant transmission construction permits for projects that are located in any national interest electricity transmission corridors that may be designated by the Secretary of Energy pursuant to Section 1221(a). This limited federal transmission facility permitting authority includes the authority to grant permittees to acquire rights-of-way through the right of eminent domain. However, the eminent domain authority given to FERC for these transmission projects cannot be used by a permit holder to acquire "property owned by the United States or a State." [1221(e)(1)]. This exclusion includes tribal lands, which are lands owned by the United States in trust for the beneficial use of the tribes. Accordingly, neither section 7 of the Natural Gas Act nor the new EPAct Section 1221(a) give FERC the authority to grant the right of eminent domain to acquire energy rights-of-way on tribal lands.

2.2.3. Emergency Authorities

While the Departments found no evidence that negotiation between parties for obtaining an energy ROW on tribal land contributed to an emergency situation, an analysis of emergency authorities addresses the system integrity and security issues raised by some industry parties in the Section 1813 study. The Departments examined emergency authorities of the Secretary of Energy pursuant to the Natural Gas Policy Act and the Federal Power Act. Although these authorities are used only in times of national emergencies, they can be used to mandate transfers

of needed energy supplies. In an emergency situation, these generally applicable statutes could apply to tribes.

A number of tribal parties commented that while no tribe has exercised its consent authority in a manner that created an emergency situation, the issues raised by Section 1813 force tribes into the untenable position of having to prove a negative, i.e., that no tribe will ever use its consent authority in this manner, or that no tribe will interfere with supplying energy resources in an emergency. Rather than forcing this exercise on the tribes, the Departments' analysis finds that emergency authorities could provide a means of rectifying such a situation if it did occur.

2.2.4. The Energy Policy Act of 2005

In addition to the provisions passed in EPAct Title V, discussed in Section 2.3.1 below, a number of other EPAct provisions address the nation's energy infrastructure, in particular the electric transmission system, and may have some general application to tribal lands. EPAct promotes improving and expanding the nation's energy infrastructure to meet the needs of a growing U.S. economy. Specifically, Sections 1221 and 368 of EPAct provide administrative tools for facilitating the siting and construction of needed energy transmission.

EPAct Section 1221 (a) amended the FPA by adding a new Section 216 (a). This new section directs the Secretary of Energy to conduct a nationwide study of electric transmission congestion by August 8, 2006.[33] Based upon the congestion study, comments thereon, and considerations that include economics, reliability, fuel diversity, national energy policy, and national security, the Secretary may designate "any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects customers as a national interest electric transmission corridor."[34] The national congestion study is to be updated every three years.

Section 368 of EPAct applies to transmission corridors for electric, natural gas, and oil. Section 368 directs the Secretaries of Agriculture, Commerce, Defense, Energy, and Interior to incorporate into land use plans energy ROW corridors for oil, gas and hydrogen pipelines and electricity transmission and distribution facilities on federal land in eleven Western states within two years of the passage of EPAct.[35] Within four years of the passage of EPAct , these Secretaries are to identify corridors within federal lands in the remaining states.[36] These energy corridors will take into account reliability, congestion, and overall infrastructure capacity.[37]

In Sections 1221 and 368, Congress enacted authorities and processes intended to promote the siting of generation and transmission to help resolve congestion and improve reliability, but did not make these provisions applicable to tribal lands. Section 1221 gives FERC transmission siting authority under certain conditions, and this authority includes the power to grant eminent domain. However, this authority specifically excludes property owned by a state or the United States, which includes tribal lands.[38] Similarly, Section 368 applies to federal lands, for example BLM, Forest Service, or Department of Defense lands, but not tribal lands. Pursuant to Section 368, the Secretaries listed above are consulting with tribes interested in the Section 368 process. Some tribes have sought inclusion of portions of their land in the Section 368 process, while others have requested not to participate. Future tribal involvement may include participating in NEPA review of a proposed energy corridor under Section 368.

Accordingly, Sections 1221 and 368 did not alter the framework for negotiating energy ROWs on tribal lands as established under current law, including EPAct Title V. The Departments note that provisions of Title V, promote tribal energy resource development, energy related governing capacity, and encourage tribes' participation in resolving congestion issues.

2.3. National Energy Transportation Policies Specifically for Energy ROWs on Tribal Land

2.3.1. Energy Policy Act of 2005, Section 503, Indian Energy

The most recent statement of national energy transportation policy specifically regarding energy ROWs on tribal lands strongly supports tribal decision-making and management of energy resources and facilities while correspondingly reducing federal oversight. EPAct Title V furthers the federal policy of tribal self-determination by encouraging tribes to develop procedures and safeguards for tribal management of every aspect of energy production and delivery on tribal lands. As expressed generally in provisions of Title V, the overarching goal is to "assist Indian tribes in the development of energy resources and further the goal of Indian self-determination."[39]

Provisions of Title V specifically relating to energy ROWs are entitled "Leases, Business Agreements, and Rights-of-Way Involving Energy Development or Transmission" and codified at 25 U.S.C. § 3504. These provisions set out a substantial program for governing energy facilities, including energy ROWs, through the development of Tribal Energy Resource Agreements (TERA).[40] Upon approval of a tribe's TERA by the Secretary of the Interior, "[a]n Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without review or approval by the Secretary of the Interior and [in accordance with certain terms set out in the statute]…."[41] These provisions require that the energy ROW must be issued in accordance with the tribe's TERA, cannot exceed 30 years, and must serve an electric generation, transmission, or distribution facility located on tribal land, or a facility on tribal land that processes or refines energy resources developed on tribal land.[42] Regulations to implement this statute were published by DOI in the Federal Register on August 21, 2006.[43]

These provisions also specifically address renewal of energy ROWs on tribal lands. Renewal of energy ROWs that have been approved according to the substantial process set out in 25 U.S.C. § 3504 will be "at the discretion of the Indian tribe."[44]

While Title V establishes new provisions to further and support tribal management of energy ROWs, Congress did not repeal existing authorities for energy ROWs on tribal lands. This is appropriate because it may not be in the interest of all tribes to invest the time and resources to develop a TERA pursuant to which energy ROWs can be approved without direct Secretarial oversight. Consequently, in addition to the policies set out by Title V, national energy transportation policies expressed by Congress in prior enactments are still relevant to energy ROWs on tribal lands.

2.3.2. Indian Right-of-Way Act of 1948, Implementing Regulations, and Historical Statutes

In addition to EPAct Title V, energy ROWs on tribal lands are governed by the 1948 Act[45] and DOI regulations at 25 C.F.R. Part 169. As explained in more detail in Section 3.2, the 1948 Act and its implementing regulations include obtaining the consent of the applicable Indian tribe as an integral element of the energy ROW application process.

In the years leading up to the 1948 Act, from the 1880s to 1940s, national energy transportation policy relating to energy ROWs on tribal lands took a variety of approaches. Of course, the Departments recognize that federal Indian policy during this time was also shifting from the era of allotment – which was intended to remove tribal control of Indian lands – to reorganization of tribal governments, and finally to restoration of tribal land status.[46] Energy transportation policies on tribal lands ranged from individual acts of Congress for each ROW to broad statutes authorizing administrative processes for requesting a ROW. As explained in more detail in Section 3.2, the requirement for obtaining a tribe's consent for an energy ROW was also expressed in a variety of ways.[47]

2.4. Departmental Findings

Recent national energy transportation policy generally stresses the need to invest in aging transmission infrastructure and expand transmission to relieve congestion and improve reliability. Much of this policy was recently enacted into law in August 2005 as EPAct. These general energy transportation policies and enactments, however, recognize the unique laws that apply to tribal lands and do not alter existing laws and regulations for obtaining an energy ROW on tribal lands.

For the past 60 years, national energy transportation laws and policies specifically applicable to tribal lands have sought tribal consent for the grant, expansion, or renewal of energy ROWs on tribal lands. These laws and policies also promoted tribal involvement in determining energy ROW routes, protections for cultural and natural resources, and emergency matters. The most recent of the federal government's statutory and policy expressions, EPAct Title V, encourages tribes to assume greater decision-making control over energy ROWs.

3. The statutory and regulatory framework for granting, expanding, or renewing energy ROWs on tribal land and the associated tribal sovereignty and self-determination interests

In Section 1813, Congress instructed the Departments to present information on the statutory and regulatory framework that guides the placement of energy ROWs on tribal lands and to provide Congress with information on the related tribal sovereignty and self-determination issues.

3.1. Public and Tribal Comments

As an overarching issue, nearly all parties from all perspectives recognized the inherent sovereignty of Indian tribes and supported federal policies of tribal self-determination. Tribes emphasized the federal government's acknowledgement of their inherent sovereignty through treaties, legislation, Supreme Court decisions, Executive Orders, and ongoing interactions between the federal government and tribes. Paraphrasing COHEN'S HANDBOOK OF FEDERAL INDIAN LAW,[48] one tribe noted the "long-standing principle of federal Indian law that Indian tribes possess inherent sovereignty." Other tribes stated that inherent tribal sovereignty "exists in the tribe itself" and "does not derive from the federal government."[49] Referring to the tribal consent provisions in energy ROW statutes and regulations, many tribes commented that tribal consent to the use of tribal lands is a manifestation of tribes' sovereign authority to determine the terms of access to tribal lands.[50] Tribes commented on the interrelatedness of sovereignty, the federal policy of tribal self-determination, and tribal governmental functions.[51] Industry also voiced their recognition of tribal sovereignty, but also noted their view that this was not an unbounded authority and is instead an authority that has been judicially limited in specific cases.[52]

Several tribes noted that tribal governments fulfill their responsibilities as sovereigns by providing services such as education, health care, environmental protection, sanitation, and law enforcement. Tribes also cited to federal programs in which tribes have governmental responsibilities or have assumed the responsibility of implementing the program, including: the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, the Comprehensive Environmental Response, Compensation and Liability Act, Emergency Planning and Community Right-to-Know Act, Oil Pollution Act, and the Native American Graves Protection and Repatriation Act.[53] Even with these government obligations, however, tribes noted that the inherent authority of tribes to tax activities on reservation lands to raise governmental revenues can be complicated by possible overlaps with the taxing authorities of neighboring jurisdictions.[54]

Tribes also described the responsibility to develop governing capacity necessary for overseeing energy ROWs. Often these functions are supported by energy ROW fees. Several tribes stated that energy ROW management activities require high levels of staff time and tribal resources.[55] In one example, the need for tribal governmental capacity to deal with energy ROWs was evident when a natural gas pipeline exploded on the Confederated Tribes of the Umatilla Reservation in 1999. The Tribe's police, fire, and emergency response personnel responded to the blast and assisted in containing the damage and investigating the cause of the explosion.[56] In

another example, a tribe cited an oil pipeline that sprang a leak and spilled several thousand gallons of oil across Pueblo lands.[57]

Tribes also commented that tribal governmental involvement is necessary to prevent harm to reservation resources. In particular, tribes noted that sovereignty and governmental capacity were critical to protecting tribal natural and cultural resources, and tribal sacred sites.[58] Tribes noted that relatively recent federal statutes and their implementing regulations provide a legal framework that a tribe can use to prevent damage to sacred places and cultural resources, if the tribal government has the financial and human resources to use this legal framework and to insist that federal agencies comply with the law. While many tribes have cultural resources programs and some have Tribal Historic Preservation Officers such tribal programs typically place many demands on limited staff. The National Historic Preservation Act and Native American Graves Protection and Repatriation Act recognize tribal sovereign authority in the general subject matter of cultural resources management. However, the relatively recent passage of these acts means that there are many existing energy ROWs that will be up for renewal that may not have been approved or would have been relocated if the current legal framework had been in place when the ROW was originally granted, because the governing tribe would have either denied consent or insisted on the ROW being relocated to avoid sacred places or other cultural resources.[59]

3.2. Laws, Regulations, and Federal Polices with Implications for Tribal Sovereignty

3.2.1. Statutory Background

The history of statutes governing energy and other types of ROWs over tribal land can be divided into three major periods. During the first phase, roughly from the 1880s to 1899, Congress authorized ROWs by enacting a specific statute for each particular ROW. In the second phase, beginning in 1899, Congress began to pass acts concerning categories of ROWs, such as those for the purpose of building railroad lines. The current phase began in 1948 with promulgation of the principal statute governing ROWs across tribal lands, commonly called the General Right-of-Way Act or the Indian Right-of-Way Act (1948 Act).[60]

During the first phase, the last two decades of the 19th century, Congress passed more than 100 separate laws granting specific ROWs on Indian reservations. These early statutes primarily involved easements for railroads and telegraph and telephone lines. Generally they required the company obtaining the ROW to pay damages or compensation as determined by the Secretary of the Interior. The acts also sometimes required that Indian consent be obtained for the ROW or the amount of ROW compensation.[61]

In 1899, in the second phase, Congress ended the practice of passing a separate statute for each ROW over Indian land and instead gave the Secretary of the Interior general authority to grant ROWs for railroads and telegraph and telephone lines.[62] Companies needing ROWs across Indian land no longer had to seek Congressional authorization but rather applied directly to the Secretary of the Interior, who could approve the ROW if the company complied with the terms

of the authorizing statute. Those terms did not include the consent of the tribe that owned the land.[63]

On March 11, 1904, Congress gave the Secretary of the Interior authority to grant ROWs for oil and gas pipelines traversing Indian reservations and allotments:

> The Secretary of the Interior is authorized and empowered to grant a right-of-way in the nature of an easement for the construction . . . of pipe lines for the conveyance of oil and gas through any Indian reservation . . . or through any lands which have been allotted.[64]

This statute is silent with regard to obtaining tribal consent for the ROW. However, the statute gave the Secretary the discretion to establish "such terms and conditions as he may deem proper" on renewals of ROWs.[65] Thus, this statute authorized tribal consent as one such term or condition, at least with regard to renewals, should the Secretary, in his discretion, so desire.

On March 4, 1911, Congress gave "head of the department having jurisdiction over the lands" authority to grant ROWs for electric transmission lines across Indian reservations.[66] This statute also is silent with regard to obtaining tribal consent for the ROW, requiring only the approval of the "chief officer of the department under whose supervision or control such reservation falls."[67]

The current phase began with the 1948 Act, enacted on February 5, 1948, which expressly requires the consent of certain tribes. It provides, in pertinent part:

> The Secretary of the Interior . . . is empowered to grant rights-of-way for all purposes, subject to such conditions as he may prescribe, over and across any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes. . .[68]
>
> No grant of a right-of-way over and across any lands belonging to a tribe organized under [the Indian Reorganization Act (IRA) and the Oklahoma Indian Welfare Act (OIWA)][69] shall be made without the consent of the proper tribal officials. . .[70]
>
> Sections 323 to 328 of this title shall not in any manner amend or repeal provisions of the Federal Water Power Act. . . nor shall any existing statutory authority empowering the Secretary of the Interior to grant rights-of-way over Indian lands be repealed.[71]

The consent provision in the 1948 Act is consistent with the tribal organization statutes, which confer on tribes organized under those statutes the power to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without their consent.[72] Including the consent requirement in the 1948 Act prevents implied supercession of the consent provisions of the tribal organization acts.[73] The 1948 Act also includes authority to impose conditions at the discretion of the Secretary.

Statutes on the same subject are to be construed together. The 1948 Act constitutes a comprehensive scheme for granting ROWs across Indian lands. It simplifies and unifies the earlier procedures and removes some of the confusion that resulted from the practice of enacting specific legislation for each separate type of ROW or easement.[74] The 1948 Act supplants the earlier ROW statutes but explicitly does not repeal them. When read together, the statutes empower the Secretary to require tribal consent for a tribe organized under the tribal organization statutes, and they vest the Secretary with the discretion to mandate tribal consent and other conditions for ROWs across lands of other tribes.

3.2.2. Regulatory Background

Before the 1948 Act was passed, DOI regulations did not require the consent of tribes to enable the Secretary to make ROW grants over their reservations.[75]

On August 25, 1951, DOI promulgated regulations governing ROWs that established a unified procedure for applications, whether for pipelines or other purposes. The regulations were designed to implement and harmonize the 1948 Act with the myriad of other ROW statutes, including the 1904 Act, and to establish clear DOI policy that ROWs would not be authorized without tribal consent.[76]

The tribal consent provision in the regulations is unambiguous: "No right-of-way shall be granted over and across any restricted lands belonging to a tribe . . . without the prior written consent of the tribal council."[77] No distinction exists in this regulation between tribes organized under the tribal organization statutes and other tribes. The regulation requires the consent of all tribes.[78]

3.2.3. Federal Policy of Tribal Self-Determination

Self-determination is a federal policy that guides the U.S. government in its actions, decisions, and programs regarding Indian tribes. Although self-determination was recognized in principle at the very beginning of the federal government's relationship with tribes during the negotiation of treaties, it evolved into a specific policy during the latter part of the 20th century. Tribal autonomy formed a basic tenet of various pieces of legislation, especially the Indian Reorganization Act of 1934 (IRA)[79] and the Indian Self-Determination and Education Assistance Act of 1975.[80] In the latter statute, Congress recognized that the tribes "will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, or persons."[81] Most recently, Title V of the Energy Policy Act of 2005 directed the Departments to create Indian energy programs in accordance with "federal policies promoting Indian self-determination."[82]

3.2.4. Policies Promoting Consultation and Coordination with Tribal Governments

Other policy expressions relevant to energy matters on tribal lands are contained in general tribal policies that provide direction to federal agencies on maintaining appropriate government-to-government relationships with tribal governments. These policies have been expressed in Executive Orders and Presidential Proclamations.

On November 12, 2001, President Bush issued a proclamation stating that "we will protect and honor tribal sovereignty and help stimulate economic development in reservation communities."[83] More recently, the Administration focused on tribal energy issues. On November 7, 2005, President Bush recognized defining principles of tribal sovereignty and self-determination and noted EPAct provisions to enhance energy opportunities and strengthen tribal economies.[84]

Previous administrations articulated on-going government-to-government consultation policies in Executive Orders. Most recently, in Executive Order No. 13175, "Consultation and Coordination with Indian Tribal Governments" executive agencies are instructed to consult with Indian tribes. The Executive Order states:

> [w]hen undertaking to formulate and implement policies that have tribal implications, agencies shall:
>
> (1) encourage Indian tribes to develop their own policies to achieve program objectives;
> (2) where possible, defer to Indian tribes to establish standards; and
> (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.[85]

Most agencies, including FERC, DOE and DOI, have comparable policy statements and orders calling for consultation with Indian tribes and Alaska Native tribal governments.

3.3. Departmental Analysis

The principle of tribal sovereignty is central to understanding the statutory and regulatory requirement of tribal consent to energy ROWs. Sovereignty is generally defined as the authority of a government to define its relationship with other governments, commercial entities, and others.[86] A tribe's authority to confer or deny consent to an energy ROW across tribal land derives from its inherent sovereignty — the right to govern its people, resources, and lands. The present right of tribes to govern their members and territories flows from a historical and preexisting independence and right to self-government that has survived, albeit in diminished form, through centuries of contact with other cultures and civilizations. Most treaties include clauses intended to preserve this right of self-governance, at least with regard to tribes' internal affairs.

This history of tribal sovereignty forms the basis for the exercise of tribal powers today.[87] Although the United States has long recognized the sovereignty of Indian tribes as "distinct, independent, political communities" exercising the authority of self-governance,[88] the relationships between federal, state, and tribal governments are complicated.

Many different authorities define the contours of this relationship, including treaties, the Constitution, legislation, Supreme Court and other federal court decisions, regulations, and

Executive Orders. "The Constitution is the primary source of federal power to regulate Indian affairs. By enumerating powers exercised by the constituent branches of the national government, the Constitution both defines and limits national powers, and, as interpreted by the Supreme Court, provides ample support for regulation of Indian affairs . . . ."[89] The earliest authorities — treaties — continue to constitute a major source of federal Indian law, and almost universally include provisions in which the United States agreed to protect Indian property from predation. Legislation reflects the power granted to Congress under the Constitution, and has been held to abrogate treaty provisions where the legislative statement is clear.[90]

Congress has legislated extensively in regard to Indian property, providing for the grant of leases and rights-of-way and even disposal of Indian property without consent.[91] Federal court decisions provide many general principles of Indian law but also address and resolve particular fact situations. All of these authorities have an important role to play in the analysis of the relationship in general, and in evaluation of individual consent issues in specific cases.

Writing in the late 1930's to 1941, Felix Cohen, then with DOI's Solicitor's Office, described the federal government's policy for obtaining tribal consent to ROWs in the seminal *Handbook of Federal Indian Law*. Cohen wrote:

> Congress . . . has conferred upon administrative authorities various statutory powers to alienate interests in tribal land less than fee, particularly easements and rights-of-way. Generally these statutes do not make tribal consent a condition to the validity of the alienation, but as a practical administrative matter tribal consent is frequently made a condition of the grant.[92]

One important aspect of this complex relationship is that under certain circumstances, the federal government becomes the trustee of Indian property.[93] There is no doubt that the trust relationship exists with regard to land held in trust for tribes. Trustees must act in the best interests of the beneficiary of the trust by protecting and preserving the corpus. DOI, as the trustee-delegate, is strongly committed to high standards for managing Indian trust land. In the context of ROWs over tribal lands, the regulations set forth a fairly detailed process, including some specific responsibilities of DOI. In performing those specific responsibilities, DOI fulfills its trust duties. While there may be differences of opinion as the appropriate consideration for any particular ROW, the regulation is clear that it shall be "not less than but not limited to fair market value of the rights granted, plus severance damages, if any . . ." unless otherwise approved by the Secretary.[94] Disagreement about what constitutes "fair market value" is inevitable, but does not indicate that DOI has not performed its trust duty in this regard.

3.4. Departmental Finding

The Departments encourage tribal economic development and have a duty to assure that management of trust assets is in accordance with the best interest of tribes and tribal members. In addition, the proper discharge of the federal responsibility to manage Indian trust assets also includes deference to and promotion of tribal control and self-determination.

Tribes have become increasingly involved in the process for approving the grant, expansion, or renewal energy ROWs on tribal lands. As described to the Departments in comments, tribes currently negotiate ROW issues such as route, compensation, term, and environmental, cultural, and emergency protections pursuant to the 1948 Act and its implementing regulations.

A tribe's determination of whether to consent to an energy ROW across its land is an exercise of its sovereignty and an expression of self-determination. Any reduction in the tribe's authority to make that determination is a reduction in the tribe's authority and control over its land and resources, with a corresponding reduction in its sovereignty and abilities for self-determination Granting a ROW on tribal land only with the consent of a tribe is in accordance with the federal policy promoting tribal self-determination and self-governance. The tribal consent requirement has been virtually unchanged since 1951. It reflects a longstanding interpretation of the pertinent statutes by the agency charged with their administration.

4. Analyses of Historical Compensation Paid for Energy ROWs on Tribal Land

Congress requested an analysis in Section 1813 that could instruct Congress on the historical rates of compensation for rights-of-way on tribal lands. The Departments performed an extensive review of potential energy rights-of-way and evaluated the best approach to provide the requested information.

4.1. Background

For the reasons described in the Introduction, the Departments relied on a case study approach to shed light on past and present process of determining compensation for energy ROW on tribal lands.

The Departments recognize that a case study approach only provides a "snapshot in time" that may not fully represent the context within which an energy ROW was granted, renewed, or expanded. In addition, the Departments recognize that these case studies represent a very small subset of the entire dataset of energy ROWs crossing tribal lands. The exact number of energy ROWs on tribal land has not been calculated, however, the following examples illustrate in brief the extensive dataset that would be necessary to analyze to do a comprehensive historical analysis.

The Confederated Salish and Kootenai Tribes reservation hosts 325 miles of ROWs for 11 regional electrical transmission lines, 150 miles for local electrical transmission lines, more than 2,000 miles for local electrical distribution lines, and 56 miles for a regional refined fuels pipeline.[95] The Shoshone-Bannock Tribes of the Fort Hall Reservation have 22 energy ROWs: 19 for electric transmission lines and 3 for natural gas lines.[96] Similar statistics are available for other tribes

The Departments appreciate the efforts of tribes and industry who volunteered case studies for review, conducted energy ROW surveys, and submitted information on specific ROWs.

4.2. Case Study and Survey Processes

After the Departments' request at the public March 2006 public scoping meeting for case study volunteers, the Ute Indian Tribe of the Uintah and Ouray Reservation (Ute Indian Tribe), the Morongo Band of Mission Indians (Morongo Band), the Southern Ute Indian Tribe (Southern Ute Tribe), and the Navajo Nation agreed to participate in the Section 1813 study and allow energy ROW agreements on their lands to serve as case studies. The Departments contracted with Historical Research Associates, Inc., (HRA) to visit each volunteer and develop case study reports. After the announcement that these tribes would serve as case study examples El Paso Natural Gas (EPNG) offered to open its records related to the Southern Ute and Navajo Nation cases that involved energy ROW negotiations with El Paso Western Pipelines.

At follow-up meetings with industry trade associations the Departments further requested industry participation in the case studies. Southern California Edison officials expressed interest

in participation, but after follow-up calls were made by the Departments and HRA they declined to participate.

At the beginning of the research process, DOI provided HRA with the names of tribes that had offered to participate in the case studies of historic rates of compensation. DOI also provided contact information for key tribal and BIA representatives, and, through Office of Historical Trust Accounting personnel, arranged for site visits in concert with HRA historians. During some of these advance conversations, HRA discussed with tribal representatives their concerns about confidentiality or proprietary business information. In some cases, tribal representatives made requests relating to confidentiality during or after HRA's visit.

HRA prepared a memorandum requesting access to records needed for the study, listing the types of potentially relevant records pertaining to ROWs for oil and gas pipelines and electric transmission lines. The types of records to which they sought access included:

- Leases or contracts for the energy ROW
- Records of negotiations and determination of compensation, including transcripts of negotiations or meetings involving BIA, tribal, and energy company representatives
- Correspondence surrounding negotiations (between all parties)
- Appraisals of the BIA and/or DOI Office of Special Trustee, company, and tribal);
- Applications for energy ROWs
- Tribal authorizations of energy ROWs such as tribal council resolutions and meeting minutes
- Any modifications to agreements

DOI circulated this memorandum to tribal officials and BIA superintendents for the four tribal volunteers.[97] During the site visits, HRA reviewed records made available by tribal representatives and reviewed ROW files maintained by the BIA. HRA identified potentially relevant records by carefully reviewing these files and obtained copies of those records. During site visits, HRA also met with tribal and BIA representatives to ask questions about how easements for energy ROW have been administered on the reservations.

These case study reports are summarized in Section 9.1 to 9.4. The complete HRA report is included as an appendix to this report.

4.3. Case Study Results

The history of energy rights-of-way on the Uintah and Ouray, Southern Ute, Morongo, and Navajo Indian Reservations reveals general trends in the negotiation and management of easements over Indian lands. In particular, negotiations on these reservations shed light on changes in amount and types of compensation, and on the role of tribal consent in the negotiation process.

Compensation in the 1950s and 1960s generally consisted of damages calculated on a per-rod or per-acre basis. In 1968, the revised federal regulations specified that consideration "shall be not less than the appraised fair market value of the rights granted, plus severance damages, if any, to the remaining estate."[98] Appraisals had been used in the ROW approval process before 1968, but the language of the new regulation may have changed the methods used to appraise ROW. Appraisers (hired by energy companies) developed various methods for determining "fair market value of the rights granted," but generally they calculated the fee value of the land using sales of comparable lands, and then they discounted that amount by some percentage because the lands involved were being used, not sold. The BIA usually either reviewed the company's appraisals or conducted its own. In these reviews, BIA appraisers determined fair market value through using comparable easements as a standard and through determinations of the land's sale value based on its highest and best use. Some tribes, such as the Southern Ute Tribe, do not require appraisals for tribal lands, mainly because the tribe itself has determined what the compensation rates should be. Currently, tribes such as the Morongo Band favor appraisal methods that take the revenue-generating potential of the land into account, rather than considering only the sale value of the land.

Starting in the 1970s and 1980s, types of consideration for energy ROW began to vary. Per-rod or per-acre rates were replaced with annual lump payments, or compensation based on throughput, and/or tribal ownership interests (particularly for pipelines). Compensation packages have also included donations to tribal scholarship funds and options to purchase service from the energy companies. One ROW on the Navajo Reservation involved a land exchange as compensation, while the Southern Ute Tribe sometimes negotiated for joint ventures or for outright ownership in pipelines. Types of consideration have depended upon the particular tribe and companies involved in the negotiations.

The 1948 Act, required tribes to be involved in the approval process by granting their consent to easements if they were organized under a Federal statute. Interior regulations that followed the 1948 Act required consent of all tribes, not just those organized by statute. The examples above involve two tribes organized under the Indian Reorganization Act of 1934 (the Ute Indian Tribe and the Southern Ute Tribe) and two that are not organized (the Morongo Band and the Navajo Nation). The case studies indicate that the BIA has had one administrative approach to all tribes, regardless of whether or not they are organized under the IRA.

In providing their consent to energy ROW, the four tribes involved in these case studies have participated in negotiations to varying degrees. The Navajo Nation began asserting its interests in the 1950s or earlier, as did the Morongo Band (albeit with limited success), while the Southern Ute Tribe and the Ute Indian Tribe made that move in the1970s and 1990s, respectively. All four of the tribes now negotiate ROW directly with the energy company involved, while also continuing to ratify agreements through the passage of tribal resolutions. The BIA retains an oversight role and the ultimate authority to approve or reject the ROW.

4.4. Departmental Analysis

A complete historical analysis of energy ROW compensation on tribal lands was not possible because of the number of energy ROWs on tribal lands and the diffuse locations of ROW

records. Even if compiling a complete and detailed historical inventory of energy ROWs on tribal land was possible, an analysis of compensation rates might only have marginal benefit as a result of the significant differences among energy ROWs. Even when limited to electric transmission lines and natural gas and oil pipelines, these energy ROWs have been established pursuant to a variety of legal authorities. In addition, energy ROWs vary in their duration, size, renewal rights, and valuation methods.

Other factors that complicate an across-the-board analysis are the financial and environmental risks associated with specific energy ROWs, additional facilities built on or related to the energy ROW, and land use. The impacts of the energy ROW on cultural resources and areas of significance can also affect energy ROW costs. Energy ROW compensation will also differ on the basis of agreements as to who is responsible for security and emergency responses and whether the energy ROW includes tribal energy development or provision of energy services.

Undertaking a historical analysis of energy ROWs is also complicated by the fact that ROW data may be confidential business information, subject to confidentiality agreements in some cases. Energy companies also expressed concern that their participation in the study could negatively affect ongoing or future tribal relationships.

As stated before, the Departments recognize that the case studies are "snapshots in time" that may not fully represent the context within which the energy ROWs discussed in this Section were granted or renewed. In addition, the Departments recognize that because these case studies represent a very small subset of the entire dataset of energy ROWs crossing tribal lands the results cannot be used to statistically extrapolate to the entire suite of energy ROWs on tribal lands and the discussion of the negotiation process cannot be generalized to that dataset.

However, the Departments do believe that the cases presented illustrate the situation that is testified to by all parties involved in this study process. Namely that the nature of the process has evolved significantly over time into one in which tribes are more fully involved in bilateral negotiations with energy companies and in setting the terms and conditions under which energy ROWs are authorized

4.5. Departmental Findings

In these case studies, in addition to using standard market valuation analysis as a base for compensation, some tribes have successfully negotiated for alternative forms of compensation, such as throughput charges or partial ownership of the lines. These examples demonstrate that mutually satisfactory outcomes are possible, although they do not necessarily reveal a standard recipe for success.

5. Standards and Procedures for Determining Compensation for Energy ROWs on Tribal Land

In Section 1813, Congress asked the Departments to address the standards and procedures that may be used to determine ROW compensation. During the scoping, consultation and comment processes, the Departments received a number of comments that recommended and discussed different valuation methodologies used in negotiations for energy ROWs on tribal lands and elsewhere.

5.1. Public and Tribal Comments

Overall, most industry representatives contended that valuation of tribal lands for energy ROWs should be based on market value principles.[99] Tribal representatives rejected those principles as inappropriate for tribal lands. In addition, some energy companies commented that limiting energy ROW negotiations to market value would restrict creative arrangements that promote development of energy resources on tribal lands.

Industry stated that concerns about the impacts of energy ROWs on infrastructure reliability and consumer energy costs could be alleviated through use of "objective, consistent, transparent, and uniform standard for valuing" energy ROWs on tribal land.[100] One trade association suggested that compensation on tribal lands should be based on objective assessments of the value of comparable nearby land, the nature of the land's existing use, and the location of the energy ROW.[101] An interest group suggested that market value would be an appropriate standard for valuing energy ROWs on tribal land citing it as the nationally recognized standard for determining just compensation for interests in land required for the public good.[102]

These suggested standards are similar to those used in eminent domain proceedings when the federal government and other governments acquire land for public purposes. One utility company stated that without an eminent domain alternative there are few, if any, limits to the amount of compensation that could be discussed in negotiations between tribes and utilities.[103] One interest group described market value principles in depth, noting that market value does not typically reflect the proposed use of the ROW or the value of the ROW to the acquiring government.[104] Industry frequently commented, however, that current valuation of many energy ROWs on tribal lands far exceeds the market value of those lands and appears to include the added value of the energy development.[105]

Industry pointed out that market value is the standard within the federal government for valuing property generally. An interest group cited the prevalence of market value principles in regulations used by DOI and the United States Department of Agriculture's Forest Service for determining land values for a variety of purposes, including energy ROWs.[106] This same group also referenced recent DOI Secretarial Orders and a departmental memorandum requiring use of market value principles, with some exceptions, for all DOI appraisals.[107]

Most industry representatives suggested that use of market value principles for energy ROWs on tribal lands would increase certainty for existing and new energy infrastructure by providing an

objective standard for determining value.[108] The desire for an objective standard was particularly emphasized by industry in the case of energy ROW renewals.

Industry commented that, in renewal situations, energy companies have existing physical assets and investments on tribal lands, and some in industry expressed concern that, without an enforceable standard, an energy ROW negotiation would automatically escalate to a company's cost to build around the tribal lands containing the company's assets.[109] In such cases, they commented that build-around costs could include lost revenue stream, new construction, and new ROW fees. Industry also commented that they could be faced with selling their existing facilities on tribal land at a reduced value if energy ROWs are not renewed.[110] Industry stated that the threat of incurring build-around costs causes uncertainty for existing projects and discourages future investment in tribal lands.

Tribes observed that imposing any standard valuation method and mandating its acceptance would constitute an exercise of eminent domain that is not applicable to lands owned by the United States and reserved for tribal use. Tribes asserted that condemning tribal lands for private energy purposes violates the "exclusive use" provision of many treaties, the federal government's trust responsibility to the tribes and the promise that tribal lands and tribal reservations will remain under the control and beneficial ownership of Indian tribes.[111]

Tribes rejected market value principles as being inappropriate and inapplicable to tribal lands. They noted that tribal lands are not bought and sold on open markets therefore traditional land appraisal techniques are not applicable.[112] Furthermore, they pointed out that tribal lands are held in trust by the federal government and are protected against alienation through treaties and other agreements which recognize tribal sovereignty over tribal lands and federal obligations to tribal property.[113]

Tribes commented that one of the most vital components of their tribal sovereignty is their authority to determine access to and use of tribal lands and resources.[114] They cited history of the federal-tribal relationship as set out in long-standing treaties, statutes, Supreme Court opinions, and Executive Orders, for confirmation of this authority.[115]

Citing the uniqueness of tribal lands and the governmental responsibilities of tribes, tribes supported maintaining the present negotiating process. Tribes stated that negotiation between a tribe and an energy company is the most appropriate basis for determining energy ROW valuation because, like other governments, a tribe has sovereign responsibilities and must appropriately manage its resources for the benefit of its people.[116] Tribes commented that a uniform valuation system could not account for all the difference among tribes, tribal governments, and tribal lands. For example, at least one tribe noted that its leasing authority was separately recognized by Congress and unique from the statutory and regulatory process used by most tribes to approve energy ROWs.[117] In contrast to the unique circumstances recognized in modern tribal policies, tribes stated that proposals for uniform valuation techniques were regressive and similar to discredited federal Indian policies.[118]

Tribes also stated that tribal lands have value tied to tribal histories and oral traditions and for the resources that may be used in tribal cultural practices. Tribal lands may have graves of ancestors

located on them, or sites that are used in religious ceremonies. Tribal members may regard a particular place as significant simply because it is part of all they have left of their aboriginal territory, or because their ancestors fought and died to keep it.[119] Therefore standard valuation methods used for non-tribal lands can not account for this unique factor as they are the only lands possessed by descendants of the aboriginal peoples.

Several tribes indicated that valuation of tribal lands could be comparable to valuation methods used by municipalities because both have jurisdiction and responsibilities for providing services to members or citizens. As reported in a study prepared for one tribal party, cities such as Houston and Laredo, Texas; and Atlanta, Georgia value ROWs by linear foot.[120] The study also noted that franchise fees received from the use of public rights-of-way may represent a significant percentage of a city's general budget.[121] The valuation methods used by municipalities were reported to depend upon the purpose of the ROW and whether the ROW could accommodate other uses.[122] Tribes further noted that energy ROW fees provide tribes with governmental revenue and the inherent authority of tribes to tax activities on reservation lands can be complicated by taxing authorities of neighboring jurisdictions.[123]

Tribes also rejected the application of any single standard for determining energy ROW compensation. They contended that a single standard could not be appropriately used to determine compensation given the variety of energy ROWs and the variety of mineral, natural, cultural, and sensitive environmental resources under their jurisdiction.[124] Without the flexibility to address these different factors, tribes and some energy companies commented that a single valuation method based on standard market valuation methodology would reduce participation by tribes in energy partnerships and decrease energy production and transportation on tribal lands.

Finally, tribes commented that calls for requiring energy ROW valuation according to only standard market valuation methodology were disingenuous for several reasons. First, they pointed out that energy companies entered into existing ROW agreements with the knowledge that these were limited-term agreements and that renewal of the agreements would require renegotiation.[125] Second, they asserted that some energy ROWs were originally obtained for little or no compensation and that past compensation rates are relevant to the current study.[126] The tribes maintain that some in industry are essentially complaining about a change in the business environment, a change not to their benefit.[127]

5.2. Departmental Analysis

Recent writings about the negotiation process say that, ultimately, a successful negotiation result is not about outwitting or taking advantage of others. It is about arriving at a shared solution to a problem – a solution that benefits all parties involved. It is also about more that just getting the best possible price on the deal. The most effective negotiation will result in a mutually beneficial, enduring relationship in which the parties trust one another and share expectations about how their deals will work out in practice as well as on paper.[128]

This is especially true in an agreement between a private company and a tribal government. Because unlike an individual property owner who may sell their land or whose descendants may not necessarily maintain an interest in the property at the end of the agreement's term, a tribal government whose interests are the well being of its people in perpetuity will maintain its interest well past the terms of the agreement -- and the tribe will then bring to the bargaining table its past history of negotiations with private industry.

Further, efforts of negotiation parties to achieve a win-win solution are enhanced with increasing amounts of transparency in the process and decreasing chances that the factors to consider during the negotiation can change unexpectedly.

To arrive at what is agreed to be "fair and appropriate" compensation for an energy ROW the interested parties, through negotiation, seek to resolve disputes, agree upon courses of action, bargain for individual or collective advantage, and/or attempt to craft outcomes which serve their mutual interests. The outcome of the negotiating conference may be a compromise satisfactory to all sides, a standoff (failure to reach a satisfactory compromise) or a standoff with an agreement to try again at a later time. As with any negotiation, considerable uncertainty can enter process when the negotiations are drawn out because of factors unrelated to the economic context of the situation.

In more general situations – not involving tribal lands – market value principles derive from the constitutional concept of "just compensation", i.e., what the federal government pays when acquiring private or state-owned property for public purposes by voluntary purchase, exchange, or eminent domain. The federal government also uses market value principles to determine compensation for the use of federal lands. The market value that satisfies "just compensation" is defined by a number of court cases and summarized in the Federal Land Acquisition Standards as:

> the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.[129]

These market value principles are supported by the USPAP for use in real estate transactions generally.[130]

Energy ROWs across tribal lands are acquired through an arms-length negotiation process with a tribe. Valuation methods used in these negotiations often use the Uniform Appraisal Standards for Federal Land Acquisition and the USPAP, Typically, these are Case-by-case estimates of land value and are well-known and well-understood methodologies. Other methods include, but are not limited to:

- methods used by municipalities

- methods used for public lands
- comparison to sales of similar lands
- valuation of land "over the fence" from the proposed ROW
- sharing of net benefits or other partnership arrangements
- cost of alternative routes
- opportunity cost
- percentage of energy throughput
- value of the land before and after the ROW
- cost of government services

For example, in the federal land appraisal process, DOI establishes a market value for the land under consideration. The market value is the amount in cash, or terms reasonably equivalent to cash, for which, in reasonable probability, the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell. This market value gives due consideration to all available economic uses of the property at the time of appraisal. However, the estimate of highest and best use must be an economic use. A non-economic highest and best use, such as conservation, natural lands, preservation, or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value under these standards.

A key consideration in establishing market value is the highest and most profitable use for which the property is adaptable and needed (or likely to be needed) in the reasonably near future. Federal agencies must show that the land is both physically adaptable for such use and that there is a need or demand for such use in the near future. The proposed use for the ROW is not a consideration.

It should be noted that the trust nature of the tribal lands under discussion here limits the number of comparable sales that would be appropriate for valuation use applying standard techniques.

However, there are also various additional methods available for calculating "fair and appropriate" compensation. These examples include, but are not limited to, the following:

a. The BLM compensation schedule, which sets a market rent for all ROWs, eliminating the need for real estate appraisals for each ROW, as well as avoiding the costs, delays, and unpredictability of the appraisal process.

   The BLM rental schedule defines fee zones by county in every state except Alaska. A county is assigned a "zone value" based on land values in the county. Lower-value counties are assigned lower-numbered zone values. A county's zone value is translated into a per-acre "zone rent" (ZR) by use of the adjustment formula described below. To calculate the annual ROW rental payment, the ZR is multiplied by the total acreage within the ROW.

For example, the BLM has determined that Duchesne and Uintah Counties in Utah fall into Zone 2 of the ROW Rent Schedule with a Zone Value of $100 per acre. Wasatch County, also in Utah, falls into Zone 4, with a Zone Value of $300 per acre. For 2006, the ZR for energy pipeline ROWs given these values is $8.01 per acre in Duchesne and Uintah Counties and $24.06 per acre in Wasatch County.

If this method is used for tribal lands, different values would have to be determined and applied.

b. Determination of market value using a net benefits approach. Section 10(e) of the Federal Power Act requires the Federal Energy Regulatory Commission (FERC) to set a "reasonable" annual charge for the use of Indian lands by FERC –licensed hydroelectric projects. The charge is subject to the approval of the Tribe whose land is used. Section 10(e) does not require that FERC use any particular method to set the annual charge, and FERC's regulations allow making this determination on a case-by-case basis. In recent years, however, FERC has used with some consistency a method based on the net benefits approach.

The net benefits approach compares the cost of generating power at a particular hydroelectric project with the cost of generating the same amount of power from the next-best-alternative source, which is typically more expensive. The difference equals the net benefit of generating the powers from the hydroelectric project. While the net benefit may be allocated in various ways, the most straightforward allocation is to determine the portion of the net benefit that accrues to Indian lands by multiplying the net benefit by the percentage of Indian land used by the project.

FERC uses a variation of this approach, allocating (or sharing) the net benefit on a 50/50 basis between the project owner and the various landowners.

Whatever method is used to determine market value for land, it should represent the baseline value. A process for adjusting the value up or down could be specified. Reasons for adjustment could include:

a. Adjustment for tribal government oversight of safety, cultural, and environmental issues associated with the energy ROW. Calculations would be based on the costs to the tribal government for providing these services on tribal lands.

b. Adjustment for tribal benefits that may be derived from an energy ROW, such as access to energy resources for tribal members or tribal businesses, improvements to roads or other infrastructure, job opportunities, or training.

c. Adjustment for the value associated with establishing an energy ROW across a large section of land in a single agreement, compared to a more piecemeal approach on non-tribal land.

Indian tribes and energy companies may use any combination of these valuation methods, and others, in their negotiations for appropriate compensation for energy ROWs on tribal lands. This open negotiation process enables tribes to determine the terms for access to tribal lands and resources. In some cases, this negotiation process could lead to an agreed on compensation amount that is more than what would be calculated as market value when using valuation standards usually practiced on non-tribal lands.

The Departments note that the negotiation and valuation process can also vary for the same type of energy transmission system depending on whether the transaction is for a new ROW, or for a ROW related to a permit for renewal of existing facilities, or if the ROW is for new facilities on tribal land where there is no available route for a bypass, or if the ROW is for the renewal or new facilities directly related to the production of energy resources on tribal land.

5.3. Departmental Findings

The Departments find that negotiations between the interested parties are an appropriate method for determining compensation. During the primary terms of many of these energy ROWs, the self governance of tribes has evolved, based on existing treaties, laws, regulations, and Executive Orders, tribes have become more involved in the day-to-day decision making and management of activities on tribal lands. This includes decisions on renewing energy ROWs that may have been put into place 3, 4, or even 5 decades ago.

Over this time, the responsibilities of tribal governments have also evolved. Many tribes have developed government structures to manage the increased responsibilities assumed by the tribes, such as cultural resource management and health, safety, and environmental protections. Unlike private property owners along a particular right-of-way, sovereign tribes do not rely on local or State governments to oversee the health, safety, and environmental reviews, permits, and requirements associated with the placement and monitoring of energy facilities. The individual tribes must bear the responsibility and costs associated with operating these governmental functions.

In the past, compensation for rights-of-way could reflect valuation for "highest and best use" because much of the management of Indian lands was being performed by the federal government. However, today, many tribes must stand up their own government bodies to perform these tasks for the general well being of their members. But, unlike federal, local and state governments, tribes can not rely primarily on taxation to provide the fiscal support for these governmental bodies and must capture the associated costs of running tribal government from contracts and compacts with the federal government, right-of-way fees, and other economic development activities, such as resource development and gaming. ROW fees therefore are akin to tax rates on assessed real estate by local government to fund budgets to provide local services.

The Departments find that the negotiation processes could benefit from mutually agreed upon practices, procedures, and actions that would better the understanding and collaboration among the parties. These include alternatives set out in the following subsection.

5.3.1. Develop comprehensive ROW inventories for tribal lands

Individual tribes, energy companies, or other entities could develop inventories of energy ROWs on tribal lands. Tribal parties and industry parties alike commented that energy ROW negotiations frequently begin with a high degree of uncertainty about the existing situation. Moreover, it appears that even if parties have accurate information about the specific energy ROW under negotiation, the negotiations can be influenced by uncertainty regarding other energy ROWs on the tribe's lands.

Some tribes and companies have already taken steps to collect this information, but it appears from the amount of uncertainty present in negotiations that both parties need to prioritize gathering such basic information. Access to information of this type would facilitate better oversight, increase understanding of issues considered in ROW negotiations, and potentially streamline future negotiations. Such information could also bring undocumented energy ROWs to light, help to avoid trespass situations, and reduce overall uncertainty for future energy ROW negotiations.

5.3.2. Develop model or standard business practices for energy ROW transactions

Indian tribes, energy companies, or other entities could develop model or standard business practices for energy ROW negotiations generally and for recurrent energy ROW situations. Similar to the need for basic energy ROW information described above, uncertainty in negotiations also derives from a lack of organized information regarding business practices for energy ROWs on tribal lands. Developing model or standard business practices would help to normalize and guide negotiations. Even if parties decide to depart from standards or models for some reason, the foundation provided by such guides would assist parties in negotiating their individual terms.

Again, some tribal parties and some industry parties have taken steps to develop information along these lines. However, it appears from the level of uncertainty still present in energy ROW negotiations that development of model or standard business practices deserves greater priority.

Model and standard business practices could be developed around specific energy ROW situations. For example, there are practical differences between negotiations for a new energy ROW and those for renewal or expansion of an existing energy ROW. Negotiations for new energy ROWs are made in the planning process of a project, when capital expenditures have not been made. Whereas negotiations for renewed or expanded energy ROWs can be constrained by existing infrastructure investments, the service needs of existing energy markets, or the history of the energy ROW in question. While the statutory and regulatory context for negotiating a new, renewed, or expanded energy ROW is the same, models and standard business practices could reflect these practical differences.

Model and standard business practices could be developed to address the limited duration of most energy ROWs on tribal lands. These could include information on when negotiations will start, what the basis of the negotiations will be, and how disputes will be resolved. In addition,

DOI could consider conditioning the approval of any new or renewed energy ROW, where approval is required, on the inclusion of this type of information in the agreement.

Model and standard business practices could be developed to address energy ROW durations that the parties consider to be of significant length. For longer-duration energy ROW agreements, tribes and energy companies could include in their agreements methods for adjusting compensation over time, processes for resolving disputes, waivers for limiting tribal sovereign immunity, or the ability to renegotiate issues during the term of the ROW.

Model and standard business practices could be developed to recognize the potential for expansion of an energy ROW. Recognizing the potential for energy ROW expansion at the beginning of negotiating an agreement could help parties select suitable transportation routes and provide certainty that any future issues would be addressed. Up-front planning for the possibility of expansion could provide tribes and energy companies with a step-by-step guide for increasing partnerships around energy ROW development.

Finally, model or standard business practices for all types of energy ROW transactions could include developing dispute resolution, mediation, or arbitration tools suited for energy ROW issues.

5.3.3. Broaden the scope of energy ROW negotiations

Another way to address the uncertainty and lack of shared objectives that tribes and energy companies may face in energy ROW negotiations is to recognize more explicitly the variety of concerns that may motivate each party. Depending on the tribe and company involved, negotiation techniques can be developed to address business and tribal concerns. For example, companies may be concerned not only with shareholder return, but also with maintaining standing in existing markets, increasing market share, exploring for new resources, or diversifying resources. Similarly, tribes may have concerns beyond economic development. Tribes may be interested in comprehensive reservation development, increasing governmental oversight of energy ROW impacts, or protecting reservation resources.

The significance of implementing such negotiating practices can be seen in the tribes and companies that have developed successful relationships. The Departments found that energy ROW negotiations in these situations do not get stalled on valuation issues. This appears to be true whether the relationship is a full energy development partnership or merely one between a ROW grantor and ROW user. Through partnerships, acceptance of alternative valuation methods, creative approaches to energy exploration, and recognition of the parties various responsibilities, some tribes and energy companies have shown that it is possible to leverage their respective resources and objectives to their mutual benefit.

6. Issues Raised During the Study

6.1. Increasing Costs of Energy ROWs and Costs to Consumers

6.1.1. Public and Tribal Comments

Industry expressed concern that escalating energy ROW fees and negotiation costs will raise customers' energy costs. An energy company, noting that 70 percent of its natural gas comes from two major supply companies with infrastructure on tribal lands, indicated that its natural gas ratepayers could be negatively impacted by unreasonable energy ROW fees paid by interstate pipeline companies.[131] A trade association also contended that energy ROW renewals resulted in tens of millions of dollars in additional costs to its member utilities and their customers.

Industry also commented that consumer energy prices could increase because of increased negotiation costs with tribes, in particular, if potential trespass damages were levied against utilities. A trade association commented that such trespass penalties could add hundreds of thousands, or even millions, of dollars in additional costs to the utility and its customers but provided no specific data or actual instances of such penalties.[132]

Several energy industry representatives indicated that the costs for energy ROWs on tribal lands have tended to increase, including administrative costs associated with longer negotiation periods.[133] Industry expressed concern about the increasing cost of energy ROWs and the implications of those rising costs for energy companies and consumers both today and into the future. In the public meetings, industry commented that electric utilities are facing upward cost pressure on multiple fronts. They noted that the cost of fuels, such as coal and natural gas, has risen substantially in recent years for utilities. They also noted that the cost of siting, operating, and maintaining generation, transmission, and distribution facilities has gone up, in particular in areas of the country where the need for new facilities is straining available resources. And, finally, they comment that environmental costs also are increasing as federal and state governments demand additional reductions in emissions. In such a setting, industry asserts that each and every cost needs to be kept at a reasonable level.[134]

For example, Edison Electric Institute (EEI) and the Interstate Natural Gas Association of America (INGAA) conducted member surveys and provided case studies including data showing increased fees for energy ROW renewals.[135] Industry was particularly concerned about the increasing costs of energy ROW renewals, as opposed to grants or expansions, because of existing investments in facilities on tribal lands and potential obstacles to abandoning or moving an energy ROW.[136] Further, industry asserted in the public meetings, that hundreds of ROW renewals will need to be negotiated over the next 10 to 15 years.

Acknowledging cost increases over historic levels, tribal parties commented that increases in energy ROW fees reflected historically low energy ROW valuations, increasing tribal involvement in ensuring economic return for the use of tribal lands, benefits from obtaining a ROW across large tracts of land from a tribal single owner, and increasing tribal government costs while federal economic support is decreasing.[137] With regard to the governing capacity

required, one tribe commented that ROW activities "demand a high level of personnel, time, attention and use of the Tribe's governmental funds" such that they employ "94 personnel positions" dedicated to various aspects of ROW management.[138]

Tribes also commented that costs on private lands do not provide an accurate comparison to tribal lands because there is no market for tribal lands to appropriately define cost parameters. One tribe contrasted private lands with tribal lands, saying, "Unlike private lands, Tribal trust land can't be sold. [And u]nlike private landowners, Tribes provide essential governmental services to people." [139]

Tribes also asserted that rising energy costs are not the result of increases in energy ROW fees across tribal lands. Studies were commissioned by three tribes to measure the consumer cost of energy ROW fees across tribal lands.

Using the Altos North American Regional Gas model, an energy analyst found that energy ROW costs on tribal lands would have no impact on downstream markets. The analyst stated that energy ROW charges on pipelines traversing tribal lands in the southwestern United States would induce a volumetric tariff difference of $0.02/mcf (thousand cubic feet) for all pipelines emanating from or traversing the greater San Juan/Four Corners area and have zero discernible effect on market prices.[140] The analyst concluded that the tribal energy ROW costs are such a small part of the overall energy market that they could not have an impact downstream markets at all.[141]

A second tribally commissioned study, using published reports of the Navajo Nation's proposed ROW fee for the El Paso Natural Gas (EPNG) network, determined that the potential impact on downstream consumers in Arizona, California, and Nevada would be between $0.40 and $0.60 per year for the average residential user if the ROW fee is spread over EPNG's total pipeline system. The cost per user would be between $0.58 and $0.85 per year if the Tribe's ROW cost is passed directly to the consumers in these downstream states.[142]

A third tribally commissioned study sought to determine what percentage of a consumer's bill is attributable to energy ROW costs for electric transmission lines and natural gas pipelines on tribal lands. The study first determined the percentage of energy costs that are attributable to ROW fees generally, and then estimated the portion of these costs attributable to ROWs on tribal lands. The study concluded that for the average homeowner tribal ROW costs amounted to between $0.01 and $0.06 per month for electricity on monthly bills averaging between $50 to $200, and between $0.001 and $0.016 per month for natural gas on monthly bills averaging $47.[143] Additionally, this tribe further quantified the impacts of its throughput fee charged for use of a ROW on its land, and found that at 5 cents/mcf, the throughput fee was a small fraction of the delivered gas in California ($13.27 per mcf during the public comment period) and in Utah ($11.75 per mcf during the public comment period, with the fee equivalent to 0.4% of delivered natural gas price to Utah consumers.). [144]

An economic analysis of energy ROW compensation presented by an interest group, however, stated that if the residential customers of one gas and electric utility in New Mexico fully bear the cost increases associated with approximately 95 energy ROW renewals over the next 15

years, then, those customers could see their electric rates increase as much as 5 percent, i.e., $5 for every $100 of a bill.[145] As explained in the analysis, this estimate is dependent upon the utility seeking and being approved for "rate recovery," and all 95 energy ROWs are assumed to be renewed at a value reported in the Navajo Nation and EPNG's on-going energy ROW negotiations. This estimate does not account for valuation differences in negotiations concerning energy distribution ROWs and energy ROWs that do not provide local service.

One tribe sought to gauge energy companies' perceptions of business risk that is related to interactions with tribes by reviewing Security and Exchange Commission (SEC) filings and notations of risk in those filings.[146] Among the 18 western companies studied from 2001 to 2005, the tribe found that in most years all of these energy companies described challenges associated with energy infrastructure construction and/or operation. However, the tribe found that over the five-year period, only three companies characterized the negotiation – or renegotiation – of tribal ROWs as a material concern in annual reports to the SEC.

6.1.2. Departmental Analysis

The Chairman of the Federal Energy Regulatory Commission (FERC) recently testified before Congress that transportation costs for natural gas and crude oil petroleum products are relatively small – the transportation component for natural gas is approximately 6 percent of its delivered cost and approximately 1 percent of the delivered cost for petroleum products.[147] As with delivered natural gas and oil, the cost of electric transmission is a small portion of a consumers' electric bill. This year DOE's Energy Information Administration found that transmission costs for electricity are in the range of 10 percent of total delivered electricity costs.[148]

These federal government statistics are in keeping with data from the energy industry. Testifying at the same hearing as the FERC Chairman, Williams Pipeline Company testified that "[pipeline transportation and storage is the smallest part of the cost of natural gas delivered to residential and commercial customers - typically about 10 percent of the total retail cost of natural gas."[149] In addition, consistent with these consumer statistics, a report prepared for EEI, "Why are Electricity Prices Increasing?," found that transmission and distribution costs accounted for about 4 and 8 percent, respectively, of electric utility operation and maintenance costs, and remained relatively flat from 2002 to 2005.[150]

Although some commenters indicated that some tribes require compensation for energy ROWs on their lands in excess of the lands' "market value" for other purposes, the effects do not appear to be large enough to have a significant effect on overall energy transportation costs and the total cost of delivered energy paid by consumers.

These first two results are supported by a review of filings with FERC requesting increases in oil, natural gas or electric rates that a FERC regulated utility can charge consumers. Although hundreds of cases have been filed for increases in rates over the last five years, a survey of these cases and consultation with FERC trial staff produced only three instances where tribal ROW costs were cited in the case as a reason for requesting a rate increase. One of these cases is still pending. The remaining two cases resulted in some rate increases, however, tribal ROW fees were not always, or not entirely, passed on to consumers, the increases included non-tribal

factors, and the overall rate increase was not deemed significant by the parties or the Commission. In one of these cases the tribal energy ROW fees are considered a regulatory asset that will be depreciated, and in the other the tribal ROW fees were not fully passed on to consumers or directly raised by the company filing for the rate increase. Although these are complicated matters, these cases provide examples that fees for ROWs on tribal lands do not always result in increases in overall costs to consumer. Moreover, the lack of rate case filings that cite to fees for ROWs on tribal lands supports the Departments' analysis that energy ROWs on tribal lands represent a very small portion of energy costs and infrastructure.

There is no evidence to date that any of the difficulties associated with ROW negotiations have led to adverse impacts on the reliability or security of energy supplies to consumers. The conditions cited above concerning the relatively small economic impacts of existing or potential disputes over energy ROWs on tribal lands also imply that, except in unusual geographic circumstances, the effects of any future potential ROW disputes on the reliability or security of energy supplies to consumers are also likely to be small.

6.1.3. Departmental Findings

As a result of our analysis, the Departments find that total energy transportation costs are a small component of overall consumer energy costs, that as a general matter a relatively small percentage the fraction of energy transportation infrastructure is on tribal lands, and that, as of now, no difficulties associated with ROW negotiations have led to security or reliability impacts that affect consumer cost.

6.2. Decreasing Energy ROW Term of Years and Increasing Negotiation Periods

6.2.1. Public and Tribal Comments

Industry generally noted that the term of years for energy ROWs are decreasing and that the negotiation times are increasing. Industry parties pointed out that shorter energy ROW terms and longer negotiation periods increase the ROW-related administrative costs to both industry and tribes. Some from industry voiced concern that in cases where there is a transition in a tribe's leadership, the lack of a consistently applied valuation methodology and negotiation process can also result in prolonged or delayed ROW negotiations. Industry also commented that these factors either individually or taken together "add to the uncertainty which utilities must consider in their investment and planning processes."[151] This uncertainty is cited as a growing cause for concern by industry, especially when they consider that there will be an increase in the number of ROW negotiations in the next decade.

Tribes also commented on the length of negotiations. One tribe observed that negotiations took from six months to eight years, but that most of the time, the parties worked in good faith to resolve their differences. Tribes noted that each energy ROW over tribal lands has unique characteristics that can affect negotiation times. Some factors that may increase or decrease negotiation times, include:

- the length of the ROW and diversity or continuity of the affected land area or land owners
- impacts on lands of cultural or religious significance
- impacts on agricultural lands
- provision of utility services to reservation residents and access to tribal natural resources
- number of individual landowners affected
- requirements associated with an environmental assessment[152]

6.2.2. Departmental Analysis

There is basic agreement that negotiations are taking longer and that the term of the agreement is shorter. This is due to a number of factors including complexity of modern negotiations, new tribal responsibilities, and approval processes in the federal government. However, the Departments also note that some companies, in particular those that entered into business partnerships with Indian tribes, found that energy ROW agreements on tribal lands are completed more efficiently than with other land owners.

6.2.3. Departmental Findings

The longer times for successful negotiation and decreased term of the ROW have impacts on cost for both industry and the tribes, with the potential to increase overall costs. The Departments find that developing comprehensive information about energy ROWs on tribal lands allows parties to enter into negotiations on stronger footing and could help to reduce negotiation periods.

6.3. Uncertainty in Energy ROW Negotiations

6.3.1. Public and Tribal Comments

Some in industry commented that the exercise of tribal sovereignty through tribal consent to energy ROWs - with no uniform and measurable standard for valuing ROWs - creates a high degree of uncertainty for the nation's energy infrastructure and consumer's energy costs.[153] One energy company commented that "the long-term security of these [transmission] lines must be more definitively guaranteed to protect the reliability and availability of the national power grid."[154] A trade association noted that due to uncertainty, "necessary infrastructure may not be built."[155]

Although, in some cases, tribes have opted to use a market valuation method, tribal parties and some energy companies commented that changes to tribal sovereignty and tribes' ability to consent to energy ROWs through imposition of a standard valuation method for all cases would result in uncertainty about a tribe's ability to exercise self-determination and manage its own energy resources.

Some from industry expressed concern about the possibility that energy ROW agreements could expire, leaving energy facilities in trespass. A trade association raised concerns that members found in trespass could have access to their facilities curtailed or blocked, thereby limiting their ability to use or conduct maintenance on lines and other facilities.[156] This trade association also noted, however, that the Administrative Procedure Act and three federal court rulings protect a timely ROW renewal applicant from actual trespass.[157]

Tribes stated that industry parties pointed to no specific instances in which the statutory and regulatory requirements for tribal consent or delays in energy ROW renewals resulted in disruptions to energy delivery or threatened the reliability of the system.[158] Tribes noted that they have never evicted an energy company with an expired ROW or required a company to remove its energy infrastructure from tribal lands. Instead, tribes commented that tribes should be fully compensated for trespass situations. Many tribes also commented that they viewed trespass situations as an opportunity to create opportunities for improved long-term business relationships.[159]

6.3.2. Departmental Analysis

The fundamental issue is a negotiating climate often marked by uncertainty and lack of shared objectives – as opposed to valuation of a particular energy ROW. Indeed, at least one industry representative commented in response to the draft report that uncertainty, as opposed to cost increases, was their primary concern.[160] The Departments find that uncertainties abound in the energy ROW negotiation process when:

- energy ROWs with limited terms require renewal, but past valuation methods are unclear, undocumented, or were developed with little involvement of the tribe
- information about the energy ROW in question may be limited
- new valuation methods lack transparency
- the parties have widely differing cultural values
- the parties do not have comparable resources to commit to the negotiations
- either party considers the existing relationship to have been unproductive
- the parties lack shared goals for the future of an energy ROW

The significance of these factors — as compared to the use of some predetermined valuation method — is made clear by the comments of some energy companies who stated that they had encountered no problems using the current process for obtaining an energy ROW on tribal lands when the ROWs were of a non-interstate nature._Energy companies that built productive relationships and partnerships with tribes commented that they find tribes to be fair negotiators for energy ROW valuation on tribal lands.[161]

The Departments also note that uncertainty occurs at all levels within the energy industry and is not primarily caused by negotiations with Indian tribes. Two reports published in June 2006, "Why are Electricity Prices Increasing?,"[162] and "Siting Critical Energy Infrastructure"[163] stress that energy ROW uncertainty stems from increased costs throughout the energy industry, needed infrastructure investment, and siting challenges at all levels of government and public

involvement. These recent reports do not mention energy ROW negotiations with Indian tribes as a source of uncertainty. Moreover, despite the forward looking nature of these reports, the cost of energy ROWs on tribal lands is also not mentioned as a future or an upcoming issue.

"Why are Electricity Prices Increasing?" finds that "[f]uel and purchased power expense growth essentially explains all of the 22-percent increase in utilities expenses from 2002 to 2005."[164] Over this period, the report notes that fuel and purchased power increased from 66 to 71 percent of all operation and maintenance costs, while transmission and distribution costs were essentially flat and represented a small percentage of operation and maintenance costs.[165]

"Why are Electricity Prices Increasing?" also discusses challenges associated with upgrading an aging transmission system. The report states that the "power delivery system is characterized by an aging infrastructure and largely reflects technology developed in the 1950's or earlier."[166] The report notes that the strain on the system is beginning to show and that utilities have plans to reverse a 25 year old trend of declining investments in transmission infrastructure.[167] The report also notes that costs can be imposed by local governments. In discussing the electric industries' plans to upgrade distribution networks, the report cites local government requirements related to aesthetics and local land use as potentially increasing costs. In particular, the report notes that requirements to put existing distribution lines underground costs approximately one million dollars per mile, which is a five to ten-fold increase over the cost of a new overhead power line.[168]

Siting challenges are discussed at length in, "Siting Critical Energy Infrastructure." The report states that large transmission projects must demonstrate, typically to state public utility commissions, that a new transmission line is the best option for addressing electric reliability and is also the most economic solution.[169] Transmission lines must also comply with environmental reviews and competing land uses.[170] The report finally notes that concerns about private property and property values must also be addressed.[171] To effectively overcome these uncertainties, the report suggests that "high-capacity interstate transmission projects should be designed to provide local benefits that can help justify their value to local constituencies. . . ."[172]

Finally, as mentioned in Section 2, EPAct includes a number of tax incentives intended to encourage investments in energy infrastructure and may help reduce investment uncertainty.

6.3.3. Departmental Findings

Where uncertainty becomes a factor, negotiations can take longer, the parties may feel constrained by prior practices that limit creative business solutions, or the parties may lack the common ground needed to explore potential solutions. Nevertheless, the Departments note, even with these uncertainty factors, that the vast majority of energy ROW negotiations are completed to mutually agreeable terms and conditions. This is true even if the negotiations are protracted and the method for determining the value of the energy ROW results in compensation that sometimes greatly exceeds what is perceived to be the market value of the tribal lands involved.

6.4. Risk to Investments in Infrastructure

6.4.1. Public and Tribal Comments

Industry commented that financial institutions and rating agencies could view a pattern of shorter energy ROW terms, longer negotiation periods, and escalating energy ROW rates as a source of risk to the industry. The perception of such a risk by financial institutions could "adversely affect the cost of the capital needed to build new generation and transmission infrastructure...."[173] Moreover, industry noted that excessive energy ROW fees and other access costs associated with tribal lands generally discourage expansion of, and investment in, existing facilities on those lands thereby reducing job-creation and development opportunities for tribes.[174]

Some from industry stated that the difficulty of companies in renewing ROWs on tribal lands are leading to proactive decisions by companies to bypass tribal land, and that the failure to adopt a reasonable process for ROW renewals will only serve to increase Indian country's energy isolation, discourage job creation and investment, and postpone long overdue economic development and national economic participation of Indian tribes.[175]

One industry representative noted, however, that risks in the energy industry were widespread and could come from financial markets and national and international policies, in addition to fluctuating prices, supply, and demand which all contribute to the volatile nature of the industry.[176] Another energy company also noted that the Section 1813 study itself, and concern about changes in the law, create uncertainty for development of energy resources on tribal lands.[177]

Tribes generally commented that energy production and the number of energy ROWs granted on tribal lands are increasing or consistent with earlier levels and do not reflect a reduction in investment. One tribe presented data on the number of natural gas pipeline and electric transmission ROWs granted on their lands since 1980 to illustrate that the granting of energy ROWs continued at earlier rates or grew with some fluctuation depending on economic cycles.[178] Another tribe commented that over the last twenty years they have successfully concluded negotiations for grants or renewals of interstate pipelines with a number of major pipeline companies.[179]

Tribes also noted that innovative energy ROW agreements have led to expansion of energy investment and resources on their reservations. In one case, such agreements added about 1.7 trillion cubic feet to the nation's supply of natural gas.[180]

6.4.2. Departmental Analysis

Energy transport companies must make ROW siting decisions that are in their (and their shareholders') best interest. This may lead to a decision to "build around" a reservation. There is likely an additional economic cost to the company, as well as lost opportunity costs to the tribe and, potentially, less access to energy resources.

6.4.3. Findings

Most tribes need additional revenue sources and have reasons to seek economic development opportunities, including productive relationships with energy companies. Energy companies are looking to develop cost effective options for transport of energy resources across the country. To date these mutual interests have allowed the development of energy ROWs across Indian lands without disruption of energy resources or undue costs to the consumer. However, reasonable certainty in the current and future negotiation process will be needed to assure that these mutual benefits can be obtained and to minimize risk to infrastructure investment.

6.5. Differences Among Grants, Expansions, and Renewals of Rights-of-Way

6.5.1. Public Comments

Some in industry raised concerns that negotiation process differs depending on whether the energy ROW under consideration is for a new facility or for an expansion or renewal of existing facilities on tribal land.

Industry contends that "where new, non-geographically constrained facilities would be sited on tribal lands, either party can walk away from the transaction if the terms are not mutually acceptable. However, where the only practical or possible route for a new facility is across tribal land or where the term of an existing facility is being renewed, there is little constraint on what a tribe can demand for that renewal."[181] " Furthermore, industry states that a build-around option is an unlikely and expensive scenario for companies that have already "invested hundreds of millions, if not billions, of dollars on existing infrastructure located on tribal lands."[182] Industry also states that ". . . If Congress were to provide a backstop mechanism" in the form of eminent domain authority to be exercised by a federal authority ". . . there would be an increased incentive for tribes to negotiate energy rights-of-way renewals for terms and conditions that more accurately reflect the current market situations."[183]

Further industry stated that the issue is one that will most likely become increasingly contentious in the future as according to their information about 90 percent of the outstanding renewals for companies are yet to occur.

In comments made at public meetings, tribes contend that company investments in already installed infrastructure, in the case of a renewal, have been largely depreciated and that companies are seeking to obtain value in negotiations for something for which they have already realized a benefit. Additionally, one tribe noted that renewals of energy ROW on tribal lands are "no different than other types of contract renewals that the [energy industry] routinely face in other settings when they come to the end of a contract and which require forward analysis of investment options and cost alternatives that ignore sunk cost and consider the renewals in the context of current market conditions."[184]

Industry asserts that most interstate natural gas pipelines still have a large amount of undepreciated investment and point to the annual reports filed by each pipeline with FERC.

These commenters state that, in general, most pipelines (including older pipeline systems) have not been fully depreciated because they are continually investing in new infrastructure, and because FERC typically requires a pipeline to depreciate its facilities in accordance with the expected life of the natural gas reserves attached to its pipeline system, which often is a period of 30-40 years or more for major onshore pipelines.[185]

Tribes further state that industry entered into these contracts knowing that they had finite terms and would have to be renegotiated at a later date and should not have expected that the same terms and conditions settled on decades before would continue without significant modification to account for present-day conditions and tribal funding needs.

6.5.2. Departmental Analysis

The Departments verified with FERC that most companies continually reinvest in their pipeline systems in many ways either upgrading systems to enhance production capacity or increase safety or simply as routine maintenance of aging equipment. In many cases a pipeline system that was permitted 20 years prior may still have hundreds of millions of dollars in undepreciated investment. Thus it would be a daunting proposition for a company to face a decision of selling or abandoning a pipeline that is not fully depreciated.

However, these contracts were entered into with the full knowledge that they were for a fixed term and that the company would have to enter into a renewal negotiation at some time in the future. Companies that made additional infrastructure investments should have been fully aware that they would be faced with this situation. At the same time, they could have included clauses in these older contracts to deal with this situation or they could have asked to renew the ROW contract prior to making any additional investment.

The Departments do recognize that the negotiation posture of tribes vis-à-vis the government has changed over time, so that the governmental role has increasingly evolved from direct involvement in the negotiation to the review and approval or disapproval of terms arrived at by direct interaction between tribes and the energy industry. However, tribal sovereignty is a known and familiar part of the business landscape in parts of the U.S. and should be recognized in any prudent business practice — especially over the last 25 years. Companies can not expect that terms of contracts would remain static over time or would remain the same for contract renewals.

6.5.3. Departmental Findings

Companies continue to make significant investments in energy transmission systems over time and in many cases still have significant undepreciated investments in infrastructure when the renewal of an energy ROW is due. However, this situation is a result of a full and open prior contract negotiation that the company should have anticipated when it entered into the initial contract and made additional and subsequent investments.

7. Congressional Approaches to Address the Issue

Under existing law and regulations, difficulties arise from time to time in negotiations for energy ROWs across tribal lands that are sometimes very significant to the parties. With that perspective in mind, the Departments list below a range of approaches that Congress could consider if it concludes that a particular impasse merits a legislative solution. These approaches range from no federal intervention to major changes to the long-standing relationship between the tribes and the federal government concerning tribal sovereignty and the federal policy of tribal self-determination.

Because of the time and fiscal constraints on this study, the Departments have not conducted individual benefit-cost analysis for each approach. Should Congress choose to consider any of these approaches, the Department's recommend that the first step, prior to enactment, be a benefit-cost analysis of the selected options(s) by an independent entity to determine that the overall benefits exceed the projected costs.

7.1. No Action -- Congress could elect no change, allowing ROW negotiations to continue under current laws, regulations, practices, and procedures

Many comments from tribal parties and energy companies indicate that, to date, current policies for granting and renewing energy ROWs are, in general, working. This approach would continue the present practice, which allows tribes and energy companies to use their own methods for valuing a ROW and to conduct negotiations on their own terms.

7.2. Congress could establish a legislative mandate for tribal consent

As described in Section 3.2.1, part of the status quo is an existing statute that only requires the consent of tribes organized under the Indian Reorganization Act and the Oklahoma Indian Welfare Act before an energy ROW is authorized on tribal lands. The other part of the status quo is a DOI regulation in effect since 1951 which is applicable to all tribes and requires the consent of a tribe before an energy ROW is authorized. Congress could emphasize the importance of the concept of tribal consent for energy ROWs by enacting a new statute applicable to all tribes that would require that the consent of a tribe be obtained as a condition to the authorization of an energy ROW.

7.3. Congress could either choose a valuation methodology itself or authorize the federal government to determine "fair and appropriate" compensation

Under this approach, Congress could either choose from one of the valuation methodologies suggested in Section 5.3 or direct the executive branch to establish a federal entity to determine "fair and appropriate" compensation for *all* energy ROWs across tribal land. This entity, rather than Congress, would be responsible for developing a valuation methodology (and the attendant

regulations) to calculate just compensation for the use of the land. However, each party (tribes or industry) would reserve the right to accept or reject the calculated value.

7.4. Congress could require binding valuation

Congress could modify the current process for energy ROW agreements by establishing binding procedures to resolve any impasse that may result in negotiations. Such binding procedures might include the following:

1) Requiring the parties to enter into binding arbitration conducted by a mutually approved third party. The decision of the third party would not be subject to appeal. Either party could petition to invoke this procedure.

2) Requiring the parties to enter into binding arbitration conducted by a third party selected by Congress. This decision by the arbiter would not be subject to administrative appeal. Either party could petition to invoke this procedure.

3) Requiring the parties to accept just compensation as determined by a federal entity using one of the strategies outlined in Section 5.3.

7.5. Congress could on a case-by-case basis authorize condemnation of tribal lands for public necessity

A condemnation proceeding involves the exercise of eminent domain by the government. It is a taking of land against the will of its owner, and requires a judicial proceeding in which a public purpose or necessity is established and just compensation is awarded to the land owner.

The United States Supreme Court consistently has affirmed that the United States Constitution vests Congress with plenary power over Indian affairs.[186] As recognized *supra* in Section 3.2.1, Congress has exercised this power in a variety of circumstances in the past to achieve various goals, including energy ROWs for transportation projects.[187] Consistent with this practice, Congress would be able, if it so chose, to remedy a threatened or actual energy supply interruption arising out of an energy ROW negotiation through a grant of condemnation or eminent domain authority. However, in recognition of tribal sovereignty and the United States' trust responsibility under existing treaties with Indian tribes, legislation granting such authority has been clear in expressing the intent of Congress to do so.[188]

8. Recommendation of the Departments

8.1. Departmental Observations

The principal observations from the Departments' analysis are:

1) The current policy is to rely on negotiations between Indian tribes and energy companies to arrive at terms for the grant, expansion, or renewal of energy rights-of-way on tribal land. This is in keeping with long-standing federal policies against the alienation of tribal lands without tribal consent and support for tribal self-determination.

2) Current methods of valuing energy rights-of-way – through negotiations between tribes and energy companies – are guided by and in keeping with existing federal tribal and energy policies. In addition, recent energy legislation (EPAct 2005) supports greater independence and control by tribes over their tribal land and resources.

3) The issues concerning energy rights-of-way on tribal lands are most acute in the context of negotiations for renewals. Recently, some renewal negotiations have become more protracted and the fees paid to the tribes for the use of their lands, with some exceptions, have risen. However, fees paid to Indian tribes for the grant, expansion, or renewal of energy rights-of-way on tribal lands are a small component of overall consumer costs for electricity or natural gas.

4) Negotiations between Indian tribes and energy companies for the grant, expansion, or renewal of energy rights-of-way across tribal lands have had no demonstrable effect on energy costs for consumers, energy reliability, or energy supplies to date. Therefore, broad changes to the current federal policy of self-determination and self-governance for tribes—or the existing right of consent—are not warranted at this time.

5) Future unresolved conflicts over energy rights-of-way across tribal land could have a significant regional or national effect on the availability, reliability, or consumer costs of energy resources. Failure to secure tribal consent for the siting of an energy right-of-way on tribal lands, especially in geographically constrained areas, could result in a heightened regional or national energy concern. In such circumstances, the United States Constitution empowers Congress to strike a balance between tribal sovereignty and the greater national interest. In some cases, this may mean the responsibility to the general American populace to provide reliable and affordable energy resources outweighs tribal sovereignty.

6) Increasing right-of-way costs to energy transmission companies may also have a detrimental effect on some tribes. Decreasing term duration, increasing costs, and future uncertainty may make rights-of-way across tribal land less desirable for many companies. This is particularly likely if companies also face the uncertainty of a right-of-way renewal in 20 or 25 years with tribes holding virtual veto power over the renewal. If companies choose to build around tribal land where they can, tribes run the risk of losing economic opportunities as well as possible interconnects to the energy transmission facilities.

7) In most cases, initial rights-of-way agreements are term contracts and no guarantee or indication of renewal was given by the tribes or the federal government. Therefore, any renewals represent, in essence, new contracts.

8.2. Recommendation -- Status Quo with Congressional Case-by-Case Intervention

The comments received by the Departments demonstrated that the grant, expansion, or renewal of energy rights-of-way on tribal lands involve fundamental issues related to tribal sovereignty, tribal self-determination, energy policy, and the ongoing business activities of many energy companies.

The Departments critically reviewed the information gathered and assessed the implications for tribal sovereignty; federal policies concerning tribal lands; tribal self-determination; national energy transportation policies as they relate to tribal lands; methods of valuing energy rights-of-way on tribal lands; and impacts of establishing the value of such rights-of-way through negotiations between an affected tribe and an energy company seeking to grant, expand, or renew the terms for a right-of-way.

Accordingly, the Departments recommend:

(1) Valuation of energy rights-of-way on tribal lands should continue to be based upon terms negotiated between the parties.

(2) In the event that a failure of negotiations regarding the grant, expansion, or renewal of an energy right-of-way has a significant regional or national effect on the supply, price, or reliability of energy resources, the Departments recommend that Congress consider resolving such a situation on a case-by-case basis through legislation targeted at the specific impasse, rather than making broader changes that would affect tribal sovereignty or self-determination generally.

9. Summaries of Case Studies, Surveys and Other Information Collected

As noted in Section 4, four tribes responded to the Departments' request for case study volunteers, and a contractor, HRA, was brought in to develop the case study reports. HRA historians, accompanied by DOI personnel, visited each reservation included in the study and examined tribal and BIA records pertaining to energy ROWs. Information on the ROWs located on Southern Ute and Navajo Nation Tribal land was supplemented with documents from the files of El Paso Western Pipelines in Colorado Springs, Colorado. HRA complied with all requests for confidentiality of information. The following are summaries of HRA's case studies. Several commenters on the August 2006 draft version of the Section 1813 report provided details that expanded upon the information in the HRA case studies. Those details are included in the summaries below and are so noted.

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EEI and INGAA volunteered to survey their membership for information on energy ROWs on tribal land. To the extent permitted by the availability of documents, the Departments compared the submitted surveys to the source documents the energy companies used to complete their surveys. Through this process the Departments were able to verify that the data submitted by energy companies was accurately reported in the survey reports issued by EEI and INGAA. Section 9.5 contains summaries of those survey reports and explains which information from them was verified or not verified in this manner.

In addition to the HRA case studies, several tribes and utilities provided information on their experiences with energy ROWs. Several of those submissions are summarized in Section 9.6. Because of time limitations, the only case study presented in Section 9.6 that was verified against source documents is the Bonneville Power Administration submission. Other individual submissions were not subject to any verification process by the Departments or HRA and the information is so noted.

9.1. Ute Indian Tribe of the Uintah and Ouray Reservation

The Ute Indian Tribe of the Uintah and Ouray Reservation (Northern Ute) is located in the Uintah Basin of northeast Utah. The Northern Ute Reservation now covers more than four million acres. The reservation includes high mountain desert and vegetated mountain ranges. It spans several oil and gas fields.

The Northern Ute received its first oil royalties in 1949. The Tribe functioned in the 1960s as an approver of ROW fees that were negotiated by the BIA. It assumed a more active role in negotiating ROW compensation in the following decades. By 2005, the Tribe established its own energy company, Ute Energy, to develop tribal oil and gas resources. As illustrated in the following examples, ROW compensation increased as the Tribe became more actively involved in negotiations. Other examples of the Tribe's increasing participation in negotiations and its

business model are presented in Section 8.6.6. These examples of the Tribe's involvement in energy ROW renewals were not included in the HRA analysis.

a. ROW No. H62-1989-070

In 1960, the Tribal Business Committee approved a 2.4-mile-long, 100-foot-wide ROW for a 138-kV line. ROW compensation was a damage fee of $764. The term of years for the ROW is unknown, and records do not indicate whether a real estate appraisal was made.

b. ROW No. H62-1978-005

In 1978, a utility company offered the Tribe $100 per acre to construct a 69-kV line over 3.78 acres of tribal land. An appraisal conducted by the BIA determined that $378 was just compensation for the ROW, since the highest and best use of the land was dry grazing and since other land used for that purpose sold for between $50 and $200 per acre a year earlier. The appraiser determined that compensation should be less than the full fee simple value of the land since the land surface was minimally disturbed and the landowners retained the bulk of their rights. The BIA collected the $378 in May 1978, and the power line was completed in June 1978. The grant of easement was executed in January 1980, with a 50-year term beginning in April 1978.

c. ROW No. H62-1983-18

In November 1982, the Tribe was offered $500 per acre for 8.55 acres of tribal land for a 12-inch natural gas transmission line. The Tribal Business Committee authorized the 20-year ROW on the condition that the $500-per-acre offer actually met or exceeded market value. The committee also directed that the grant of easement include five-year reviews to determine if damage payments should increase, and it indicated that increases would depend on compliance with ROW stipulations or current economic conditions.

The land appraisal, completed a year after the ROW was authorized and the pipeline was constructed, found that the $500-per-acre offer was appropriate given real estate values in the area and that the bulk of the rights would be retained by the landowners. In 2003, the company applied for ROW renewal offering to pay damages and compensation as determined by DOI. No further information is available on the ROW renewal or compensation, but the pipeline is included on a 2006 tribal map showing FERC-regulated pipelines.

d. ROW No. H62-1992-80

In 1991, a company wished to cross four miles of tribal lands with two 10-inch interstate natural gas pipelines and construct a compressor station and four natural gas gathering lines for a total of 28.5 acres. The company suggested a 30-year ROW but did not offer a compensation rate. It later offered $2,000 per acre for a 25-acre easement and $4,500 for a five-year business lease for the compressor site, in addition to the $250 it had earlier given the tribal scholarship fund.

The Tribal Business Committee proposed basing the ROW fee on throughput. The company declined for the reasons that it had never provided compensation on such a basis before, only 2% of the pipeline crossed tribal lands, and it would be impossible to finalize contracts in the two weeks remaining before construction started. The company countered with an offer of $2,500 per acre, an additional contribution to the scholarship fund, and a joint venture with the Tribe on the gathering lines. The Tribe refused and again suggested a throughput fee or a joint venture as an alternative.

The company again rejected the throughput proposal, stating that it had already established fixed transportation and gathering rates for its consumers and would not be able to adjust them to recover the additional throughput costs. The company indicated its interest in a joint venture in the future but not at the present time because of time constraints. It offered $3,000 per acre for the pipeline and compressor station with a 20-year term, $1,325 per acre for the gathering lines, and a $25,000 contribution to the scholarship fund. The company also stated it would ask its contractors to employ 35 to 40 members of the Tribe on construction projects. Complete terms of the ROW agreement are not available, but the Tribe received $238,537 as payment for the pipeline, compressor station, and gathering lines for a 20-year ROW.

9.2. Southern Ute Indian Tribe

The size of the tribal estate is presently estimated at 308,000 acres. Since the 1950s, oil and gas have been the key economic resources for the Southern Ute. Located within the San Juan Basin, the Tribe's lands contain oil and gas reserves and coal beds.

In the 1950s and 1960s, the Tribe generally accepted the BIA's recommendations on the adequacy of compensation for energy ROWs. Compensation in those decades usually consisted of appraisals of surface damage fees on a per-acre or per-rod basis. In the 1970s, the Tribe became more involved in oil and gas leasing, and in 1980, the Tribal Council formed an Energy Resource Office to facilitate gathering information on the Tribe's energy potential and monitoring compliance with existing leases. The forms of ROW compensation became more varied and included contributions to scholarship funds, annual rental fees, land trades, throughput fees, and investment opportunities.

In the 1990s, the Tribe formed the Red Willow Production Company[189] to operate oil and gas wells and leases and the Red Cedar Gathering Company to pursue coal-bed methane gas production. By this point in time, compensation negotiations were conducted between the Tribe and energy companies and the Tribal Council would accept or reject ROW proposals. The BIA would then approve the ROWs to which the council consented. Appraisals were seldom done, since the Tribe established general compensation rates for particular types of ROWs.

Red Willow Production Company and Red Cedar Gathering Company are managed by the Southern Ute Growth Fund, which estimated its investment value at more than $2 billion in 2006. The following four cases studies demonstrate the movement the Tribe made in managing its energy resources from the 1950s to the present day.

a. Western Slope Gas Company

In 1961, the Western Slope Gas Company offered damages of either $1 per rod or $320 per lineal mile for a 50-year, 50-foot-wide ROW for a natural gas transmission pipeline and gathering system. Subsequent applications that year for additions to the gathering system were also for a 50-year term at the $1-per-rod rate. The Tribal Council consented to the applications at the $1-per-rod rate.

b. Mid-American Pipeline Company

By the late 1970s, the Tribe became directly involved in ROW compensation negotiations. The Mid-America Pipeline Company offered $15.60 per rod for a 10-inch liquefied petroleum gas pipeline crossing almost seven miles of tribal land. Total compensation under the offer was $33,571. After the Tribe rejected the offer, Mid-America proposed $15 per rod and donations to the scholarship fund, for a total compensation package of $56,203. The Tribal Council eventually approved a 10-year easement for payment of $32,280 and other considerations, which totaled $50,000 in contributions to the scholarship fund.

By the mid-1980s, Mid-America and the Tribe were involved in renewal negotiations. The Tribe rejected the Mid-America proposals for either a permanent easement at $28 per rod or $140,000 for a 20-year term with an option to pay $20,000 annually thereafter for as long as the company chose to renew the ROW. Mid-America noted that it had paid from $5 to $20 per rod for permanent ROWs on non-Indian land in the vicinity.

The Tribe countered with offers based on a rate-based tariff fee. Under this valuation method, compensation could be up to $236,200 for a 10-year term and $497,000 for a 25-year term. Mid-America instead proposed a perpetual easement for a lump sum and annual contributions to the scholarship fund; the amounts offered are not contained in available records. The Tribe suggested compensation of $374,810 for a 25-year term, which was based on Mid-America's expected profits, but paid as an annual rental based on the pipeline's projected throughput.

Negotiations for a renewal began in 1985, five years before the expiration of the grant of easement. No agreement had been reached by the time the ROW expired in October 1990, and the Tribe declared it would not hold Mid-America in trespass as long as negotiations were conducted in a good-faith manner. In late 1991, the two parties agreed to $425,000 for a 10-year ROW, plus the guarantee of a tax credit in case the tribe should later impose an applicable "possessory interest tax or business opportunity tax."

In 1996, the parties entered negotiations on the ROW renewal and an additional 16-inch pipeline. Tribal and Mid-America representatives agreed to a formula that multiplied the previous renewal amount by the consumer price index (all urban consumers), resulting in compensation of $518,000 each for the renewal and the new easement ($320 per rod).

c. El Paso Natural Gas Company

In 1956, EPNG compensated the Tribe $4,250 for damages for a 20-year, 6.647-mile ROW for a 24-inch natural gas pipeline (the El Paso mainline). EPNG's payment was double the estimated damages.

In its 1974 renewal application, EPNG indicated that the ROW would expire at the end of 1976. In 1976, the company submitted a second renewal application since no action had been taken on the first. In subsequent negotiations, EPNG offered $3 per rod for 20 years for all its projects (i.e., projects in addition to the mainline) that were expiring in 1978 and 1979. The Tribe refused the offer on the grounds that it was receiving $5 per rod for other primary ROWs and that it was due damages for EPNG's trespass. Agreement was reached in 1979 granting EPNG a 10-year easement for all its ROWs on the Reservation that had or would expire before January 1, 1982, for a payment of $607,515. Three years later, EPNG requested a waiver of the annual 20% increase in per-rod costs because of decreased sales and inflation that was lower than expected. The Tribe rejected the request.

In January 1989, EPNG applied for renewal of the ROWs renewed in 1979 and submitted payment of $349,326, which it based on a Tribal Council resolution requiring $600 per acre for ROW renewals. The Tribe refused the offer and requested compensation based on alternative valuations such as throughput. The Tribe requested $2,638,000 for a 10-year renewal. EPNG countered with an offer of $966,933. The final agreed-upon figure was $1.3 million for a 10-year renewal of the ROWs.

EPNG applied in May 1998 for a 20-year renewal of the mainline ROW, due to expire in February 2000, and included payment of $77,289 for 96.611 acres based on an appraisal of $800 per acre. The company subsequently proposed 10 annual payments of $25,122 per year, or a lump sum of $303,507. Negotiations were not concluded until March 2000. The agreement called for EPNG to assign its Colorado Dry Gas Gathering System to the Tribe and for the Tribe to pay EPNG $2 million and provide renewed 20-year ROWs for the El Paso Field Services Blanco Gathering System and the mainline facilities.

d. Red Cedar Gathering Company

In an effort to expand the pipeline infrastructure required to expedite development of its coal-bed methane resource, the Tribe issued a blanket 11-year grant to WestGas for all ROWs necessary for constructing and operating gathering systems and pipelines in the western part of the Reservation. ROW compensation consisted of a throughput fee of $0.015 per million Btu on all gas compressed and processed in a defined area.

When the Public Service Company of Colorado decided to sell WestGas in 1994, the Tribe entered into partnership with an investment group, Stephens Group, Inc., to bid on it. The bid was initially rejected but then reconsidered when it was made clear that the Tribe would have to consent to the transfer of easements from WestGas to the winning bidder. The partnership bought WestGas for $87 million, and Stephens and the Tribe created the Red Cedar Gathering Company, a joint venture. Stephens contributed all of WestGas's assets to Red Cedar, and the Tribe contributed $5 million and an extension of WestGas's existing ROWs to the end of 2036. The throughput fee was also increased to $0.0175, with subsequent upward adjustments to be made in 2009 and every five years thereafter, as long as the adjustments were in Red Cedar's best interests. The blanket grant was also extended from the previously defined area to all tribal lands.

9.3. Morongo Indian Reservation

The Morongo Band of Indians is one of several linguistically related tribal groups in south-central California collectively referred to as the Cahuilla. The Morongo Reservation was created in 1877 by Executive Order. The size of the reservation grew and got smaller with subsequent Executive Orders and allotment activity. In 2003, the reservation encompassed 32, 402 acres, of which 31, 115 acres were tribal lands. The Morongo Band did not organize under the IRA.

The Morongo Band's reservation possesses no oil, gas, or mineral resources. Nevertheless, the Band has numerous energy ROWs. The reservation's location in southern California is an ideal east-west corridor for transmission of natural gas, oil, and electricity. Beginning in 1995, the 50-year term of some electric and transmission line ROWs began to expire, and renewal negotiations are currently underway.

The degree of tribal involvement in negotiations for the initial energy ROWs is unclear from BIA and Tribal records. Appraisals were used to determine compensation for some ROWs, but there are also instances of the Tribe exploring alternative forms of compensation.

a. ROW No. 372-Morongo-15

In 1946, the Southern California Gas Company and the Southern Counties Gas Company of California were granted a ROW for a 30-inch gas pipeline at a rate of $99.75 per acre for the 8.02-mile easement.[190] In 1966, the Tribe requested that Southern California Gas Company provide gas service to the Reservation. The company did so in 1968, in exchange for obtaining renewals of the 30-inch pipeline in addition to another ROW and for receiving a new ROW for a 36-inch natural gas pipeline. The estimated cost of the gas system installed by Southern California Gas Company was $82,078.

b. ROW No. 378-Morongo-143

In April 1945, representatives from the BIA and Southern California Edison (SCE) attended a general meeting of the Morongo Band to discuss SCE's plans to build a transmission line connecting Boulder Dam to Los Angeles. Two months after the meeting, the DOI granted SCE authority to construct the line. The Morongo Band, BIA, and SCE were negotiating compensation for the ROW as the transmission line was being built. The Morongo contested BIA's appraisal of $25 per acre.

In November 1945, SCE requested permission for two transmission lines and a road across the Morongo Reservation. Damages were estimated at $6,421.50, and the BIA required an annual payment of $5 per mile. SCE agreed to pay the damages fee but balked at the annual fee. The Morongo Band pushed for payment of the annual fee and continued to protest the $25-per-acre appraisal, at one point suggesting to DOI that $100 per acre was the appropriate land value.

The final compensation schedule for the transmission lines totaled $6,421.50 (39 towers at $25 per tower; $25 per acre for dry land; $637.50 for 2.49 acres of irrigated land) and a $5-per-mile annual rental for an unspecified number of years. In May 1950, SCE submitted a license

application to FERC's predecessor, the Federal Power Commission (FPC), for the transmission line. The 50-year license was issued in April 1954 but with a starting date of July 1, 1945.

SCE initiated the renewal process in 1992, three years before the ROW expiration date. The Morongo Band asserted that the FPC license, which also had a 1995 expiration date, could not be renewed by FERC, the successor agency to FPC, because the line was no longer a primary line and therefore no longer under FERC's jurisdiction. The Morongo Band reported that it had to threaten SCE with litigation to remove the line before SCE would agree to enter negotiations with it. Both parties have since entered into an agreement that calls for negotiations to begin in 2008 and conclude by 2010.

c. ROW No. 378-Morongo-47

When the California Electric Power Company (CEPC) applied for a 150-foot ROW for two 115-kV transmission lines on 4.73 miles of the Reservation in 1959, the Morongo Band suggested that the company provide electric service to reservation homes in addition to a damage fee.[191] CEPC was amenable to this and offered payment of $21,000 and provision of a distribution system to allotted lands, on the condition of receiving ROWs for the distribution lines. CEPC's $21,000 payment was based on an appraisal of $400 per acre, which the appraiser reduced by 40% on the basis that the land did not have potential for subdivision or commercial development. BIA's appraisal valued the land at $13,250, which was 50% of appraised market value of the fee title. The Morongo Band accepted the company's offer.

In 1963, SCE acquired CEPC's power lines and increased the voltage of one line to 230 kV, apparently with the approval of BIA. At some point, SCE installed fiber-optic lines on the ROW for its own use. In the late 1990s, SCE requested a ROW amendment to allow it to sell its excess fiber-optic capacity. The amendment was agreed to for a lump-sum payment of $535,000.

d. ROW No. 378-Morongo-277

SCE's 33-kV Banning-Palm Springs electric distribution line had been FPC-licensed since 1929. After the FPC determined that the line was no longer a primary line, SCE applied for a 25-foot, 4.02-mile ROW for the line in 1969. In keeping with its BIA-approved practice of valuing easements at 50% of market value for lines of voltages less than 220 kV, SCE offered $7,155 for approximately 12.19 acres. It also estimated severance damages at $1,500. The BIA stated that the appraisal was adequate compensation but noted that nothing was constraining the Morongo Band's free-bargaining position.

In a special election, the Morongo Band approved granting SCE 50-year ROWs for a 220-kV transmission line and 12-kV and 33-kV distribution lines. The lump-sum payment was $153,660.

8.4.4. Navajo Nation

The Navajo Nation covers more than 16 million acres on the Colorado Plateau of northeast Arizona, southeast Utah, and northwest New Mexico. The tribal council, the legislative branch of the Navajo Nation, is composed of 88 popularly elected members.

The bulk of the Navajo Nation tribal income in the 20th century derived from energy-related mineral leases for its natural gas, oil, coal, and uranium resources. Income from oil and gas averaged $70,000 per year from 1921 to 1937 and rose to $1 million per year from 1938 to 1956. In the 1960s, annual averages for oil and gas income were $18 million. In the 1970s, the Navajo started moving away from fixed royalties as the price of fossil fuels increased worldwide.

The Navajo Nation Oil and Gas Company (NOG) was chartered through DOI as a federal corporation under Section 17 of the IRA and ratified by the Navajo Nation Council in 1998.[192] Five years later, NOG began developing energy resources on tribal lands by granting new oil and gas leases.[193]

As energy ROWs came up for renewal in the 1970s and 1980s, the Navajo Nation and energy companies negotiated consolidated easements that incorporated a number of ROWs into one package. Since the 1980s, it has been the Nation's practice to negotiate directly with ROW applicants.

a. Four Corners Pipeline

Four Corners Pipe Line Company (Four Corners) applied to BIA and the Navajo for an easement for a 16-inch oil pipeline in April 1957 and received it in May 1959. The Navajo participated in the application approval process and, at one point, withdrew its consent to the application until stipulations agreed to earlier were included in the agreement. One of the stipulations called for damages of $1 per lineal rod. Damages payment for the 20-year easement for 230 miles of pipeline and other facilities totaled $199,796.

Twenty-six miles of the pipeline fell across lands subject to a land dispute between the Hopi Indians and the Navajo. Four Corners paid each tribe $10,000 for the 26-mile segment.

In April 1976, Four Corners applied to renew the ROW, set to expire in May 1977. The BIA, indicating that current market value was $3 per rod, rejected the company's initial offer of $2 per rod. Although Four Corners responded with an offer at the higher rate, the ROW was not renewed.

In February 1980, Four Corners requested an easement consolidating all of its ROWs on Navajo Nation lands. The subsequent 1981 agreement between the Navajo and Four Corners renewed all of the company's prior ROWs, both expired and unexpired.

Payment for the consolidated renewals was primarily based on throughput of hydrocarbons in the main line at 3 cents per barrel, adjusted annually on the basis of the CPI. The first year's payment was not to be less than $250,000 for 1981. Four Corners also paid $900,000 for the period in which the mainline was in use but the ROW had expired. In return, the Navajo released the company from liability during that trespass. Four Corners further agreed to pay for actual damages caused by pipeline construction or operation.

In 1998, Questar Southern Trails Pipeline Company (Questar) purchased the Four Corners pipeline with the intent to convert it from oil to natural gas. Since this change required additional

construction, the 2001 agreement between Questar and the Navajo Nation to re-renew the 1981 ROW also included Navajo consent to additional ROWs for the necessary construction.

The 2001 20-year ROW agreement called for undisclosed compensation in the form of 20 annual installments, with all payments after the first adjusted annually according to the CPI; annual contributions to the Navajo Nation Scholarship Program; and installation of up to six taps for delivery of gas on the reservation.

b. Arizona Public Service 500-kV Line

The Arizona Public Service (APS) transmission line described in this case study runs from the Four Corners steam generating plant in New Mexico to a substation near Boulder City, Nevada. The line runs across Navajo land and passes through the Hopi Reservation before running again on Navajo land.

Final approvals for the Navajo sections of the line were granted in March 1967 for a 25-year term with an option to renew for a "like term."[194] The Navajo were involved in the approval process.

In December 1991, consistent with the ROW terms, APS submitted payment of $108,176.47 ($6.98 per rod) to BIA for the Navajo Nation to renew the ROW associated with the 500 kV line but indicated its willingness to discuss other considerations for renewal. The Navajo Nation rejected that payment and asked the BIA to return the check to APS. The payment was resubmitted to BIA in March 1992; the check was cashed without being returned to APS.[195]

The Navajo rejected compensation at the same rate as the initial grant and appointed a negotiation team to seek different terms. The BIA suggested that the APS appraisal of $4.73 to $4.76 per rod was significantly short of the "going rate," which was a minimum of $45 per rod.[196]

By late December of 1993, the Hopi Nation and the Navajo Nation were part of a confidentiality agreement with SCE to negotiate the ROW renewal. SCE was involved because it had the right to use the entire capacity of the transmission line. A task force was established in 1994 to negotiate the ROW renewal with APS, SCE, the City of Los Angeles Department of Water and Power, and the Public Service Company of New Mexico.

The Navajo Nation requested BIA to return to APS any payments it had made for the ROW renewal because they were not acceptable. The ROW has not yet been renewed.

c. Transwestern Pipeline Company, San Juan Line

Transwestern Pipeline Company (Transwestern) began operation of a 30-inch natural gas pipeline on the Navajo Reservation in 1960, added compression facilities in 1967, and began building loop lines in 1969. By 1980, the capacity of the Transwestern system on Navajo land was 750,000 mcf per day. Information on the initial ROW grant is not available, but it was set to expire in October 1979.

Transwestern's ROW renewal application was submitted to BIA without Navajo Nation consent. The BIA rejected the application determining that the Nation's consent was required by the Navajo Treaty of 1868 and applicable federal regulations. Transwestern sued in federal court to have the rejection of its application overturned, but the Navajo Nation's right to consent was upheld and Transwestern returned to negotiations with the Navajo Nation.[197]

In 1984, Transwestern and the Navajo Nation developed a memorandum of understanding (MOU) that allowed Transwestern to renew its expired ROWs and to extend its unexpired ROWs to a new expiration date of December 2003. The parties also reached agreement to an undisclosed settlement amount.

Transwestern and the Navajo Nation agreed to a subsequent MOU in 1991 that allowed the company an option to acquire 79.5 miles of additional ROWs. Under the MOU, 25% of the consideration would be paid as a nonrefundable payment with the remainder (of the fee), paid when Transwestern exercised its option to acquire ROWs, adjusted according to the CPI and the actual size of the ROWs. The MOU committed Transwestern to sell and deliver up to 3,000 mcf of natural gas to the Navajo Nation upon completion of a service agreement.

In 1998, Transwestern began the process of renewing its easements scheduled to expire at the end of 2003. The company sought one grant to cover all its easements on Navajo Nation trust land. An independent appraiser estimated that the market value of the affected land ranged from $10.69 to $14.40 per rod. The BIA recommended instead that the market value of the land was $25 per lineal rod.

Transwestern and the Navajo Nation agreed to an extension of the ROWs to November 2009. Transwestern's other rights would expire at that time and the parties desired that all ROWs would have the same renewal and expiration dates.[198] Payment for the extension was to be made in an initial installment followed by six annual payments based on the CPI and adjusted upward but not decreased. The 2001 agreement was amended in 2004 to allow Transwestern to construct a new 36-inch, 21,415-rod pipeline, the easement for which will also expire in 2009.

d. El Paso Natural Gas Company, San Juan Line

The EPNG pipeline system on the Navajo Nation land may be the largest network of energy ROWs on tribal land. The company's pipelines also cross lands of the Southern Ute, Laguna Pueblo, Acoma Pueblo, Gila River, Tohono O'odham, and San Carlos Apache.

EPNG's first ROW on Navajo land was for a 218-mile, 24-inch natural gas pipeline. The application filed in July 1950 offered $1 per rod ($320 per mile) in damages, in addition to any actual damages caused by construction on agricultural or forested lands. No additional information is available on that transaction.

EPNG expanded its operations in the 1950s and 1960s to include sections of loop line at 24, 30, and 34 inches in diameter. In 1971, EPNG applied for renewal of the main line and the loop lines

in addition to other ROWs. The company sought to combine the ROWs even though expiration dates ranged from 1972 to 1986.

An appraiser for EPNG established the fee simple market value at $25 to $670 per acre, depending on the land type. The appraiser then discounted those values by 50% on the basis that the ROWs accounted for only about 50% of the land's value. The appraiser also stated that 8% of the value of the land taken would be a just rental rate for the land. These calculations put the value of the ROWs at $50,769. The BIA recommended a value of $125,272 after reviewing that appraisal.

The ROWs in question were eventually renewed as two consolidated ROWs. Total compensation for the renewals was $260,000 for tribal and allotted land. One of the new ROWs had a 14-year term, expiring in 1986, with an option to renew for an additional 20 years. Consideration for the 20-year renewal would be $276,000, adjusted every five years on the basis of the CPI. The other new ROW did not include similar renewal provisions.

Negotiations to renew these ROWs began in January 1982, four years before their expiration date. The Navajo sought an agreement based on throughput, which EPNG opposed. At some point, the parties seemed to agree to a payment of $600,000, but they disagreed as to what the payment covered. The Navajo claimed that the $600,000 covered only one ROW, but EPNG asserted that it covered both. The Nation further believed that EPNG had agreed to renegotiate consideration for all its ROWs.

The final agreement to resolve these issues required an initial $2 million payment to the Navajo Nation and 20 annual payments of $1.35 million, adjusted every three years on the basis of the CPI. Under the agreement, EPNG was allowed to acquire 15 miles of gathering lines. Rather than consolidating all of EPNG's ROWs into one easement, the agreement divided the renewals into several different easements.

However, all the easements shared the same expiration date. The agreement states this was done to ease the administrative burdens on both parties.[199]

When EPNG submitted the official renewal applications in 1985, it included appraisal information estimating the value of the land at $15 per rod. The BIA noted that the rate for other pipelines ranged from $20 to $40 per rod but that the per-rod rate under the recent renewal agreement came to almost $78.

In the ensuing years, EPNG and the Navajo have negotiated amendments to the 1985 agreement, which expired in October 2005. The easements have been extended to December 31, 2006.

9.4. Survey Information

Edison Electric Institute (EEI) and the Interstate Natural Gas Association of America (INGAA) conducted surveys inquiring into their members' experiences negotiating energy ROWs on tribal lands. Reports on their survey findings are available on the 1813 website.

9.4.1. Edison Electric Institute

EEI is a trade association for shareholder-owned electric utility companies. EEI reported that its members provide electric service to 71 percent of all electric utility customers in the country and generate almost 60 percent of the electricity produced by the nation's generators.

In its survey, EEI sought information about costs, terms, and conditions of energy ROW renewals; data on the appraised value of lands included in the ROW; comparative data about the terms and conditions of the ROW contract that immediately preceded the renewed ROW contract; and the information on the methodology used to determine the renewal cost. Member companies were asked to concentrate on energy ROW renewal transactions occurring within the past five years. EEI aggregated survey results to protect the confidentiality interests of all parties involved.

At the request of EEI, findings from the surveys were independently verified against source documents provided by energy companies. This verification consisted of comparing source documents, supplied by the companies, to the companies' survey responses and to the aggregated survey data that EEI used as the basis for its comments dated May 15, 2006. It was not feasible to verify the accuracy or completeness of the source documents provided by the energy companies.

Following this verification, EEI corrected the few differences that were found and then re-aggregated the data and submitted a survey addendum dated June 21, 2006. Since several of the energy ROW renewals included in the survey had occurred more than five years ago, EEI revised its report to present findings of the full data set (which included all energy ROW renewals) and the 2001–2005 data set (which included only renewals that occurred during that time span).

EEI's original comments and addendum are available on the website. The following data were extracted from the revised comments dated June 21, 2006, unless otherwise noted. Information presented in the following tables and the text expanding on the information in those tables has been verified as accurately reported by EEI, unless specifically noted below.

A preliminary EEI screening survey of its 75-member base revealed that 28 companies had jurisdictional territories that overlapped tribal reservation lands; 20 of those 28 companies had ROWs on tribal land. Eight of the 20 companies had completed renewal transactions within the past five years, and only one out of the eight declined participation in the survey. Information was gathered on 20 energy ROWs, seven of which were renewed prior to 2001.

The EEI survey data show that, on average, energy ROWs are being renewed for a shorter term of years than the ROWs that preceded them. As shown in Table 1, this was true for ROWs renewed since 2001 and for the ROWs in the entire data set.

Table 1 Term of Years of Energy ROW Renewals and Prior Term of Years				
Data Set	Number of ROWs	Duration in Years		
		Average	Median	Range
2001-2005				
Term of Expiring ROW	12	48	50	20-50
Term of Renewed ROW	12	31	25	20-50
Full				
Term of Expiring ROW	20	43	50	20-50
Term of Renewed ROW	20	28	25	10-50

In the next table, EEI compares the "fair market value" of land associated with existing ROWs to the cost paid for that ROW. EEI defines the term "fair market value" as the "economic (i.e., competitive) value of the land."[200] To arrive at this "fair market value," EEI calculated the market value of the land. In that calculation, EEI took into account the variation in terms of years of the renewals and whether the market value of the energy ROW was presented in a survey response as fee simple or easement.

Energy ROW prices were adjusted by EEI to reflect a usable life of 50 years. For example, a 25-year renewal compensated at $2 million was normalized to $4 million for 50 years. When land value was presented in a survey as fee simple, it was discounted by 50 percent in one calculation and 70 percent in another to obtain the easement value.

On the basis of a 50 percent discount, EEI calculated the average multiple of market value was 31 for energy ROWs renewed within the last five years; the average multiple was 21 on the basis of a 70 pecent discount. The average multiples for the full data set were 115 on the basis of the 50 percent discount and 83 on the basis of the 70 percent discount. When an outlier (1,624 times the market value) was dropped from the full data set, the average multiples were 31 and 23, respectively. These averages, medians, and ranges of multiples of market value for energy ROW renewals are presented in Table 2.

Table 2 ROW Renewal Compensation as Multiple of Market Value				
Data Set	Number of ROWs	Multiple of Market Value of 50% / 70%		
		Average	Median	Range
2001-2005	12	31 / 22	8 / 6	1–150 / 1–107
Full	19	115 / 83	12 / 8	1–1,625 / 1–1,161
Full minus outlier	18	31 / 23	10 / 7	1–150 / 1–107

EEI reported that of the 12 energy ROW renewals completed within the past five years, when easements were assessed at 50 percent of the fee simple value, the market value was paid in two cases, was between 2 and 4 times the market value in four cases, and was between 11 and 25

times in three cases; also, in three cases, compensation was between 65 and 150 times market value. When the easement value was assessed at 50 percent of the fee simple value for the full data set, the market value was paid in two cases, was between 2 and 4 times in five cases, and was between 11 and 25 times in five cases; also, in five cases, compensation was between 65 and 1,625 times market value.

The EEI survey requested information on the methodologies used to establish the value of the ROW renewal. In the full data set, EEI reported that tribal negotiators sought renewal fees based on build around costs in five cases, throughput was used in one instance, and in three cases the valuation sought was based on other recent ROW renewals. For the ROWs renewed in the 2001-2005 period, build around costs were sought in two cases, throughput was requested once, and recent ROW renewals were used as the basis in two cases.

Another measure of energy ROW renewals used by EEI was per mile cost. EEI reported that the traditional all-inclusive cost (i.e., ROW and construction) of high-voltage, overhead transmission facilities are about $500,000 per mile for rural land and about $1 mjillion per mile for suburban land. Lower-voltage transmission and distribution lines generally are hundreds of thousands of dollars per mile.[201] EEI clarified that the all-inclusive cost estimates are based on easements in perpetuity and not temporary permits on tribal land.[202]

EEI reported that the average per-mile cost of ROW renewals was $893,700 for respondents in the 2001–2006 data set and $727,400 for respondents in the full data set. When per–mile costs are normalized over a 50-year term, the average is $1,494,900 for renewals in the past five years and $1,366,000 for renewals in the full data set. Additional data on per-mile costs of renewals is provided in Table 3.

Table 3 ROW Renewal Costs on a Per Mile Basis

Data Set	Number of ROWs	Per-Mile Cost ($)		
2001-2005		**Average**	**Median**	**Range**
Unadjusted	11	893,700	140,500	12,800–7,300,000
Normalized	11	1,494,900	280,900	12,800–10,400,000
Full				
Unadjusted	18	727,400	146,200	12,800–7,300,000
Normalized	18	1,366,000	318,900	12,800–10,400,000

When information was available on the compensation paid for the energy ROW preceding the renewal described in the survey response, EEI calculated the multiple of the renewal price to the preceding price. Table 4 conveys the results of that analysis. As EEI pointed out in its report, the findings in Table 4 are based on relatively few data points.

Table 4 ROW Renewal Cost as Multiple of Previous ROW Cost

Data Set	Number of ROWs	Multiple		
		Average	**Median**	**Range**

Table 4 ROW Renewal Cost as Multiple of Previous ROW Cost				
Data Set	Number of ROWs	Multiple		
2001–2005	5	779	227	18–2,767
Full	11	863	227	10–3,812

EEI also surveyed its members on the length of negotiations to reach agreements on ROW renewals. Table 5 presents those findings.

Table 5 ROW Renewal Negotiation Periods				
Data Set	Number of ROWs	Months		
		Average	Median	Range
2001–2005	12	23	13	6-102
Full	20	25	14	6-102

The following qualitative information was included in EEI's May 15, 2006 comments and survey but it was not verified by comparing it to source documents.

EEI members noted two main reasons for the length of renewal negotiations: frequent turnover in tribal governance and long lead times in BIA action on land appraisals. EEI observed that lengthy negotiations increase administrative costs to companies and tribes and can place companies in the position of operating beyond a ROW expiration date. Shorter terms of years for ROW renewals can also contribute to increased ROW administrative costs for tribes and companies.

In its report, EEI noted that if energy ROW costs increase by a factor of 227 (the median escalation over previous ROWs), total electricity costs will rise by 4% because of those increases.

9.4.2. Interstate Natural Gas Association of America

INGAA is a national, nonprofit trade association that represents the interstate natural gas pipeline industry. According to INGAA, its members account for virtually all of the natural gas transported and sold in interstate commerce.

INGAA reports that several members chose not to become involved in the survey, either out of concern that their participation could have an impact on present or future negotiations with tribes or because there was not sufficient time to gather the requested information. INGAA also states that members were reluctant to participate in the survey because the information sought was highly sensitive business information, was subject to a confidentiality agreement, or could be used by tribes as a starting point for negotiations.

Six INGAA companies and one non-INGAA member, a products pipeline company, submitted survey information on a total of 20 energy ROWs on tribal land involving 15 different tribes in 11 states.

At INGAA's request the Departments verified its use of survey data. As in the case of the EEI survey, this verification consisted of comparing INGAA's survey responses with information in the source documents submitted by participating companies. It was also not feasible to verify the accuracy or completeness of the source documents. In addition, because of concerns regarding the confidentiality of data, not all the companies that submitted survey information supplied source documents for the independent assessment.

The verification of the relevant documents confirmed the following findings that INGAA included in its report:

- All respondents that provided data indicated that they were paying compensation in excess of market value.
- In addition to the per-rod ROW payment, many companies contributed to tribes in various forms (scholarships, recreational funds, etc.).
- The average term of years for initial and renewed ROWs was 20 years.
- Two respondents reported ROW negotiations taking at least two years; some others reported significantly longer periods; and one reported negotiations taking more than 10 years.

Three of the five case studies volunteered by EPNG for the INGAA report are summarized below. The information in these case studies has been verified through source documents provided by El Paso. The two remaining El Paso case studies described in the INGAA comments were summarized previously in Sections 8.4.2 and 8.4.4.

In 1993, the easement for the Plains to Gallup Crossover Line — two 30-inch, 56-mile natural gas pipelines that cross the Laguna Indian Reservation and move gas from the Permian Basin to the San Juan Basin — was appraised at a value of $300 per acre. The negotiated settlement for a 20-year ROW renewal was approximately $7,000 per acre.

Similarly, EPNG's negotiated settlement for a 20-year ROW renewal for 23 miles of the Crossover Line that crosses the Acoma Indian Reservation reached almost $7,000 per acre. EPNG reported the land was appraised at $300 per acre.

Since it began its business relationship with the Gila River Indian Community (GRIC) of Arizona in the 1930s with a 10-inch pipeline that covered 20 miles of GRIC land, EPNG acquired additional easements and now has more than 100 miles of pipeline on the land. In 1987, EPNG and GRIC negotiated an easement that would renew the ROWs for all EPNG facilities on the tribal land with a common expiration date of December 31, 1994. An approved GRIC appraiser initially appraised the easement at $130,000 but modified it to $260,000. The final negotiated agreement was $3.2 million.

When the ROW was renewed in 1994, EPNG paid $3.588 million for a 10-year renewal. In 2004, the company paid $5.2 million for an additional 10-year renewal in addition to payments for administrative costs, a scholarship fund, and an education fund.

INGAA included the following comment, which was not verified through source documents, in its May 15, 2006 submission: tribes generally began negotiations by requesting terms of less than 20 years and that few respondents were satisfied with the negotiations.

INGAA also included the results of a 1998 survey in its submission for the Section 1813 study. That survey is not described here because it did not differentiate between tribal and allotted lands and it included data from Canada and from ROWs other than those for oil and natural gas pipelines and electric transmission lines — the subjects of this report. Similarly, the case studies included in the INGAA report that were volunteered by a non-INGAA member are not summarized here because the company is a products pipeline company.

9.5. Other Case Study Reports Submitted by the Parties

The following examples of historic rates of compensation for energy ROWs on tribal land were selected from among several submissions by tribes and the federal power marketing administrations. The following case studies were chosen for inclusion because they were fairly complete or they addressed issues raised in the Section 1813 study, including valuation methods and conflict adjudication processes.

Due to limited time and resources, only the case volunteered by Bonneville Power Administration was verified. The other cases included in this section are only a summary of the submittal by individual participants and were not subject to verification by the Departments.

9.5.1. Bonneville Power Administration

In 1978, DOE's Bonneville Power Administration (BPA) entered into an agreement with the Confederated Tribes of the Warm Springs Reservation of Oregon that provides BPA with perpetual easements for an additional-width energy ROW as well as opportunities for two future ROWs totaling a width of not more than 747.5 feet. Documentation indicates that BPA paid at least five times market value for the additional-width ROW.

One of the future ROWs would accommodate moving BPA's existing transmission line approximately 12 miles if the tribe exercised that option. Compensation for the future corridors would be negotiated consistent with prevailing economic conditions and market values.

Pursuant to the terms of the 1978 agreement, if BPA and the tribe were unable to agree on the proper compensation for the ROW, it would be determined by arbitration. Each party would select an arbitrator, and then these two arbitrators would select a third one. If the two arbitrators were unable to agree on a third, either party could request the Chief Judge of the United States District Court for the District of Oregon to appoint the third impartial arbitrator. Thereafter, the three arbitrators would meet in formal session to hear and receive evidence from the parties concerning the compensation for the ROW. The decision of the arbitrators as to the amount of compensation would be binding on both parties.

9.5.2. The Hopi Tribe

The Hopi Reservation has the second lowest percentage of households with access to electricity in the United States: 29% of reservation residents live without electricity, as opposed to the national average of approximately 1%.[203]

The major provider of electrical services in Arizona has a 500-kV transmission line ROW across the Hopi Reservation. Under the original 25-year term of the agreement, the Tribe was paid a total of $755.00 for an approximately 50-mile ROW. In their submittal, the Hopi state that "Though there is some debate between the Tribe and the electrical provider whether the original agreement was automatically renewable at the same compensation at the end of the first 25 years, the electricity has continued to flow uninterrupted." [204]

The transmission line does not provide any electricity to Hopi Reservation residents. However, the Tribe, to encourage electrification, foregoes compensation from the electric provider for ROWs providing electrical service to the reservation. Often the Tribe pays to have these distribution lines extended pursuant to the energy provider's policy that extensions can be charged to users on a per-foot basis.

Thus, the Tribe reported that it has been paid a total of $1,510 for a 50-year, 50-mile transmission ROW that supplies electric power to millions while supplying none to the Hopi, foregoes fees on other ROWs to supply power to its residents' homes, and sometimes pays for the necessary extension for those distribution lines. [205]

APS, the holder of the ROW for the 500-kV line, stated that ROW is 97.53 miles in length and that it paid the Hopi Tribe $755.00 per mile for a total payment of $36,818.33. The resolutions approving the ROW and payment state that the second payment for the second 25-year term will be an amount equal to the first payment. APS subsequently sent payments totaling $38,137.17.[206]

APS also stated that the 500-kV line does not provide electricity to any Arizona residents because 100% of the capacity of the line is owned by SCE.

9.5.3. Pueblo of Santa Ana

In the 1980s, the Pueblo of Santa Ana negotiated 20-year ROWs for a 12-inch natural gas pipeline and a 30-inch gas pipeline at an acre-per-year compensation of approximately $356.42 and $143.65, respectively. Both ROWs included terms for an automatic renewal for an additional 20-year term, with compensation based on the rate of inflation. When the renewals occurred, the ROW compensation came to approximately $697.56 and $271.66, respectively.[207]

9.5.4. San Xavier District of the Tohono O'Odham Nation

In 1992, the Bureau of Reclamation acquired an easement in the City of Tucson for a high-voltage power line to connect to the Central Arizona Project pumping station. The easement crosses the San Xavier District for a distance of about 1 mile. Land to the east of the District and land to its west were acquired from the City of Tucson and Pima County for $7.50 per square foot.

The District and its allottees were offered $1.76 per square foot for the land between those easements, and the width of the easement was reduced from 60 to 30 feet. The power line has been constructed, but negotiations for appropriate compensation continue.[208]

9.5.5. Shoshone-Bannock Tribes of the Fort Hall Reservation

The Fort Hall Reservation has 19 electric transmission lines and 3 natural gas pipelines on its 545,000 acres. One of the earliest energy ROWs was the 50-year, 1941 grant to the Utah Power Company for a 26-mile transmission line. Negotiations for the ROW were conducted between the BIA and the company and led to a damage assessment of $6.00 per pole and a proposed $5.00 per mile annual rental fee. The Tribes received $177.00 in damages; records do not confirm that the per-mile annual rental fee was ever paid.

The transmission line ROW expired in 1991. The company did not request its renewal until 2001 when, in response to an Idaho Public Utilities Commission hearing on Utah Power's proposed merger with another company, the Tribes testified that the company was in trespass. Within a week of the hearing the company filed a renewal which was approved, for a 20-year term, after a brief period of negotiations for an undisclosed fee.[209]

Two electric transmission line ROWs on the Reservation are held in perpetuity. The fees for these ROWS were $15,050 for a 138 kV line and $33,950 for a 345 kV line. The former ROW is 15.28 acres and the latter is 183.56 acres.[210]

9.5.6. Ute Indian Tribe of the Uintah and Ouray Reservation

In addition to the case studies prepared by HRA and summarized in Section 5.4.1, the Northern Ute submitted additional examples of the Tribe's more recent practices in consenting to energy ROWs.[211] Each of the case studies involved situations in which energy companies had existing energy facilities on a ROW but with new negotiations for access. Negotiations were needed to resolve disputed instances of trespass or remedy disputes over past performance under existing agreements. All negotiations resulted in agreements on renewals or replacement agreements. In addition, the agreements expanded the scale and the scope of the Tribe's and the companies' energy-related activities on the Reservation.

In one case, the Tribe and the energy company developed several incentives to accomplish their mutual business objectives: (1) throughput fees of five cents per mcf for a ROW renewal, (2) capacity priority position for the Tribe's royalty in-kind gas, (3) an overriding royalty to provide a ROW for each well location; (4) a commercial right for the Tribe to participate in any pipeline expansion and a right to participate in any new drilling in the area, and (5) preferential transportation cost for any third-party commercial gas.

In another case, the Tribe offered an energy company a concession agreement which would allow the company to manage all its ROWs on the Reservation under one master agreement. The fee for the concession agreement had a floor and ceiling to be reset based on a specified index. The parties agreed that binding arbitration would be used for certain disputes if they could not

resolve them amicably. The Tribe granted a limited waiver of sovereign immunity and agreed to submit to jurisdiction of outside legal courts for enforcement of arbitration awards.

Through negotiations in a third case the Tribe was able to resolve several long-standing disputes, maintain throughput as the basis for a ROW renewal, and increase its energy development opportunities. Though characterized as "tough" negotiations, the outcomes created partnerships and aligned the parties' economic interests.

9.5.7. Rosebud Sioux Tribe

In 1974 and 1976 the BIA signed easements for a 15-mile115-kV transmission line through the Rosebud Sioux Reservation. Despite statutory provisions[212] that ROWs over reservation lands are not to exceed a period of 50 years, the ROWs were granted in perpetuity.

The Tribal Council consented to the ROWs on the understanding that the transmission line would supply an additional source of electric energy throughout the area which would benefit the Reservation. The fees for the 1974 and 1976 ROWs were $14,484.00 and $10,520.00, respectively, to be paid to the Tribe and the individual land owners whose property the ROWs crossed. The Tribe does not have documentation of appraisals made for the ROWs or distribution of payments for them.[213]

Appendix A

The document, *Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands, 1948-2006*, is an appendix to this draft report. The document is available on the public website, http://1813.anl.gov.

Appendix B

EPAct Section 1813 Study Commenters

("Commenter" is defined here as someone who submitted a comment in writing to the Departments. It does not include verbal comments made in pre-scoping telephone calls or at public meetings or government-to-government meetings)

Affiliated Tribes of Northwest Indians
Agua Caliente Band of Cahuilla Indians
Ak Chin Indian Community Council
Andrews Davis Corporation
Appraisal Institute
Arizona Corporation Commission
Arizona Public Service Company
Arizona Tribal Energy Association
Arkansas Riverbed Authority
Association of Oil Pipe Lines
Association of Property Owners and Residents of the Port Madison Area
Augustine Band of Cahuilla Indians
Avista Utilities
Bill Barret Corporation
Birdbear, C
Blackfeet Nation
Blackfeet Tribal Business Council
Burton, Steven
Chambers, Reid
Cheyenne River Sioux Tribe
City of Toppenish (William Rogers)
Colorado Office of Consumer Counsel
Colorado River Indian Tribes
Confederated Salish and Kootenai Tribes of the Flathead Nation
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of the Warm Springs Reservation of Oregon
Coquille Indian Tribe
Cornell, Stephen
Council of Energy Resource Tribes
Dawson, Marlene
Eastern Shoshone Tribe
Edison Electric Institute
El Paso Natural Gas Company
Fair Access to Energy Coalition
Fallon Paiute-Shoshone Tribe
Fond du Lac Reservation Business Committee
Frye, Paul
Governor Bill Owens (Colorado)
Governor Bill Richardson (New Mexico)
Harvey, Carol
Havens, Bill
Hopi Tribe
Hualapai Nation
Idaho Power Company
Interstate Natural Gas Association of America
Intertribal Monitoring Association on Indian Trust Funds

Jemez Pueblo
Jicarilla Apache Nation
Kinder Morgan Energy Partners
Kiowa Tribe
Kooros, Ahmed
Lac Courte Oreillies Band of Lake Superior Ojibwe
Leech Lake Band of Ojibwe
Mandan, Hidatsa and Arikara Nation
Manzanita Band of Diegueno Mission Indians
Manzanita Band of Mission Indians
Marek, Joanna F.
Meloy, Charles
Montana Wyoming Tribal Leaders Council
Morongo Band of Mission Indians
National Congress of American Indians
Navajo Nation
New Mexico Oil and Gas Association
Nez Perce Tribe
Nighthorse Campbell, Honorable Ben
Oneida Tribe
Organized Village of Kake
Paul, Chris A.
Pechanga Band of Luiseno Mission Indians
Plains Pipeline
Public Service Company of New Mexico
Pueblo de San Ildefonso
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of San Felipe
Pueblo of Sandia
Pueblo of Santa Ana
Pueblo of Zia
Quechen Indian Tribe
Questar Southern Trails Pipeline Company
Quileute Indian Tribe
Rosebud Sioux Tribe
Sac and Fox Nation
Sachau, B.
Salt River Pima-Maricopa Indian Community
Salt River Project
San Diego Gas & Electric/Southern Cal Gas Co
San Xavier District of the Tohono O'odham Nation
Santa Clara Pueblo

Sempra Energy
Senate Chamber, State of Colorado
Senator Wayne Allard (Colorado)
Seneca Nation of Indians
Shipps, Thomas H.
Shoshone Business Council
Shoshone-Bannock Tribes
Skokomish Indian Tribe
Southern Ute Indian Tribe
St. Regis Mohawk Tribe
Tanana Chiefs Council
Taos Pueblo
TDX Power (Ron Philemonoff)
Three Affiliated Tribes
Tohono O'odham Nation
Town of Aurelius (Edward Ide)
Tribal Council of the Northern Cheyenne Tribe
Tribes of the Mni Sose Intertribal Water Rights Coalition
Tulalip Tribes
Ute Energy
Ute Indian Tribe of the Uintah and Ouray Reservation
Ute Mountain Ute
Western Business Roundtable
White Mountain Apache Tribe
Yakima Nation
Zuni Tribe

1 ENDNOTES

[1] *See, e.g.,* Comments of the Edison Electric Institute 5-6 (Sept. 4, 2006); Comments of the FAIR Coalition 19 (Sept. 4, 2006).
[2] Comments of the FAIR Coalition 19 (Sept. 4, 2006).
[3] Id.
[4] Comments of the Edison Electric Institute 6 (Sept. 4, 2006).
[5] Id.
[6] Id.
[7] Comments of the FAIR Coalition 21 (Sept. 4, 2006).
[8] Comments of the Isleta, Zia, and Sandia Pueblos 6 (Sept. 1, 2006).
[9] Id (emphasis in the original).
[10] Public Testimony of the Jicarilla Apache Nation 1 (Mar 7-8, 2006)
[11] Id.
[12] Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 19 (May 11, 2006) (emphasis in the original).
[13] Comments Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes and the Pueblo of Zia 13 (Jan. 20, 2006).
[14] Id. (citing U.S. Dep't of Energy, Energy Consumption and Renewable Energy Development Potential on Indian Lands ix (April 2000) *(available at http://www.eia.doe.gov/cneaf/solar.renewables/ilands/ilands.pdf (using information from the 1990 Decennial Census)).*
[15] Id. at 14 (citing U.S. Dep't of Commerce, Bureau of the Census Statistical Brief Housing of American Indians on Reservations - Equipment and Fuels 3, Table (April 1995) *(available at http://www.census.gov/apsd/www/statbrief/sb95_11.pdf)).*
[16] Id. at 12.
[17] National Energy Policy Development Group, National Energy Policy, *viii* (May 2001).
[18] Id. at *vii*.
[19] Id. at 7-1.
[20] Id.
[21] Id. at 7-7 and 7-8.
[22] Id. at 7-5.
[23] Id.
[24] Id. at 7-6.
[25] Id at 7-7 and 7-8.
[26] Id. at 7-12.
[27] Id.
[28] Id.
[29] Id.
[30] Id. at 7-9.
[31] Id. at 7-8 to 7-9.
[32] Id. at 7-9.
[33] 16 U.S.C. § 824p.
[34] 16 U.S.C. § 824p (a)(2).
[35] 42 U.S.C. § 15926 (a).
[36] 42 U.S.C. § 15926 (b)
[37] 42 U.S.C. § 15926 (d).
[38] 16 U.S.C. § 824p (e).
[39] 25 U.S.C. § 3502.
[40] 25 U.S.C. § 3504 (e)
[41] 25 U.S.C. § 3504 (b).
[42] 25 U.S.C. § 3504 (a) and (b).
[43] 71 Fed. Reg. 48626.
[44] 25 U.S.C. § 3504 (c).
[45] Indian Right-of-Way Act of 1948, 62 Stat. 17, codified at 25 U.S.C. §§ 323–328.

[46] The primary allotment act, the General Allotment Act of 1887, also know as the Dawes Act, 24 Stat. 388, authorized the President to allot portions of tribal lands to individual Indians. Individual allotments were to remain in trust for a period of years, allowing the individual time to assimilate, and then would be conveyed in fee to the individual. Tribal lands not assigned to individuals were to be sold as surplus lands. The primary effect of the General Allotment Act was a reduction of Indian held land, for a variety of reasons, from 138 million acres in 1887 to 48 million in 1934. Federal policy reversed course with the passage of the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461 *et seq.*, which ended allotment and restored the status of tribal lands. *See* William C. Canby, Jr., American Indian Law in a Nutshell 19-25 (2nd ed. 1988).
[47] *See e.g.,* 25 U.S.C. § 321; 43 U.S.C. § 961; the Act of August 5, 1882 (22 Stat. 299) (granting a ROW to Arizona Southern Railroad Co. through the Papago Indian Reservation in Arizona); Section 3 of the Act of March 2, 1889 (25 Stat. 852) (granting a ROW to Forest City and Watertown Railroad Co. through the Sioux Indian Reservation); Section 2 of the Act of June 6, 1894 (28 Stat. 87) (granting a ROW to Albany and Astoria Railroad Co. through the Grand Ronde Indian Reservation in Oregon).
[48] *See generally* COHEN's HANDBOOK OF FEDERAL INDIAN LAW 204–220 (2005 ed).
[49] Comments of Manzanita Band of Mission Indians, St. Regis Mohawk Tribe, Three Affiliated Tribes 6 (April 29, 2006).
[50] *See, e.g.,* Comments of the Isleta, Zia, and Sandia Pueblo, May 15, 2006; Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation cover letter (May 11, 2006).
[51] *See. e.g.,* Comments of the Council of Energy Resource Tribes and National Congress of American Indians 2 (Jan. 20, 2006).
[52] *See, e.g.,* Statement of New Mexico Oil & Gas Association 2 (April 18, 2006); Comments of the Edison Electric Institute 2 (May 15, 2006).
[53] *See, e.g.,* Comments of the Manzanita Band of Mission Indians, St. Regis Mohawk Tribe, and Three Affiliated Tribes 3-6 (April 29, 2006) (citations omitted).
[54] *See, e.g.,* Comments of the Manzanita Band of Mission Indians, St. Regis Mohawk Tribe, and Three Affiliated Tribes 6 (April 29, 2006) (citing to Cotton Petroleum v. New Mexico, 490 U.S. 163 (1989)); Comments Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes and the Pueblo of Zia 24 (Jan. 20, 2006).
[55] *See, e.g.,* Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 67 (May 11, 2006).
[56] Comments of the Confederated Tribes of the Umatilla Indian Reservation 4 (Jan. 6, 2006).
[57] Comments of the Pueblo of Santa Ana 5 (May 15, 2006).
[58] *See, e.g.,* Comments of the Leech Lake Band of the Ojibwe 1-2 (Jan. 9, 2006); Comments of the Pueblo of Jemez 4 (Jan. 20, 2006); Comments of the Pechanga Band of Luiseño Mission Indians 7 (May 15, 2006).
[59] Comments of the Manzanita Band of Mission Indians, St. Regis Mohawk Tribe, and Three Affiliated Tribes, Sept. 4, 2006
[60] Indian Right-of-Way Act of 1948, Vol. 62, p. 17, 62 Stat. 17, codified at 25 U.S.C. §§ 323–328.
[61] Historical Research Associates, Inc., Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands, 1948-2006, 4 n. 3, 4, and 5 (July 7, 2006).
[62] Act of March 2, 1899 (30 Stat. 990).
[63] Id.
[64] 25 U.S.C. § 321.
[65] Id.
[66] Act of March 4, 1911, codified at 43 U.S.C. § 961.
[67] Id.
[68] 25 U.S.C. § 323.
[69] For purposes of this discussion, the Indian Reorganization Act (25 U.S.C. § 476) and the Oklahoma Indian Welfare Act (25 U.S.C. § 503) are referred to as the "tribal organization statutes."
[70] 25 U.S.C. § 324.
[71] 25 U.S.C. § 326.
[72] Historical Research Associates, Inc., Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands, 1948-2006, 4 n. 3, 4, and 5 (July 7, 2006).
[73] S. Rep. No. 80-823, (Jan. 14, 1948), reprinted in 1948, U.S.C.C.A.N. 1033, pp. 1034–1036.
[74] Id. at 1036 (preserving existing statutory authority for specific types of ROWs "avoid[s] any possible confusion which may arise, particularly in the period of transition from the old system to the new").

[75] 25 C.F.R. § 256.83 (1939) (Although this regulation is entitled "Consent of Allottees or Tribe," its terms only required that ROW applications be "presented" or "submitted" to tribal governments, and did not explicitly require the consent of the tribal government following such presentation or submission).
[76] 16 Fed. Reg. 8578 (1951).
[77] 25 C.F.R. § 169.3(a), (Originally this regulation was published at 25 C.F.R. Part 256. In 1957, DOI reorganized ROW regulations and placed them under Part 161 of Chapter 25).
[78] In 1967 the Department of the Interior published a proposal to allow the Secretary to grant rights-of-way over lands of tribes that had not organized under the tribal organization statutes, without tribal consent. The House of Representatives Committee on Government Operations issued a Report which concluded " . . . The Secretary's proposal for granting rights-of-way over tribal land without consent of the tribe which owns it violates property rights, democratic principles, and the pattern of modern Indian legislation." HOUSE COMMITTEE ON GOVERNMENT OPERATIONS, DISPOSAL OF RIGHTS IN INDIAN TRIBAL LANDS WITHOUT TRIBAL CONSENT. H. Rep. No. 91-78, at 304 (1969). The proposal was subsequently withdrawn.
[79] 25 U.S.C. § 461.
[80] 25 U.S.C. § 450a.
[81] Id. at § 450(a)(2).
[82] 25 U.S.C. § 3502.
[83] Presidential Proclamation 7500, 66 Fed. Reg. 57641 (Nov. 12, 2001).
[84] Presidential Proclamation 7956, 70 Fed. Reg. 67635 (Nov. 7, 2005).
[85] Executive Order No. 13175, 65 Fed. Reg. 67429 (Nov. 9, 2000).
[86] BLACK'S LAW DICTIONARY 1402 (7th ed. 1999).
[87] COHEN's HANDBOOK OF FEDERAL INDIAN LAW 205 (Aug. 2005 ed.)..
[88] *See* Worcester v. Georgia, 31 U.S. 515, 559 (6 Pet.), 1832.
[89] COHEN's HANDBOOK OF FEDERAL INDIAN LAW 390 (Aug. 2005 ed.).
[90] United States v. 5,677.94 Acres of Land, 162 F. Supp. 108, 110-111 (D. Mont. 1958).
[91] COHEN's HANDBOOK OF FEDERAL INDIAN LAW 214 (Aug. 2005 ed.).
[92] FELIX COHEN, HANDBOOK OF FEDERAL INDIAN LAW 104 (1941) (footnotes omitted) (citing to 25 U.S.C. §§ 311–322 and historical regulations at 25 C.F.R. §§ 256.24, 256.53, and 256.83).
[93] A trust relationship may arise when the United States is required by statute to manage or operate Indian lands or resources. See United States v. Mitchell, 463 U.S. 206 (1983) (specific duties defined by statute and regulation). In order for a trust to exist the three common-law elements of a trust must be present: a trustee (the United States), a beneficiary, and a corpus (timber, lands, funds, etc.).
[94] 25 C.F.R. § 169.12.
[95] Comments of the Confederated Salish and Kootenai Tribes of the Flathead Nation 2 (April 25, 2006).
[96] Comments of the Shoshone-Bannock Tribes 8 (May 12, 2006).
[97] In the case of the Ute Indian Tribe of the Uintah and Ouray Reservation, HRA prepared the request memorandum during the site visit. For the other reservations, the request was circulated prior to HRA's visit.
[98] 33 Fed. Reg. 19807 (Section 161.12).
[99] *See, e.g.,* Comments of FAIR Access to Energy Coalition 2 (May 15, 2006); Comments of Edison Electric Institute 14 (May 15, 2006); Comments of Interstate Natural Gas Association of America 12 (May 15, 2006).
[100] *See, e.g.,* Comments of Interstate Natural Gas Association of America 2 (May 15, 2006).
[101] Comments of the Edison Electric Institute 14 (May 15, 2006).
[102] Comments of FAIR Access to Energy Coalition 2 (May 15, 2006).
[103] Comments of Idaho Power Company 3 (Feb. 15, 2006).
[104] Comments of FAIR Access to Energy Coalition 5 (May 15, 2006).
[105] *See, e.g.,* Comments of Edison Electric Institute 10-11 (May 15, 2006); Comments of Interstate Natural Gas Association of America 2 (May 15, 2006)
[106] Comments of FAIR Access to Energy Coalition 2-3 (May 15, 2006).
[107] Id. at 7-10.
[108] *See, e.g.,* Comments of Idaho Power Company 4 (Feb. 15, 2006); Comments of Edison Electric Institute 14 (May 15, 2006).
[109] *See, e.g.,* Comments of Idaho Power Company 4 (Feb. 15, 2006); Comments of Edison Electric Institute 10 (May 15, 2006).
[110] Comments of Interstate Natural Gas Association of America 9 (May 15, 2006).

[111] *See, e.g.,* Comments of the Quechan Indian Tribe 1-2 (May 15, 2006); Comments of The Confederated Tribes of the Warm Springs Reservation of Oregon 7 (May 15, 2006).
[112] *See generally* Comments of the Jicarilla Apache Nation, 17-21 (May 12, 2006).
[113] *See, e.g.,* Comments of the Isleta, Zia, and Sandia Pueblos 3 (May 15, 2006); Comments of the Jicarilla Apache Nation, 18-19 (May 12, 2006); Comments of Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes and the Pueblo of Zia 3-7 (Jan. 20, 2006).
[114] *See, e.g.,* Id.; Comments of The Confederated Tribes of the Warm Springs Reservation of Oregon 3 (May 15, 2006).
[115] *See, e.g.,* Comments of Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes and the Pueblo of Zia 3-7 (Jan. 20, 2006).
[116] *See, e.g.,* Comments of the Pechanga Band of Luiseño Mission Indians 5 (May 15, 2006).
[117] *See generally* Seneca Leasing Act of 1950, 64 Stat. 442 (Act of Aug. 14, 1950) and Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. § 1774.
[118] *See, e.g.,* Comments of the Isleta, Zia, and Sandia Pueblos 16 (May 15, 2006).
[119] Comments of the Manzanita Band of Mission Indians, St. Regis Mohawk Tribe, and Three Affiliated Tribes, Sept. 4, 2006
[120] Municipal Administrative Services, Inc, 5 and 7 (May 12, 2006) (submitted with comments of the Navajo Nation (May 13, 2006)).
[121] Id.
[122] Id. at 2.
[123] *See, e.g.,* Comments of the Manzanita Band of Mission Indians, St. Regis Mohawk Tribe, and Three Affiliated Tribes 6 (April 29, 2006) (citing Cotton Petroleum v. New Mexico, 490 U.S. 163 (1989)); Comments Pueblo of Isleta, the Mandan, Hidatsa and Arikara Nation, the Pueblo of Sandia, the Shoshone-Bannock Tribes and the Pueblo of Zia 24 (Jan. 20, 2006).
[124] *See, e.g.,* Comments of the Pechanga Band of Luiseño Mission Indians 7 (May 15, 2006); Comments of the Shoshone-Bannock Tribes 15 (May 12, 2006); Comments of the Isleta, Zia, and Sandia Pueblos 3 (May 15, 2006); Comments of the Jicarilla Apache Nation, 13-14 (May 12, 2006).
[125] *See, e.g.,* Comments of the Southern Ute Indian Tribe 5-6 (May 15, 2006); comments of the Affiliated Tribes of Northwest Indians Economic Development Corporation 8 (May 14, 2006).
[126] *See, e.g.,* Comments of the Isleta, Zia, and Sandia Pueblos 6-7 (May 15, 2006); Comments of the Jicarilla Apache Nation, 18-19 (May 12, 2006); Comments of the Shoshone-Bannock Tribes 9 (May 12, 2006).
[127] *See, e.g.,* Comments of the Southern Ute Indian Tribe 5-6 (May 15, 2006); Comments of the Isleta, Zia, and Sandia Pueblos 9 (May 15, 2006).
[128] WINNING NEGOTIATIONS THAT PRESERVE RELATIONSHIPS 3 (Harvard Business School Press, 2004
[129] Uniform Appraisal Standards for Federal Land Acquisitions 30 (5th ed. 2000).
[130] *See generally* Uniform Standards of Professional Appraisal Practice, Standard 1: Real Property Appraisal, Development (July 1, 2006) *(available at* http://commerce.appraisalfoundation.org/html/2006%20USPAP/toc.htm*)*
[131] Comments of Sempra Energy 2 (May 15, 2006).
[132] Comments of the Edison Electric Institute 5 (May 15, 2006).
[133] *See generally* Comments of Interstate Natural Gas Association of America (May 15, 2006); Comments of the Edison Electric Institute (May 15, 2006).
[134] Comments of the Edison Electric Institute 12 (May 15, 2006 and Sept. 4, 2006).
[135] Comments of the Edison Electric Institute 8 (June 21, 2006); Comments of Interstate Natural Gas Association of America 8-10 (May 15, 2006).
[136] Comments of the Edison Electric Institute 8 (May 15, 2006).
[137] Comments of the Shoshone-Bannock Tribes 9 and 15 (May 12, 2006); Comments of the Isleta, Zia, and Sandia Pueblos 6-7 (May 15, 2006); Comments of the Ute Mountain Ute Tribe 2 (May 15, 2006); Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 87 (May 11, 2006).
[138] Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 67 (May 11, 2006).
[139] Comments of the Ute Mountain Ute Tribe 3 (May 15, 2006).
[140] Dale M. Nesbitt, Altos Management Partners, Inc., Impacts on Natural Gas Markets of Charges Assessed for Tribal Rights-of-Way in the Southwestern United States 4 (May 15, 2006) (submitted with comments of the Southern Ute Indian Tribe (May 15, 2006)).
[141] Id.

[142] Charles J. Cicchetti, Pacific Economics Group, The Economic Implications of Navajo Right of Way Fees 8 (May 15, 2006) (submitted with comments of the Navajo Nation (May 13, 2006)).
[143] Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 36-46 (May 11, 2006).
[144] Id.
[145] Comments of the FAIR Access to Energy Coalition 9 (June 16, 2006).
[146] Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 47-50 (May 11, 2006).
[147] Testimony of Federal Energy Regulatory Comm'n Chairman Joseph Kelliher, House Committee on Energy and Commerce, Subcommittee on Energy and Air Quality, summary and 6 (Nov. 2, 2005).
[148] Energy Information Administration, Dep't of Energy, Annual Energy Outlook 147 (2006)
[149] Testimony of Philip D. Wright, Williams Pipeline Company, House Committee on Energy and Commerce, Subcommittee on Energy and Air Quality, 2 (Nov. 2, 2005).
[150] The Brattle Group, Why are Electricity Prices Increasing? 10 (June 2006) (percentages calculated from operation and maintenance costs shown in Figure 2-1) (*available at* http://www.eei.org).
[151] Comments of the Edison Electric Institute 5 (May 15, 2006).
[152] *See, e.g.,* Comments of the Shoshone-Bannock Tribes 15 (May 12, 2006).
[153] *See, e.g.,* Comments of the Edison Electric Institute 2 (May 15, 2006); Comments of Interstate Natural Gas Association of America 3 (May 15, 2006); Comments of Idaho Power Company 2 (May 15, 2006).
[154] Comments of Idaho Power Company 2 (May 15, 2006).
[155] Comments of Interstate Natural Gas Association of America 3 (May 15, 2006).
[156] Comments of the Edison Electric Institute 5 (May 15, 2006).
[157] Id. At 5 n. 2 (citing 5 U.S.C. §§ 551(8) and 558(c), as interpreted by Swinomish Tribal Community v. Federal Energy Regulatory Comm'n, 627 F.2d 499, 506 (D.C. Cir. 1980); Miami MDS Co. v. Federal Communications Comm'n, 14 F.3d 658, 659-60 (D.C. Cir. 1994); and Natural Resources Defense Council, Inc. v. United States Envtl. Protection Agency, 859 F.2d 156, 213 (D.C. Cir. 1988)).
[158] *See, e.g.,* Comments of the Isleta, Zia, and Sandia Pueblos 8 (May 15, 2006); Comments of the Jicarilla Apache Nation 13 (May 15, 2006).
[159] *See, e.g.,* Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 74 (May 11, 2006).
[160] Comments of Edison Electric Institute 3 (Sept. 4, 2006);
[161] *See, e.g.* Comments of Questar Southern Trails Pipeline Company 2 (May 15, 2006); Comments of Bill Barrett Corporation 1 (March 8, 2006).
[162] The Brattle Group, Why are Electricity Prices Increasing? (June 2006) (*available at* http://www.eei.org).
[163] National Commission on Energy Policy, Siting Critical Energy Infrastructure (June 2006) *(available at* http://www.energycommission.org)
[164] The Brattle Group, Why are Electricity Prices Increasing? 9 (June 2006) *(available at http://www.eei.org)*.
[165] Id.
[166] Id. at 52.
[167] Id. at 52-55.
[168] Id. at 64.
[169] National Commission on Energy Policy, Siting Critical Energy Infrastructure 18 (June 2006) (*available at* http://www.energycommission.org)
[170] Id.
[171] Id.
[172] Id.
[173] Comments of the Edison Electric Institute 12 (May 15, 2006).
[174] *See, e.g.,* Comments of Western Business Roundtable 1 (Jan. 20, 2006); Comments of Idaho Power Company 2 (May 15, 2006); Comments of Edison Electric Institute 13 (May 15, 2006); Comments of Interstate Natural Gas Association of America 3 (May 15, 2006).
[175] Comments of the Edison Electric Institute 5 (Sept. 4, 2006)
[176] Comments of the New Mexico Oil and Gas Association 1 (Jan. 20, 2006).
[177] Comments of the Bill Barrett Corporation 2 (Mar. 8, 2006).
[178] Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 61-62 (May 11, 2006).
[179] Comments of the Southern Ute Indian Tribe 4 (May 15, 2006).
[180] Id. at 8.
[181] Comment of Edison Electric Institute, pg 4, (September 4, 2006)
[182] Comments of Interstate Natural Gas Association, pg 4, (Sept. 3, 2006)

[183] Comment of Edison Electric Institute, pg 10, (Sept. 4, 2006)
[184] Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation, 109, (May 11, 2006)
[185] Comments of Greenberg Traurig, pg 2, (Oct. 11, 2006)
[186] *See* Lone Wolf v. Hitchcock, 187 U.S. 553, 564-67 (1903); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56-57 (1978); Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 192 (1989) ("the central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs").
[187] *See* United States v. Celestine, 215 U.S. 278, 285 (1909); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56-57 (1978); United States v. Dion, 476 U.S. 734, 738-39 (1986); and *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998).
[188] *See* Menominee Tribe of Indians v. United States, 391 U.S. 404, 412-13 (1968); United States v. Dion, 476 U.S. 734, 738-39 (1986); and South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343 (1998).
[189] Page 50 of the HRA Report states that the Tribe assigned operation of 21 acquired wells to Red Willow and retained royalty interests in 30 other wells. The Tribe states that it retained royalty interests on all wells operated by Red Willow on the Reservation. Comments of the Southern Ute Indian Tribe 6 (Sept. 2, 2006).
[190] Comments of the Morongo Band of the Mission Indians 6 (Sept. 3, 2006). (the unit of measure stated in the HRA Report is acres but should be miles.)
[191] Comments of the Morongo Band of the Mission Indians 6 (Sept. 3, 2006). (the unit of measure stated in the HRA Report is acres but should be miles.)
[192] Comments of the Navajo Nation 8 (Sept. 1, 2006).
[193] Id. At 9. Page 113 of the HRA Report states that the Navajo Nation had refused all offers to develop its energy reserves from 1978 to 2003. The Navajo Nation states that it granted rights to 254,000 acres to Chuska Energy Company for oil and gas exploration and development under an operating agreement signed in 1987 and had prior agreements with the company in 1983 and 1984.
[194] Historical Research Associates, Inc., Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands - 1948-2006 123 (July 7, 2006).
[195] Comments of Arizona Public Service Company 2-3 (Sept. 3, 2006).
[196] Historical Research Associates, Inc., Historic Rates of Compensation for Rights-of-Way Crossing Indian Lands - 1948-2006 125 (July 7, 2006).
[197] Comments of the Navajo Nation 7-8 (Sept. 1, 2006).
[198] Id. at 8.
[199] Id.
[200] Comments of the Edison Electric Institute 6 (May 15, 2006).
[201] Id. at 9 (May 15, 2006).
[202] Comments of the Edison Electric Institute 17 (Sept. 4, 2006).
[203] U.S. Dep't of Energy, Energy Consumption and Renewable Energy Development Potential on Indian Lands, (2000) (*available at http://www.eia.doe.gov/cneaf/solar.renewables/ilands/toc.html.)*
[204] Comments of the Hopi Tribe 3 (May 14, 2006).
[205] Id.
[206] Comments of Arizona Public Service Company 3-4 (Sept. 3, 2006).
[207] Comments of the Pueblo of Santa Ana 3 (May 15, 2006).
[208] Comments of the San Xavier District of the Tohono O'odham Nation 1 (May 15, 2006).
[209] Comments of the Shoshone-Bannock Tribes of the Fort Hall Reservation 9 (May 12, 2006).
[210] Comments of the Shoshone-Bannock Tribes of the Fort Hall Reservation attachment (May 12, 2006).
[211] Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation 77-85 (May 11, 2006).
[212] 43 U.S.C. § 961.6.
[213] Comments of the Rosebud Sioux Tribe 3-6 (May 15, 2006).

Code of Federal Regulations Currentness
Title 25. Indians
Chapter I. Bureau of Indian Affairs, Department of the Interior
Subchapter H. Land and Water
➡ Part 169. Rights-Of-Way Over Indian Lands (Refs & Annos)

§ 169.1 Definitions.

As used in this Part 169:

(a) Secretary means the Secretary of the Interior or his authorized representative acting under delegated authority. Before proceeding under these regulations anyone desiring a right-of-way should inquire at the Indian Agency, Area Field Office, or other office of the Bureau of Indian Affairs having immediate supervision over the lands involved to determine the identity of the authorized representative of the Secretary for the purposes of this part 169.

(b) Individually owned land means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(c) Tribe means a tribe, band, nation, community, group or pueblo of Indians.

(d) Tribal land means land or any interest therein, title to which is held by the United States in trust for a tribe, or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(e) Government owned land means land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and benefit of Indians and not included in the definitions set out in paragraphs (b) and (d) of this section.

§ 169.2 Purpose and scope of regulations.

(a) Except as otherwise provided in § 1.2 of this chapter, the regulations in this Part 169 prescribe the procedures, terms and conditions under which rights-of-way over and across tribal land, individually owned land and Government owned land may be granted.

(b) Appeals from administrative action taken under the regulations in this Part 169 shall be made in accordance with Part 2 of this chapter.

(c) The regulations contained in this Part 169 do not cover the granting of rights-of-way upon tribal lands within a reservation for the purpose of constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other works which shall constitute a part of any project for which a license is required by the Federal Power Act. The Federal Power Act provides that any license which shall be issued to use tribal lands within a reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such lands. (16 U.S.C. 797(e)). In the case of tribal lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), the Federal Power Act requires that annual charges for the use of such tribal lands under any license issued by the Federal Power Commission shall be subject to the approval of the tribe (16 U.S.C. 803(e)).

§ 169.3 Consent of landowners to grants of right-of-way.

(a) No right-of-way shall be granted over and across any tribal land, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the tribe.

(b) Except as provided in paragraph (c) of this section, no right-of-way shall be granted over and across any individually owned lands, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the owner or owners of such lands and the approval of the Secretary.

(c) The Secretary may issue permission to survey with respect to, and he may grant rights-of-way over

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and across individually owned lands without the consent of the individual Indian owners when

(1) The individual owner of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant;

(3) The whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant;

(4) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the grant will cause no substantial injury to the land or any owner thereof;

(5) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

§ 169.4 Permission to survey.

Anyone desiring to obtain permission to survey for a right-of-way across individually owned, tribal or Government owned land must file a written application therefor with the Secretary. The application shall adequately describe the proposed project, including the purpose and general location, and it shall be accompanied by the written consents required by § 169.3, by satisfactory evidence of the good faith and financial responsibility of the applicant, and by a check or money order of sufficient amount to cover twice the estimated damages which may be sustained as a result of the survey. With the approval of the Secretary, a surety bond may be substituted in lieu of a check or money order accompanying an application, provided the company issuing the surety bond is licensed to do business in the State where the land to be surveyed is located. The application shall contain an agreement to indemnify the United States, the owners of the land, and occupants of the land, against liability for loss of life, personal injury and property damage occurring because of survey activities and caused by the applicant, his employees, contractors and their employees, or subcontractors and their employees. When the applicant is an agency or instrumentality of the Federal or a State Government and is prohibited by law from depositing estimated damages in advance or agreeing to indemnification, the requirement for such a deposit and indemnification may be waived providing the applicant agrees in writing to pay damages promptly when they are sustained. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the application was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required in this section, a reference to the date and place of such filing, accompanied by proof of current financial responsibility and good faith, will be sufficient. Upon receipt of an application made in compliance with the regulations of this Part 169, the Secretary may grant the applicant written permission to survey.

§ 169.5 Application for right-of-way.

Written application identifying the specific use requested shall be filed in duplicate with the Secretary. The application shall cite the statute or statutes under which it is filed and the width and length of the desired right-of-way, and shall be accompanied by satisfactory evidence of the good faith and financial responsibility of the applicant. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the

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corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the applicant was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required by this section, a reference to the date and place of such filing will be sufficient. Except as otherwise provided in this section, the application shall be accompanied by a duly executed stipulation, in duplicate, expressly agreeing to the following:

(a) To construct and maintain the right-of-way in a workmanlike manner.

(b) To pay promptly all damages and compensation, in addition to the deposit made pursuant to § 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land on account of the survey, granting, construction and maintenance of the right-of-way.

(c) To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

(d) To restore the lands as nearly as may be possible to their original condition upon the completion of construction to the extent compatible with the purpose for which the right-of-way was granted.

(e) To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.

(f) To take soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way.

(g) To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.

(h) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(i) That upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition.

(j) To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

When the applicant is the U.S. Government or a State Government or an instrumentality thereof and is prohibited by law from executing any of the above stipulations, the Secretary may waive the requirement that the applicant agree to any stipulations so prohibited.

§ 169.6 Maps.

(a) Each application for a right-of-way shall be accompanied by maps of definite location consisting of an original on tracing linen or other permanent and reproducible material and two reproductions thereof. The field notes shall accompany the application, as provided in § 169.7. The width of the right-of-way shall be clearly shown on the maps.

(b) A separate map shall be filed for each section of 20 miles of right-of-way, but the map of the last section may include any excess of 10 miles or less.

(c) The scale of maps showing the line of route normally should be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when necessary and when an increase in scale cannot be avoided through the use of separate field notes, but the scale must not be increased to such extent as to make the maps too cumbersome for convenient

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handling and filing.

(d) The maps shall show the allotment number of each tract of allotted land, and shall clearly designate each tract of tribal land affected, together with the sections, townships, and ranges in which the lands crossed by the right-of-way are situated.

§ 169.7 Field notes.

Field notes of the survey shall appear along the line indicating the right-of-way on the maps, unless the maps would be too crowded thereby to be easily legible, in which event the field notes may be filed separately on tracing linen in such form that they may be folded readily for filing. Where field notes are placed on separate tracing linen, it will be necessary to place on the maps only a sufficient number of station numbers so as to make it convenient to follow the field notes. The field notes shall be typewritten. Whether endorsed on the maps or filed separately, the field notes shall be sufficiently complete so as to permit the line indicating the right-of-way to be readily retraced on the ground from the notes. They shall show whether the line was run on true or magnetic bearings, and, in the latter case, the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

§ 169.8 Public survey.

(a) The terminal of the line of route shall be fixed by reference of course and distance to the nearest existing corner of the public survey. The maps, as well as the engineer's affidavit and the certificate, shall show these connections.

(b) When either terminal of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey if not more than 6 miles distant from it, and the single bearing and distance from the terminal point to the corner computed and noted on the maps, in the engineer's affidavit, and in the certificate. The notes and all data for the computation of the traverse must be given.

§ 169.9 Connection with natural objects.

When the distance to an established corner of the public survey is more than 6 miles, this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The maps must show the position of such mark, and course and distance to the terminus. There must be given an accurate description of the mark and full data concerning the traverse, and the engineer's affidavit and the certificate on the maps must state the connections.

§ 169.10 Township and section lines.

Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner shall be noted. The maps shall show these distances and the station numbers at the points of intersections. The field notes shall show these distances and the station numbers.

§ 169.11 Affidavit and certificate.

(a) There shall be subscribed on the maps of definite location an affidavit executed by the engineer who made the survey and a certificate executed by the applicant, both certifying to the accuracy of the survey and maps and both designating by termini and length in miles and decimals, the line of route for which the right-of-way application is made.

(b) Maps covering roads built by the Bureau of Indian Affairs which are to be transferred to a county or State government shall contain an affidavit as to the accuracy of the survey, executed by the Bureau highway engineer in charge of road construction, and a certificate by the State or county engineer or other authorized State or county officer accepting the right-of-way and stating that he is satisfied as to the accuracy of the survey and maps.

§ 169.12 Consideration for right-of-way grants.

Except when waived in writing by the landowners or their representatives as defined in § 169.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this Part 169 shall be not less than but not limited to the fair market value of the rights granted, plus severance damages, if any, to the remaining estate. The Secretary shall obtain and advise the landowners of the appraisal information to assist them (the landowner or landowners) in negotiations for a right-of-way or renewal.

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§ 169.13 Other damages.

In addition to the consideration for a grant of right-of-way provided for by the provisions of § 169.12, the applicant for a right-of-way will be required to pay all damages incident to the survey of the right-of-way or incident to the construction or maintenance of the facility for which the right-of-way is granted.

§ 169.14 Deposit and disbursement of consideration and damages.

At the time of filing an application for right-of-way, the applicant must deposit with the Secretary the total estimated consideration and damages, which shall include consideration for the right-of-way, severance damages, damages caused during the survey, and estimated damages to result from construction less any deposit previously made under § 169.4. In no case shall the amount deposited as consideration for the right-of-way over any parcel be less than the amount specified in the consent covering that parcel. If in reviewing the application, the Secretary determines that the amounts deposited are inadequate to compensate the owners, the applicant shall increase the deposit to an amount determined by the Secretary to be adequate. The amounts so deposited shall be held in a "special deposit" account for distribution to or for the account of the landowners and authorized users and occupants of the land. Amounts deposited to cover damages resulting from survey and construction may be disbursed after the damages have been sustained. Amounts deposited to cover consideration for the right-of-way and severance damages shall be disbursed upon the granting of the right-of-way. Any part of the deposit which is not required for disbursement as aforesaid shall be refunded to the applicant promptly following receipt of the affidavit of completion of construction filed pursuant to § 169.16.

§ 169.15 Action on application.

Upon satisfactory compliance with the regulations in this Part 169, the Secretary is authorized to grant the right-of-way by issuance of a conveyance instrument in the form approved by the Secretary. Such instrument shall incorporate all conditions or restrictions set out in the consents obtained pursuant to § 169.3. A copy of such instrument shall be promptly delivered to the applicant and thereafter the applicant may proceed with the construction work. Maps of definite location may be attached to and incorporated into the conveyance document by reference. In the discretion of the Secretary, one conveyance document may be issued covering all of the tracts of land traversed by the right-of-way, or separate conveyances may be made covering one or several tracts included in the application. A duplicate original copy of the conveyance instrument, permanent and reproducible maps, a copy of the application and stipulations, together with any other pertinent documents shall be transmitted by the Secretary to the office of record for land documents affecting the land covered by the right-of-way, where they will be recorded and filed.

§ 169.16 Affidavit of completion.

Upon the completion of the construction of any right-of-way, the applicant shall promptly file with the Secretary an affidavit of completion, in duplicate, executed by the engineer and certified by the applicant. The Secretary shall transmit one copy of the affidavit to the office of record mentioned in § 169.15. Failure to file an affidavit in accordance with this section shall subject the right-of-way to cancellation in accordance with § 169.20.

§ 169.17 Change of location.

If any change from the location described in the conveyance instrument is found to be necessary on account of engineering difficulties or otherwise, amended maps and field notes of the new location shall be filed, and a right-of-way for such new route or location shall be subject to consent, approval, the ascertainment of damages, and the payment thereof, in all respects as in the case of the original location. Before a revised conveyance instrument is issued, the applicant shall execute such instruments deemed necessary by the Secretary extinguishing the right-of-way at the original location. Such instruments shall be transmitted by the Secretary to the office of record mentioned in § 169.15 for recording and filing.

§ 169.18 Tenure of approved right-of-way grants.

All rights-of-way granted under the regulations in this Part 169 shall be in the nature of easements for the periods stated in the conveyance instrument. Except as otherwise determined by the Secretary and stated in the conveyance instrument, rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), for railroads, telephone

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lines, telegraph lines, public roads and highways, access roads to homesite properties, public sanitary and storm sewer lines including sewage disposal and treatment plants, water control and use projects (including but not limited to dams, reservoirs, flowage easements, ditches, and canals), oil, gas, and public utility water pipelines (including pumping stations and appurtenant facilities), electric power projects, generating plants, switchyards, electric transmission and distribution lines (including poles, towers, and appurtenant facilities), and for service roads and trails essential to any of the aforestated use purposes, may be without limitation as to term of years; whereas, rights-of-way for all other purposes shall be for a period of not to exceed 50 years, as determined by the Secretary and stated in the conveyance instrument.

§ 169.19 Renewal of right-of-way grants.

On or before the expiration date of any right-of-way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or status of the original right-of-way grant, the applicant may file with his application a certificate under oath setting out this fact, and the Secretary, with the consent required by § 169.3, may thereupon extend the grant for a like term of years, upon the payment of consideration as set forth in § 169.12. If any change in the size, type, or location of the right-of-way is involved, the application for renewal shall be treated and handled as in the case of an original application for a right-of-way.

§ 169.20 Termination of right-of-way grants.

All rights-of-way granted under the regulations in this part may be terminated in whole or in part upon 30 days written notice from the Secretary mailed to the grantee at its latest address furnished in accordance with § 169.5(j) for any of the following causes:

(a) Failure to comply with any term or condition of the grant or the applicable regulations;

(b) A nonuse of the right-of-way for a consecutive 2-year period for the purpose for which it was granted;

(c) An abandonment of the right-of-way.

If within the 30-day notice period the grantee fails to correct the basis for termination, the Secretary shall issue an appropriate instrument terminating the right-of-way. Such instrument shall be transmitted by the Secretary to the office of record mentioned in § 169.15 for recording and filing.

§ 169.21 Condemnation actions involving individually owned lands.

The facts relating to any condemnation action to obtain a right-of-way over individually owned lands shall be reported immediately by officials of the Bureau of Indian Affairs having knowledge of such facts to appropriate officials of the Interior Department so that action may be taken to safeguard the interests of the Indians.

§ 169.22 Service lines.

(a) An agreement shall be executed by and between the landowner or a legally authorized occupant or user of individually owned land and the applicant before any work by the applicant may be undertaken to construct a service line across such land. Such a service line shall be limited in the case of power lines to a voltage of 14.5 kv. or less except lines to serve irrigation pumps and commercial and industrial uses which shall be limited to a voltage not to exceed 34.5 kv. A service line shall be for the sole purpose of supplying the individual owner or authorized occupant or user of land, including schools and churches, with telephone, water, electric power, gas, and other utilities for use by such owner, occupant, or user of the land on the premises.

(b) A similar agreement to that required in paragraph (a) of this section shall be executed by the tribe or legally authorized occupant or user of tribal land and the applicant before any work by the applicant may be undertaken for the construction of a service line across tribal land. A service line shall be for the sole purpose of supplying an occupant or user of tribal land with any of the utilities specified in paragraph (a) of this section. No agreement under this paragraph shall be valid unless its execution shall have been duly authorized in advance of construction by the governing body of the Indian tribe whose land is affected, unless the contract under which the occupant or user of the land obtained his rights specifically authorizes such occupant or user to enter into service agreements for utilities without further tribal consent.

(c) In order to encourage the use of telephone, water, electric power, gas and other utilities and to facilitate

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the extension of these modern conveniences to sparsely settled Indian areas without undue costs the agreement referred to in paragraph (a) of this section shall only be required to include or have appended thereto, a plat or diagram showing with particularity the location, size, and extent of the line. When the plat or diagram is placed on a separate sheet it shall bear the signature of the parties. In case of tribal land, the agreement shall be accompanied by a certified copy of the tribal authorization when required.

(d) An executed copy of the agreement, together with a plat or diagram, and in the case of tribal land, an authenticated copy of the tribal authorization, when required, shall be filed with the Secretary within 30 days after the date of its execution. Failure to meet this requirement may result in the removal of improvements placed on the land at the expense of the party responsible for the placing of such improvements and subject such party to the payment of damages caused by his unauthorized act.

§ 169.23 Railroads.

(a) The Act of March 2, 1899 (30 Stat. 990), as amended by the Acts of February 28, 1902 (32 Stat. 50), June 21, 1906 (34 Stat. 330), and June 25, 1910 (36 Stat. 859; 25 U.S.C. 312-318); the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934); and the Act of March 3, 1909 (35 Stat. 781), as amended by the Act of May 6, 1910 (36 Stat. 349; 25 U.S.C. 320), authorize grants of rights-of-way across tribal, individually owned and Government-owned land, except in the State of Oklahoma, for railroads, station buildings, depots, machine shops, side tracks, turnouts, and water stations; for reservoirs, material or ballast pits needed to the construction, repair, and maintenance of railroads; and for the planting and growing of trees to protect railroad lines. Rights-of-way granted under the above acts shall be subject to the provisions of this section as well as other pertinent sections of this Part 169. Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) Rights-of-way for railroads shall not exceed 50 feet in width on each side of the centerline of the road, except where there are heavy cuts and fills, when they shall not exceed 100 feet in width on each side of the road. The right-of-way may include grounds adjacent to the line for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed 200 feet in width by a length of 3,000 feet, with no more than one station to be located within any one continuous length of 10 miles of road.

(c) Short spurs and branch lines may be shown on the map of the main line, separately described by termini and length. Longer spurs and branch lines shall be shown on separate maps. Grounds desired for station purposes may be indicated on the map of definite location but separate plats must be filed for such grounds. The maps shall show any other line crossed, or with which connection is made. The station number shall be shown on the survey thereof at the point of intersection. All intersecting roads must be represented in ink of a different color from that used for the line for which application is made.

(d) Plats of railroad station grounds shall be drawn on a scale of 400 feet to an inch, and must be filed separately from the line of route. Such plats shall show enough of the line of route to indicate the position of the tract with reference thereto. Each station ground tract must be located with respect to the public survey as provided in § 169.8 and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) If any proposed railroad is parallel to, and within 10 miles of, a railroad already built or in course of construction, it must be shown wherein the public interest will be promoted by the proposed road. Where the Interstate Commerce Commission has passed on this point, a certified copy of its findings must be filed with the application.

(f) The applicant must certify that the road is to be operated as a common carrier of passengers and freight.

(g) The applicant shall execute and file, in duplicate, a stipulation obligating the company to use all precautions possible to prevent forest fires and to suppress such fires when they occur, to construct and maintain passenger and freight stations for each Government townsite, and to permit the crossing, in a manner satisfactory to the Government officials in charge, of the right-of-way by canals, ditches, and other projects.

(h) A railroad company may apply for sufficient land for ballast or material pits, reservoirs, or tree planting to aid in the construction or maintenance of the road. The authority to use any land for such purposes shall terminate upon abandonment or upon failure to use

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the land for such purposes for a continuous period of 2 years.

§ 169.24 Railroads in Oklahoma.

(a) The Act of February 28, 1902 (32 Stat. 43), authorizes right-of-way grants across tribal and individually owned land in Oklahoma. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this Part 169. Except when otherwise determined by the Secretary, railroad rights-of-way in Oklahoma granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) One copy on tracing linen of the map of definite location showing the line of route and all lands included within the right-of-way must be filed with the Secretary. When tribal lands are involved, a copy of the map must also be filed with the tribal council.

(c) Before any railroad may be constructed or any lands taken or condemned for any of the purposes set forth in section 13 of the Act of February 28, 1902 (32 Stat. 47), full damages shall be paid to the Indian owners.

(d) After the maps have been filed, the matter of damages shall be negotiated by the applicant directly with the Indian owners. If an amicable settlement cannot be reached, the amount to be paid as compensation and damages shall be fixed and determined as provided in the statute. If court proceedings are instituted, the facts shall be reported immediately as provided in § 169.21.

§ 169.25 Oil and gas pipelines.

(a) The Act of March 11, 1904 (33 Stat. 65), as amended by the Act of March 2, 1917 (39 Stat. 973; 25 U.S.C. 321), authorizes right-of-way grants for oil and gas pipelines across tribal, individually owned and Government-owned land. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this Part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) shall also be subject to the provisions of this section.

(b) Rights-of-way, granted under aforesaid Act of March 11, 1904, as amended, for oil and gas pipelines, pumping stations or tank sites shall not extend beyond a term of 20 years and may be extended for another period of not to exceed 20 years following the procedures set out in § 169.19 of this part.

(c) All oil or gas pipelines, including connecting lines, shall be buried a sufficient depth below the surface of the land so as not to interfere with cultivation. Whenever the line is laid under a road or highway, the right-of-way for which has been granted under an approved application pursuant to an act of Congress, its construction shall be in compliance with the applicable Federal and State laws; during the period of construction, at least one-half the width of the road shall be kept open to travel; and, upon completion, the road or highway shall be restored to its original condition and all excavations shall be refilled. Whenever the line crosses a ravine, canyon, or waterway, it shall be laid below the bed thereof or upon such superstructure as will not interfere with the use of the surface.

(d) The size of the proposed pipeline must be shown in the application, on the maps, and in the engineer's affidavit and applicant's certificate. The application and maps shall specify whether the pipe is welded, screw-joint, dresser, or other type of coupling. Should the grantee of an approved right-of-way desire at any time to lay additional line or lines of pipe in the same trench, or to replace the original line with larger or smaller pipe, written permission must first be obtained from the Secretary and all damages to be sustained by the owners must be paid in advance in the amount fixed and determined by the Secretary.

(e) Applicants for oil or gas pipeline rights-of-way may apply for additional land for pumping stations or tank sites. The maps shall show clearly the location of all structures and the location of all lines connecting with the main line. Applicants for lands for pumping stations or tank sites shall execute and file a stipulation agreeing as follows:

(1) Upon abandonment of the right-of-way to level all dikes, fire-guards, and excavations and to remove all concrete masonry foundations, bases, and structural works and to restore the land as nearly as may be possible to its original condition.

(2) That a grant for pumping station or tank site purposes shall be subservient to the owner's right to remove or authorize the removal of oil, gas, or other mineral deposits; and that the structures

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for pumping station or tank site will be removed or relocated if necessary to avoid interference with the exploration for or recovery of oil, gas, or other minerals.

(f) Purely lateral lines connecting with oil or gas wells on restricted lands may be constructed upon filing with the Secretary a copy of the written consent of the Indian owners and a blueprint copy of a map showing the location of the lateral. Such lateral lines may be of any diameter or length, but must be limited to those used solely for the transportation of oil or gas from a single tract of tribal or individually owned land to another lateral or to a branch of the main line.

(g) The applicant, by accepting a pipeline right-of-way, thereby agrees that the books and records of the applicant shall be open to inspection by the Secretary at all reasonable times, in order to obtain information pertaining in any way to oil or gas produced from tribal or individually owned lands or other lands under the jurisdiction of the Secretary.

§ 169.26 Telephone and telegraph lines; radio, television, and other communications facilities.

(a) The Act of February 15, 1901 (31 Stat. 790), as amended by the Act of March 4, 1940 (54 Stat. 41; 43 U.S.C. 959); the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961); and the Act of March 3, 1901 (31 Stat. 1083; 25 U.S.C. 319), authorize right-of-way grants across tribal, individually owned, and Government-owned land for telephone and telegraph lines and offices, for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities. Rights-of-way granted under these acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(c) No right-of-way shall be granted for a width in excess of 50 feet on each side of the centerline, unless special requirements are clearly set forth in the application which fully justify a width in excess of 50 feet on each side of the centerline.

(d) Applicants engaged in the general telephone and telegraph business may apply for additional land for office sites. The maps showing the location of proposed office sites shall be filed separately from those showing the line of route, and shall be drawn to a scale of 50 feet to an inch. Such maps shall show enough of the line of route to indicate the position of the tract with reference thereto. The tract shall be located with respect to the public survey as provided in § 169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) Rights-of-way for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, shall be limited to 200 feet on each side of the centerline of such lines and poles; radio and television, and other forms of communication transmitting, relay, and receiving structures and facilities shall be limited to an area not to exceed 400 feet by 400 feet.

§ 169.27 Power projects.

(a) The Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961), authorizes right-of-way grants across tribal, individually owned and Government-owned land for electrical poles and lines for the transmission and distribution of electrical power. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) shall also be subject to the provisions of this section.

(b) All applications, other than those made by power-marketing agencies of the Department of the Interior, for authority to survey, locate, or commence construction work on any project for the generation of electric power, or the transmission or distribution of electrical power of 66 kV or higher involving Government-owned lands shall be referred to the Office of the Assistant Secretary of the Interior for Water and Power Resources or such other agency as may be designated for the area involved, for consideration of the relationship of the proposed project to the power development program of the United States. Where the proposed project will not conflict with the program of the United States, the

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Secretary, upon notification to the effect, may then proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the project in order to eliminate conflicts with the power development program of the United States, the Secretary shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application.

(c) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(d) Rights-of-way for power lines shall be limited to those widths which can be justified and in no event shall exceed a width of 200 feet on each side of the centerline.

(e) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision, for avoiding inductive interference between any project transmission line or other project works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(f) An applicant for a right-of-way for a transmission line across Government-owned lands having a voltage of 66 kV or more must, in addition to the stipulation required by § 169.5, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) The applicant agrees that, in the event it becomes necessary for the United States to acquire the applicant's transmission line or facilities constructed on or across such right-of-way, the United States reserves the right to acquire such line or facilities at a sum to be determined upon by a representative of the applicant, a representative of the Secretary of the Interior, and a third representative to be selected by the other two for the purpose of determining the value of such property thus to be acquired by the United States.

(2) To allow the Department of the Interior to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the grant for the transmission of electrical power in connection with the applicant's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the applicant and the applicant shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the applicant for the transmission of electrical power in connection with the applicant's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the applicant to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the applicant's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the applicant's line will not be impaired.

(iv) After any interconnection is completed, the applicant shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the applicant's control between the applicant's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the applicant will be operated in parallel.

(vi) The transmission of electrical power by the Department over the applicant's line will be

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effected in such manner and quantity as will not interfere unreasonably with the applicant's use and operation of the line in accordance with the applicant's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The applicant will not be obligated to allow the transmission over its line by the Department of electrical power to any person receiving service from the applicant on the date of the filing of the application for a grant, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the applicant an equitable share of the total monthly cost of maintaining and operating the part of the applicant's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the applicant's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the applicant's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the applicant that surplus capacity is available for utilization by the Department, the applicant needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the applicant may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the applicant's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the grant, the applicant desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission by the Department of electrical power over the applicant's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the applicant and the Secretary of the Interior or his designee.

(g) Applicants may apply for additional lands for generating plants and appurtenant facilities. The lands desired for such purposes may be indicated on the maps showing the definite location of the right-of-way, but separate maps must be filed therefor. Such maps shall show enough of the line of route to indicate the position of the tract with respect to said line. The tract shall be located with respect to the public survey as provided in § 169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

§ 169.28 Public highways.

(a) The appropriate State or local authorities may apply under the regulations in this part 169 for authority to open public highways across tribal and individually owned lands in accordance with State laws, as authorized by the Act of March 3, 1901 (31 Stat. 1084; 25 U.S.C. 311).

(b) In lieu of making application under the regulations in this part 169, the appropriate State or local authorities in Nebraska or Montana may, upon compliance with the requirements of the Act of March 4, 1915 (38 Stat. 1188), lay out and open public highways in accordance with the respective laws of those States. Under the provisions of that act, the applicant must serve the Secretary with notice of intention to open the proposed road and must submit a map of definite location on tracing linen showing the width of the proposed road for the approval of the Secretary prior to the laying out and opening of the road.

(c) Applications for public highway rights-of-way over and across roadless and wild areas shall be considered in accordance with the regulations contained in part 265 of this chapter.

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Current through March 15, 2007; 72 FR 12121
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MEC SOF EXH 40

Ehxibit H

August 19, 1981

ASSISTANT
Area Director, Phoenix

Mohave Electric Distribution Line to Havasupai Tribe

Superintendent, Truxton Canon Agency

The Havasupai Tribal Council, by Resolution No. 17-81 rescinded its previous action evidenced by Resolution 26-77 which had authorized the Superintendent, Truxton Canon Agency to grant a right-of-way to Mohave Electric Cooperative. Even though the Resolution 26-77 had been adopted on September 10, 1977, the right-of-way was never granted by the Superintendent. There were reasons for this, some of which were; no map of survey was made, no appraisal was made, the actual route for the line was not finally determined. But, whatever the reasons, the grant of easement was not made prior to May 29, 1981, the date when the Havasupai Tribe passed Resolution 17-81. Having no grant of right-of-way, there is no authority to enter into any construction contract or to begin any construction.

After May 29, 1981, the Superintendent no longer had any authority to grant an easement across Havasupai lands. Section 16 of the Indian Reorganization Act, 25 USC 476, provides that the Constitutions of those Tribes accepting and organizing under the IRA shall vest the Tribe with the right and power ". . . to prevent the . . ." encumbrance of tribal lands, interest in lands, or other tribal assets without the consent of the Tribe." The Havasupai Tribe is an IRA tribe and is vested with that power. Therefore, as long as the Tribe retains its position no grant of right-of-way may be made.

The Resolution 17-81 states the Tribe will consider authorization of a right-of-way easement upon receipt and review of an accurate map (map of definite location), updated archaeological survey and an appraisal of the right-of-way. This is not an unreasonable position except perhaps the requirement for an appraisal. We discuss that subject below. All of those things are normally required by the regulations before there can be any grant of right-of-way and subsequent construction. These requirements have been stated, perhaps annually, for the last five years by the Real Property Branch answering various inquires from the Cooperative or BIA personnel.

A memorandum of June 17, 1981, from your office states that the Tribe has been presented with all of the information required with the exception of the appraisal. Having been alerted to certain factors it did not previously know or was not attuned to, our Real Estate Services Branch has reviewed its previous position concerning the need for an appraisal of the right-of-way. They have now found that neither the Havasupai nor the Hualapai Tribe have compensable interest, since each is the primary

beneficiary of the line across its own land. (It could be arguable whether or not the Hualapai Tribe has a compensable interest, but, the question is moot since it has waived any compensation).

If the BIA were the primary beneficiary of this proposed line, or if others than the Tribe and tribal members were, there is no question an appraisal would be required. The rationale is that the Tribe must be advised of the value of its land in such case, even though it may wish to waive any damages. It's felt the BIA should advise the Tribe of the value of the rights it is giving up. But, if the Tribe and its members are the primary beneficiaries, the Tribe is not giving up any rights. It is using the land for its own benefit. It's true the Co-operative would (or may, depending on the point of view) receive a certain benefit from a right-of-way, but it would not pay for the right-of-way. It would expect the customer to provide the right-of-way. This particular case falls in the latter category. The beneficiary is to be the Tribe and its members. Therefore, there are no compensable rights being given away by the grant. It follows there is no need for an appraisal to be made on Havasupai lands.

The grant of easement over the Hualapai Reservation, although differing slightly, falls in the same category. Its grant of right-of-way is also primarily to benefit itself and its members. It's true that Havasupai and perhaps other users in between the two reservations will also benefit but the burden to the Hualapai lands will be no greater because of that fact. One would have to have a fertile imagination to distinguish a value that the Havasupai Tribe would be giving up because of the services granted to others as opposed to those retained on the reservation. The Hualapai will require the pole line whether or not it is extended to the Havasupai Reservation. Therefore, no appraisal is required for the Hualapai grant either.

If the Havasupai Tribal Council has been presented with an adequate map of definite location, an archaeological clearance and an environmental assessment which indicates no significant impact on the human environment requiring an EIS, and if it has no constructive changes or suggestions, then it should be advised that it must now make a final determination whether or not it wishes this pole line to furnish it dependable power. If so, it must authorize the grant of right-of-way resolution. If not, we will drop the project at the Hualapai Reservation boundary. The Council should also be fully advised of the condition of the Long Mesa generator and its life expectancy so that it may make a well informed decision on this vitally important issue.

The Bureau has expended large sums to furnish power to the Tribe from the Long Mesa generator. How long this will continue is uncertain. The BIA is now ready and willing to put out a large sum of money to substitute a dependable power supply for the generator. We hope they will accept it, but if not, we will have to abide by the Havasupai Tribal Council decision.

/s/ William P. Ragsdale

cc: Facilities Management, PAO
Chairman, Havasupai Tribal Council

MEC SOF EXH 41

SURNAME
Lund

Facility Management
602-261-4145

October 11, 1978

Mrs. Sylvia P. Tompkins
Director, Public Utilities
Management Division
General Services Administration (GSA)
Washington, D.C. 20406

Dear Mrs. Tompkins:

We have received your letter of September 20, 1978, regarding the Havasupai-Hualapai utility contract. In addition, we have also received a copy of a letter from R.E.A. regarding suggested modifications to the draft proposal.

As mentioned in your letter, you have requested a copy of the proposed rights-of-way for the project. To date, an appraisal of the portion to be built on the Hualapai Reservation has been completed and is included for your file. Portions of the proposed line are located on private property and state grazing lands and are noted on the enclosed map as "Boquivas Cattle Company." An additional portion, formerly under the jurisdiction of the Kaibab National Forest has been granted to the Havasupai Tribe since the time of the Hualapai appraisal.

As noted in the proposal, Mohave Electric Cooperative, Inc., is charged with obtaining easements and rights-of-way. This they are apparently reluctant to do, due to the costs involved, until they are reasonably assured of a contract.

An appraisal for approximately eight miles of line on the Havasupai Reservation will have to be made prior to granting a right-of-way on that portion of the line. This is also noted on the map.

Please be advised that if the project were funded by Congressional appropriation, it would be constructed by the Bureau of Indian Affairs. A contract would only be required for delivery of energy at a primary metering point.

Mr. Charles D. Wahl's concern regarding construction of facilities on Indian Reservations can be dealt with by constructing the line to Havasupai off the Hualapai Reservation. In fact, the line would be less costly to build. In this instance, only the eight miles on the Havasupai Reservation would be on Indian land. Service could be provided to the Frasier Wells area (Hualapai) by a short spur line.

It is requested that negotiations be left open until decisions are made by M.N.C. regarding this latter course of action.

Sincerely yours,

/Sgd/ Curtis Geiogamah
Assistant Area Director

Enclosures

cc: Forrest Gerard, Asst. Sec. of Ind. Affairs.

Lund:nc

MEC SOF EXH 42

Fa. Highmb.

HUALAPAI TRIBAL COUNCIL

P.O. BOX 168 • PEACH SPRINGS, ARIZONA 86434 • 602 769-2216

The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other: in doing so happiness and contentment was achieved then, as it should be now.

The connecting of the Hair makes them one person; for happiness or contentment can not be achieved without each other.

The Canyons are represented by [illegible]urples in the middle g[illegible]ere the people were c[illegible]hese canyons are s[illegible]d should be so treated a[illegible]s.

The Reservation is pictured to represent the land that is ours, treat it well.

The Reservation is our heritage and the heritage of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible -- the plants don't grow -- there will be no life -- nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us.

T[illegible] around the symbol [illegible]ees, representing our [illegible]lapai -- PEOPLE OF T[illegible]LL PINES --.

October 25,1978

Mr. Curtis Geiogamah, Assistant Area Director
Facility Management
Bureau of Indian Affairs, Phoenix Area Office
P.O. BOX 7007
Phoenix, Arizona 85011

RE: Mohave Electric Cooperative, Inc.,
Havasupai-Hualapai Reservations

Dear Mr. Geiogamah:

I write you in regard to your letter of October 11, 1978, addressed to Mrs. Sylvia P. Tompkins, Director, Public Utilities of General Services Administration.

The Hualapai Tribe most seriously objects to your recommendation in that letter that the power line be constructed outside of the Hualapai Reservation. The obligation of the Bureau of Indian Affairs in exercising the trust responsibility of the United States toward the Hualapai Tribe is no less than its responsibility toward the Havasupai Tribe. The negotiations for the right-of-way on the Hualapai Reservation was made with the understanding that the Hualapai Tribe would receive the benefit of the use of the line as it crossed the Hualapai Reservation. More than the "Frazier Wells area" would be serviced in the future.

Whatever the recommendation of the Hualapai Tribal Council upon a reconsideration of the issue, the minimum obligation of the Bureau of Indian Affairs is to advise the Hualapai Tribe of the purported problems which have been raised and to seek the advise of the Tribal Council as to the position that ought to be taken by the Bureau of Indian Affairs. This was not done. If now the GSA and Mohave Electric Cooperative feel relieved of any obligation to the Hualapai Tribe, the burden must be borne very heavily by the Bureau of Indian Affairs.

The letter from Mr. Wahl, attorney for Mohave Electric Cooperative, Inc., to Mrs. Tompkins dated August 16, 1978, misplaces the brunt of the memorandum and order by Judge Copple in the case of Salt River Project v. Navajo Tribe. The Judge's Opinion is that case dealt only with jurisdictional aspects of

the action brought by the Salt River Project. In no way can it be said that the position of the Salt River Project is without appeal outside of Tribal Court. Secretarial administrative determination in regard to disputes between the parties pursuant to the Code of Federal Regulations would be protective of the parties. Indeed, under the Administrative Procedures Act, the determination of the Secretary may be appealed to the United States District Court. Clearly, the Salt River Project wished to avoid the administrative process and have the District Court involved at the inception of the dispute.

Mr. Wahl seems to be concerned with political rather than juridical matters.

> ". . . . what other hostile legal activity is a Tribe capable of doing so as to prevent Mohave Electric's performance under the contract. In other words, is the present trend and changing attitude of Indians one of which would require future litigation or perform acts on the property which could make the performance of a contract impossible? (sic). . . . .
> Frankly, I and many other Arizonans are becoming quite concerned about potential business transactions which are located on Indian Reservations."

Clearly, the Hualapai Tribe is unwilling to open its Reservation to the casual exploitation of non-Indian interests. Those days are no longer with us; the Tribe is pleased with the "present trend and changing attitude." The Bureau of Indian Affairs should be supportive of the Hualapai Tribe in this effort to secure a benefit for the granting of a benefit.

Mohave Electric Cooperative, Inc., came to the Tribal Council for right-of-way. After some negotiations, the Hualapai Tribal Council came to an agreement with Mohave Electric Cooperative, Inc., and authorized a right-of-way. It appears now that Mohave Electric Cooperative, Inc., is perfectly willing to breach its understanding with the Hualapai Tribal Council while raising questions about the integrity of the Hualapai Indians. The Bureau of Indian Affairs ought not to be in a position where it is defensive of such a position. It ought further to be noted that the obiligation of the General Services Administration is to operate with the general policy of the United States in regard to Indian Tribes. That would require GSA to understand its trust responibility to the Hualapai Tribe. It is certainly clear that without the support of the United States such electric companies would be hard

put to provide their service to anyone in rural areas. They ought not to be allowed to take from the United States on the one hand and demand that the United States abandon those Indian people to whom it has a trust responsibility on the other hand.

On behalf of the Hualapai Tribe, I would hope that the Phoenix Area Office of the Bureau of Indian Affairs would correct whatever impression it has left with GSA that it has only a passing concern with the electrification of the eastern portion of the Hualapai Indian Reservation.

Cordially,

Earl Havatone

EARL HAVATONE, CHAIRMAN
HUALAPAI TRIBE

EH:jf

x copies to: Forest Gerard, Assistant Secretary-Indian Affairs
Curtis Nordwall, Superintendent, Truxton Canon Agency
Mrs. Tompkins, Director, Public Utilities of GSA
Richard Wilks, Tribal Attorney

BUREAU OF INDIAN ...
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PHOENIX AREA DIRECTOR

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MEC SOF EXH 44

MEC SOF EXH 45

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MOHAVE
electric cooperative

P.O. Box 1045, Bullhead City, Arizona 86430

RECEIVED
BIA - PAO
CONTRACTS & GRANTS
JUN 19 1 40 PM '96

June 6, 1996

Mr. Barry Welsh
Acting Manager
Bureau of Indian Affairs (BIA)
Phoenix Area Office
One North First Street, 4th Floor
Phoenix, Arizona 85004

BUREAU OF INDIAN AFFAIRS
RECEIVED
JUN 17 11 37 AM '96
PHOENIX AREA DIRECTOR

Re: Line Serving BIA

Dear Mr. Welsh:

We have received correspondence from the BIA regarding the expired contract between the BIA and Mohave Electric. Enclosed for your review are copies of past correspondence sent by Mohave Electric to the BIA. These two letters are specifically related to the possible renewal of the contract.

The first letter, dated March 17, 1992, and sent by certified mail as specified in the contract, notified the BIA that the contract was due to expire on April 1, 1992. Mohave Requested the BIA to provide a written response by March 31, 1992, describing the intentions of the BIA regarding any proposal for contract renewal. The second letter, dated June 15, 1995, and which was also sent by certified mail, was sent to again request information about the intentions of the BIA concerning the now expired contract. This letter requested a written response by June 29, 1995, with a description of the intentions of the BIA, and more specifically as to whether the BIA wished to discuss a new contract or if there was a desire for Mohave Electric to cease service. Neither of these letters ever received a direct response.

We have carefully reviewed many aspects of the expired contract and of the service itself. We recognize that the BIA reimbursed Mohave for the construction of the power line from Mohave's Nelson substation to a point near the Grand Canyon, with a length of approximately 63.3 miles, and Mohave retains ownership of this line. The review of all aspects has resulted in a determination that continuing with this service as it currently exists is not in the best interests of the members of Mohave Electric. We intend to transfer ownership of this line to the BIA. This transfer will require the relocation of the metering equipment form the present location near the Grand Canyon to a location near or at the Nelson Substation.

We request that you arrange for your representative to contact Mohave's Engineering Department in order to commence activities which will culminate in the orderly transfer of facilities within one hundred and twenty (120) days from today.

Sincerely,

Stephen McArthur
Comptroller

cc: Michael A. Curtis, legal counsel

MEC SOF EXH 46

MEC SOF EXH 47

MEC SOF EXH 48

FINAL ADMINISTRATIVE DRAFT ENVIRONMENTAL ASSESSMENT

HAVASUPAI BAR 4 COMMUNITY PROJECT

EA No.: 01-LC-020

Prepared for

U.S. Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, NV 89006-1470

Prepared by

Tetra Tech, Inc.
3775 Iris Avenue, Suite 4
Boulder, Colorado 80301

Applicant

Havasupai Tribe, Supai, Arizona

November 2003

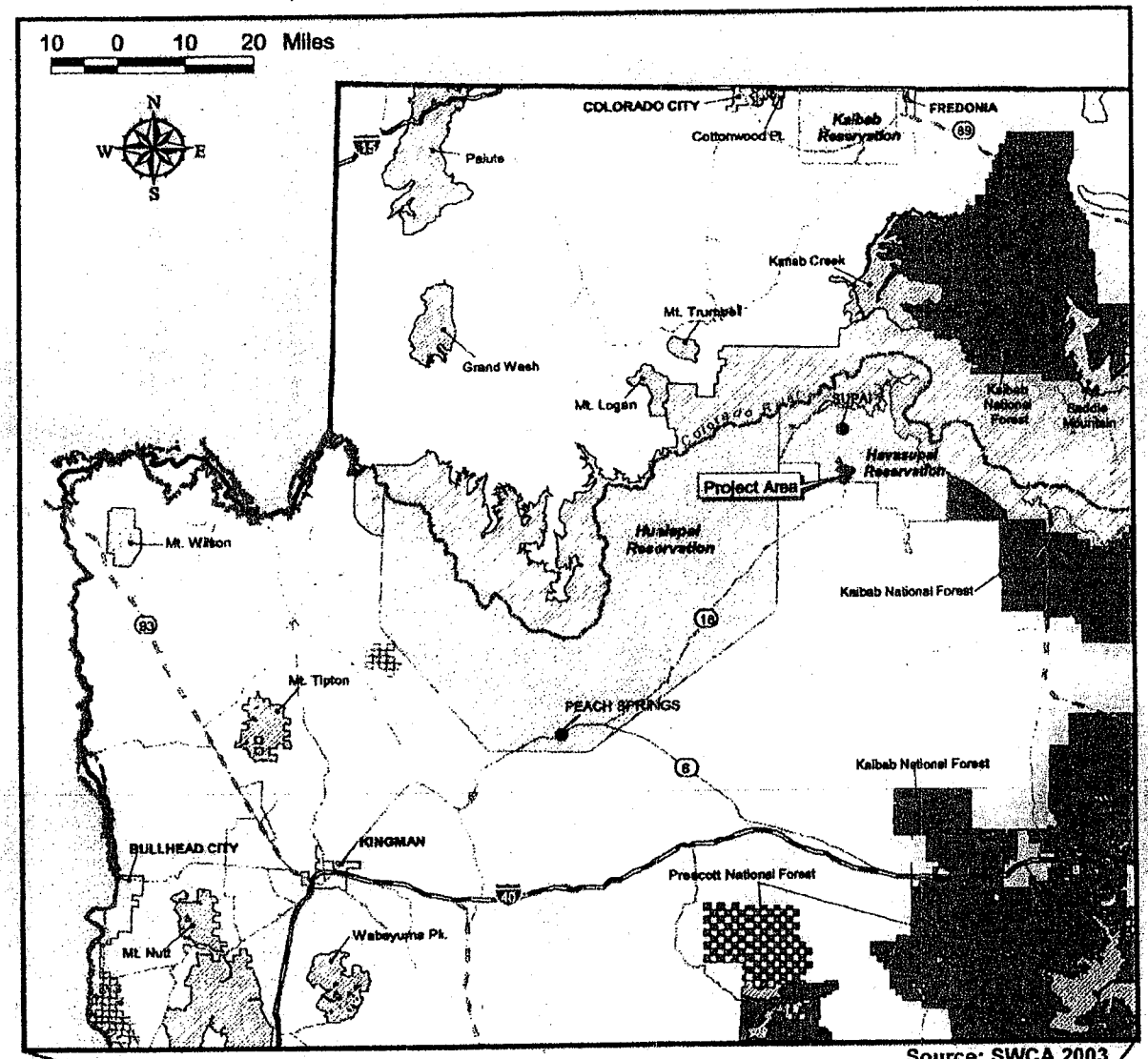
SECTION 1
INTRODUCTION

1.1 INTRODUCTION AND LOCATION

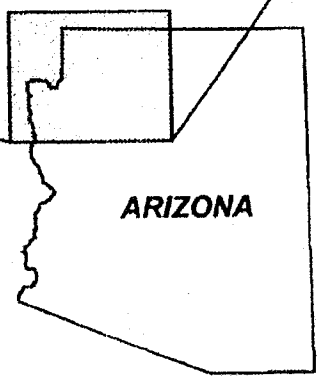
The Havasupai Tribe (Tribe) is proposing to construct a community development in the Bar Four area of the Havasupai Reservation (Reservation) in northern Arizona (Figure 1-1). This section describes the project history, purpose of and need for the action, and provides an overview of the project area. The Havasupai Reservation is located in the canyon lands and surrounding mesas south of the Grand Canyon in Coconino County, Arizona (Figure 1-1). The village of Supai is located on the Reservation within Cataract Canyon which is also known as Havasu Canyon. The village is only accessible by an 8.5 mile pedestrian and equestrian trail and helicopter service which flies two or four days per week dependent on season. The proposed project area is on the mesas along the rims of Cataract and Tunnel Canyons in an area known as "Bar Four" along Indian Route (IR)18 in Sections 22, 23, 26, 27, 34, and 35, Township 32 North, Range 4 West, in reference to the Gila and Salt River Baseline and Meridian. The closest town accessible by automobile is Peach Springs, located within the Hualapai Reservation in Mohave County, approximately 60 miles from the Havasupai Reservation (Figure 1-1).

1.2 PROJECT HISTORY AND PARTICIPATING AGENCIES

In 1882, the United States (US) Government restricted the Havasupai Tribe to 518 acres at the bottom of Cataract Canyon in the village of Supai. The project area of Bar Four and much of the current Reservation was returned to the Tribe in 1976 through the passage of Public Law 93-620. This Act provided for the enlargement of the Havasupai Indian Reservation by 185,000 acres, and it also designated 95,300 contiguous acres of Grand Canyon National Park, as a permanent traditional



Source: SWCA 2003.



Project Area
River
Interstate
Highway
Town
Grand Canyon National Park
Indian Reservation
USFS
Urban Area
Wilderness Area

Base maps are Driftwood Canyon, AZ and Supai, AZ (provisional editions 1986) USGS 7.5' quadrangles

Project Location
Havasupai Indian Reservation, Arizona

Tetra Tech, Inc.

Figure 1-1

use area of the Havasupai Tribe. However, the only housing on the Reservation continues to be located in Supai. The Tribe has continued to grow in number. There are currently 667 registered Tribal members, most of whom live on the Reservation. By 1979 the village had reached its capacity to add additional housing. The Tribe has been planning for development of Bar Four since the mid-1980s and has been seeking assistance from multiple federal agencies. A master plan (Sverdrup 1991) was produced in 1991 to address the goal of developing Bar Four, and development plans for the residential and commercial developments have been updated in recent years (UrbanTech 1996, 2001).

Construction of an electrical supply line to Bar Four was funded by a fiscal year 1998 Housing and Urban Development Indian Community Development Block Grant Program (HUD-ICDBG) grant, and an environmental assessment (EA), funded by the Bureau of Indian Affairs (BIA), was completed under 24 CFR Part 58 HUD guidelines in 2002 and updated in 2003. Construction of the approximately 13.6-mile-long line began in September 2003 and will run from the "Long Mesa Turn" near mile marker 43 on IR 18 (just north of the boundary between the Hualapai Reservation and Boquillas Ranch) to the proposed location of the emergency services site at Bar Four on the Havasupai Reservation (Figure 2-1). The initial line will be constructed of steel poles, 34.5-kilovolt capacity (three-phase) wires, guys, and insulators. Construction through culturally sensitive areas will be monitored in late October, and completion is expected in December, with final testing in January 2004 (Entz 2003).

The US Department of the Interior, Bureau of Reclamation (Reclamation) is the lead federal agency in accordance with the National Environmental Policy Act of 1969 (NEPA). Reclamation is also conducting Section 106 consultation under the National Historic Preservation Act (NHPA) with the Arizona State Historic Preservation Office (SHPO). The BIA and the US Department of Health and Human Services, Indian Health Service (IHS) are cooperating agencies in the preparation of this EA. Federal actions under the authority of BIA are the granting of road rights-of-way, granting of permits for utilities located within these rights-of-way, and the expenditure of Federal Highway Trust funds. BIA has assumed responsibility for Section 7 consultation under the Endangered Species Act (ESA) with US Fish and Wildlife Service (USFWS). Federal actions under the authority of IHS are funding of water, sewer, and solid waste facilities for eligible homes. Houses funded solely under HUD are not eligible for IHS funded services. The HUD-ICDBG is also party to development in the project area, providing funding for electric and telecommunications development. Funding is summarized in Table 1-1. This EA analyzes potential environmental and socioeconomic impacts that could result from implementing the proposed action and from taking no action.

MEC SOF EXH 49

MEC SOF EXH 50

DRAFT FINAL REPORT

TRIBAL AUTHORITY PROCESS CASE STUDIES: THE CONVERSION OF ON-RESERVATION ELECTRIC UTILITIES TO TRIBAL OWNERSHIP AND OPERATION

Prepared by:
NEOS Corporation
3569 Mt. Diablo Blvd., Suite 200
Lafayette, CA 94549

Contract #DE-AC65-91WA07849
Task 13-46

Prepared for:
Western Area Power Administration
Phoenix Area Office

January 1996

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Appendix A: Charter of the Aha Macav Power Service, Bylaws of the Aha Macav Power Service, and Amendments to the Bylaws of the Aha Macav Power Service

CASE STUDY #2: TOHONO O'ODHAM UTILITY AUTHORITY
Appendix B: Tohono O'odham Utility Authority Second Restated Plan of Operation

EXECUTIVE SUMMARY

Within the service territory of the Western Area Power Administration, there are approximately 145 federally recognized Indian reservations. A limited number of tribes own and operate the electric systems on their reservations and two tribes are reported on in this document. The purpose of the case studies is to allow other tribes considering the same type of enterprise to gain an overview of the processes followed by these two tribes.

Originally, the subjects of these case studies were to have been tribal utilities previously owned and operated by the U.S. Bureau of Indian Affairs (BIA). It was determined that the BIA had not transferred utility ownership and operation to any tribe for several decades. The BIA does currently own three utilities on reservations and operates two of those. As a result, the focus of the case studies was changed to tribes that had recently taken control of their own electric utilities.

There were found to be many reasons a tribe would want to consider this type of venture. These include:

- Dissatisfaction with the current electricity supplier;
- The existing electric utility is unwilling to expand service at a reasonable cost;
- The desire for self-determination and economic growth; and
- Taking advantage of legislative incentives for tribal enterprise.

The subjects of these case studies, Aha Macav Power Service (AMPS) on the Fort Mojave Reservation and Tohono O'odham Utility Authority (TOUA) serving the Tohono O'odham Nation, were both created for all the above reasons. However, the most significant reason, according to each tribe, was the desire for increased self-determination and economic growth on the reservation.

Common to both AMPS and TOUA is the fact that their operations are restricted to within the boundaries of their respective reservations. Recognized as sovereign nations, Indian reservations are not subject to the edicts of state regulatory bodies. Therefore, all regulatory duties usually carried out by state public utility commissions are, instead, the responsibility of the utility's Board of Directors. This fosters achievement of tribes' quest for increased self-determination.

AMPS was created by the Fort Mojave Indian Tribe in 1991 to improve the economic situation on the reservation and increase tribal self-determination. The first area served was a new residential development on the reservation. With the decision to begin developing their Nevada lands, the tribe began the search for a power supplier. After failing to secure power from three potential suppliers, the tribe decided to supply power to the site themselves.

Once it began providing electric service to the newly developed reservation areas, AMPS became interested in bringing electric service to the remainder of the reservation. A major obstacle is that those areas are already being served by two other utilities. AMPS has already begun overbuilding in the areas served by one of the other utilities. In addition, load forecasts show a high growth rate that may be difficult to meet. Even with experienced management, AMPS could find itself with insufficient power to meet its load or be forced to sign high priced contracts to have sufficient capacity.

TOUA was created on the Tohono O'odham Nation in 1970 to provide the tribe with electric, water, wastewater, and telephone service. The first service provided by the electric operations was an act of self-determination: wheeling power from an IOU to a mining operation on the reservation. Later, TOUA bought the on-reservation electric system of an electric cooperative and has since expanded

that to serve the entire reservation. By doing this, TOUA has been able to provide power to everyone on the reservation who wants it.

TOUA was one of the first tribally-owned and operated electric utilities in the country. Because of the lack of precedent, acquiring adequate funding was the most difficult task for TOUA's early management. At the beginning, TOUA had no assets and only the mine as a potential customer. Twenty-five years later, TOUA has grown to a mature utility, but now it faces the possibility of low growth due to insufficient economic activity. This could find TOUA holding contracts for capacity it does not need.

Since most Indian reservation are served by non-Indian utilities, there are potentially a great number of tribes that may wish to attempt utility ownership and operation. However, some of the roadblocks they will encounter include: lack of utility management experience, lack of startup capital, and the resistance by any existing utility on the reservation to the tribe's desire to appropriate or overbuild their system.

1.0. INTRODUCTION

The service territory of Western Area Power Administration (Western) encompasses approximately 145 federally recognized Indian reservations. Nearly all of the reservations are supplied power via systems owned and operated by investor-owned utilities, cooperatives, or municipal utilities. Only a few of the reservations are served by electric utilities owned and/or operated by the resident tribes.

This report provides case studies of two Indian tribes in the southwestern U.S. that have taken ownership and operative control of the electric utility operations on their reservations. The purpose of these case studies is to allow other tribes, which may be interested in the same actions, to observe the processes followed by the two tribes. From this information they may develop a plan of action for their own utility.

As originally stated in the Task Order assigned by Western's Phoenix Area Office, the purpose of this task was to develop case studies documenting the process of converting electric utilities owned and operated by the Bureau of Indian Affairs (BIA) to tribal ownership and operation. Initial research revealed that the BIA currently owns three electric utilities. Of those three it operates only two. The third is operated under contract by the tribes living on the reservation. Table 1-1 summarizes the characteristics of the BIA's three systems.

Table 1-1. Characteristics of BIA-Owned Electric Utilities

BIA-Owned Utility	Number of Customers (est.)	Area Served (sq. mi.)
Bureau of Indian Affairs/Colorado River Agency Electric System Location: Colorado River Indian Reservation, AZ Operator: BIA - Colorado River Agency, Parker, AZ	3,125	432
San Carlos Indian Irrigation Project Location: Gila River Indian Reservation, AZ/CA Operator: BIA - San Carlos Agency, Sacaton, AZ	2,000	1,200[1]
Mission Valley Power Location: Flathead Indian Reservation, MT Operator: Tribal Council of the Confederated Salish and Kootenai Tribes. Dixon, MT	13,000	980

Note: 1) This includes land on the Gila River Indian Reservation, the San Carlos Apache Indian Reservation, and off-reservation lands in portions of Pima, Gila, and Pinal Counties.

The BIA has been undergoing a transformation to remove itself from the utility business. It has initiated this process with Mission Valley Power on the Flathead Indian Reservation in Montana. The Confederated Salish and Kootenai Tribes on the reservation are presently operating Mission Valley Power under contract from the BIA while the BIA retains ownership of the system. The purpose of this agreement is to give the tribes the opportunity to gain utility operating experience so they can eventually assume full control and ownership of the utility. Originally, the tribes were to take full control of the utility when the power plant at the 180 MW Kerr Dam within the reservation was

recently up for re-licensing. However, a federal examiner decided that the tribes lacked the technical ability to operate the power plant and market its output and they were denied full control. Eventually, the tribe will be given a full operating license after 30 years. Until that time, they will continue to operate the utility under contract to the BIA.

The two systems which the BIA still operates are the BIA/Colorado River Agency Electrical System on the reservation of the Colorado River Indian Tribe and the San Carlos Indian Irrigation Project on the Gila River Indian Reservation, both in Arizona. The Colorado River Indians have begun investigating the possibility of taking over of the BIA-owned utility on their reservation and commissioned a feasibility study of the plan.[1]

The Gila River Indians went through ten years of negotiations and planning to be able to take over ownership and operation of the BIA-owned system on their reservation. However, just seven days before they would have taken control of the system, the Gila River Tribal Council decided they did not want to go through with it. The project was dropped, so the BIA maintains ownership and operation of the system.

There are no known recent examples of tribes taking over full ownership and control of BIA-owned electric utilities in the Western U.S. All currently operating tribal utilities started from either small existing systems owned by other utilities or from nothing at all. The Navajo Tribal Utility Authority serving the Navajo Reservation started with almost no distribution system. Only government buildings on the reservation had electricity. The Tohono O'odham Utility Authority (TOUA) on the Tohono O'odham Nation in Arizona took over the on-reservation system of an electric cooperative that served only the reservation's four largest villages. The Aha Macav Power Service (AMPS) on the Fort Mojave Reservation is in the process of over-building the existing on-reservation system of a nearby electric cooperative to add to the system has already built in newly developed areas of the reservation. Both TOUA and AMPS have provided electricity to areas of their respective reservations previously without power. TOUA and AMPS were chosen as subjects for these case studies because: 1) they are both completely owned and controlled by their respective tribes and 2) they are fairly new and are still growing to meet the needs of their customers and reservations.

1.1 Case Study Approach

The process of acquiring and assembling all the information for these case studies began with research into the two tribes and their reservations. The information gathered during this stage served to provide background for site visits to the two reservations. Representatives from Western and NEOS Corporation visited the two reservations to meet with utility management. Prior to the site visits, NEOS supplied utility management with an information request determined by Western and NEOS to be pertinent to the creation of the case studies. The site visits provided the opportunity for facility tours, utility management interviews, and exchange of information such as system maps, Plans of Operation, Charters, Bylaws, and other documents.

[1] *Evaluation of Future Electric Utility Service*, prepared by Lee Gardner and Associates in September 1994 for the Colorado River Indian Tribes.

1.2 Purpose of Case Studies

The purpose of these case studies is to provide documentation of the processes followed by the two tribes when they took over ownership and operation of their electric utilities. Other tribes considering taking over ownership and operation of the electric utilities on their reservation may use these case studies as resources and references to determine possible courses of action for the development of their own utilities. These case studies are not intended to be used as "how-to" guides for tribal utility development. Rather, the intent is simply to document the processes followed by the two tribes.

Each case study contains the following topics:

- The Reservation;
- The People and Tribe Inhabiting the Reservation;
- Development of the Indian Utility;
- Impetus for the Development of the Electric Utility;
- Sources of Funding for the Utility's Development;
- Third Party Involvement in the Process;
- Method(s) Used to Acquire the Existing Utility Systems;
- Applications or Legal Documents Filed;
- Utility Organization;
- Utility Operations;
- The Pros and Cons of Tribal Utility Operation According to the Tribe; and
- The Future of the Utility.

2.0 TRIBAL UTILITY OWNERSHIP AND OPERATION

The ownership, management, and operation of an electric utility is expensive, complex, and entails substantial risk. Tribal utility operations are not common for two primary reasons: 1) limited access to startup capital and 2) lack of utility management experience. Those tribes have created their own utilities for several reasons, including:

- Dissatisfaction with the current electricity supplier;
- The unwillingness of the current utility to expand service to outlying areas of the reservation;
- The desire for self-determination and economic growth; and
- Taking advantage of legislative incentives for tribal enterprise.

Comparing and contrasting the operations and characteristics of several reservation electric utilities illustrates the basic differences between Indian-run and non-Indian-run utilities.

2.1 Dissatisfaction with Prior Utility Operation

There are some 285 Indian reservations in the U.S. with about 145 of these located in the service territory of Western Area Power Administration. All but a few reservations are provided electrical service by utilities not associated with the tribe. The owners and operators may operate the utility to either maximize shareholder benefits or to meet policy directives established by a governmental agency. Whatever the mission of the utility, tribal interests are probably not taken into consideration.

In the case of the Colorado River Indian Tribe (CRIT) of Parker, AZ, the tribe has been dissatisfied with the BIA's operation of the electric system on the reservation. Reasons include the CRIT's opinion that the BIA was not aggressive enough in contesting rate increases by wholesale energy suppliers on behalf of CRIT. BIA policy has been to recognize repayment obligations, often at the expense of tribal concerns. From the CRIT point-of-view, the BIA does not operate the utility in the best interest of anyone other than the BIA.

Problems of this nature may result from BIA's obligation to follow federal regulations and procedures. The planning and administration of a BIA-owned and operated electric system is the responsibility of the BIA Area Administrator. The Area Administrator appoints the Agency Superintendent to head the utility. However, few, if any, Agency Superintendents are trained to operate electric utilities. Therefore, it is common for the Superintendent to have a Power Manager with an engineering background actually run the system. This has been the case in the Colorado River Indian Reservation electric system. There has been a great deal of turnover in BIA personnel, leading to discontinuity of utility management. Another dilemma is the BIA's policy of limiting the horizon of electric utility resource planning to its fiscal year rather than the 10 to 20-year horizon common to other electric utilities. Thus, BIA power supply planning is performed one year at-a-time. Such a practice removes the opportunity to obtain longer term power supply contracts.

These actions are not deliberate, but rather the result of a non-technical federal bureau attempting to operate an electric utility. This often results in the BIA being unable to operate the utility to the satisfaction of the tribe for whom it is operated.

2.2 Existing Utility Unwilling to Expand Service

Indian reservations, particularly in the southwest, are often large and remote. For many years, most homes did not have electricity service as a result of both the vast distances between homes and the poverty status of the reservations. While most reservations had some type of electric service, it was often limited to larger towns and villages.

Prior to the Tohono O'odham Nation's development of TOUA, only four villages had electric service, leaving 27 villages without power. The existing utility was not interested in supplying power to those outlying villages. The Nation decided to buy the system from the utility in order to provide the level of service desired by the Nation.

Similarly, the Fort Mojave Reservation had considerable undeveloped acreage that was expensive to develop. In part, AMPS was formed largely because the tribe decided it wanted to supply power to those areas not served by the other local utilities.

2.3 Desire for Self-Determination and Economic Growth

Some tribes have desired to own and operate their own utilities for the purpose of increasing their sovereignty on the reservation and improving tribal member's economic situation. This is true of both the Tohono O'odham and Fort Mojave Indians. Often, because of their remote locations, Indian reservations have been unable to attract a great deal of economic development activity. Owning and operating its own electric utility gives a tribe the opportunity to improve the economic conditions on the reservation themselves. Planning and control for growth on the reservation allows for considerable excercise of power by the tribes. Furthermore, most economic benefits accrue to the tribe and its members.

2.4 Legislative Incentives for Tribal Enterprise

Three federal legislative acts have had a particular bearing on the inception and operation of electric utilities by Indians. The Indian Self-Determination and Education Assistance Act of 1975, Indian Tribal Government Tax Status Act of 1982, and Energy Policy Act of 1992, all authorized funds that could be used for the purpose of providing Indians more control over their energy resources.

2.4.1 Indian Self-Determination and Education Assistance Act of 1975

The Indian Self-Determination and Education Assistance Act authorized the Secretary of Energy to implement an "orderly transition from federal domination of programs for and service to Indians to effective and meaningful participation by Indian people in the planning, conduct, and administration of those programs and services." The Act authorized funds for grants and contracts for training Indian people to operate programs and services. The Mission Valley Power project on the Flathead Indian Reservation in Montana is an example of assistance from the 1975 legislation (See Section 2.5).

2.4.2 Indian Tribal Government Tax Status Act of 1982

It has been since only 1982 that Indian tribes have had the authority to borrow funds on a tax exempt basis.[2] This authority exists due to the Indian Tribal Government Tax Status Act of 1982 which allows qualifying Indian tribal governments to issue tax-exempt debt under the Internal Revenue Code similar to that of state governments, cities, counties, special districts, and other governmental agencies. Tribes are authorized to borrow tax-exempt if the proceeds, either of a loan or bond, are used to finance an essential governmental function. The Internal Revenue Service (IRS) published liberal regulations that permitted both public facilities and for-profit commercial and industrial facilities to be financed pursuant to this new authority. Since then, however, new federal law and regulations have restricted the broad authority originally granted by the initial IRS regulations. Utilities such as electricity, water, and sewer are specifically covered under the provisions of the 1982 act.

2.4.3 Energy Policy Act of 1992

The Energy Policy Act of 1992 contains two sections that specifically authorize the Secretary of Energy to grant financial assistance to Indian tribal governments for energy purposes. Section 2603 mandates energy self-sufficiency demonstration programs and loans. Section 2606 authorizes grants to encourage the adoption of energy efficiency and renewable energy programs on Indian reservations.

2.4.3.1 Section 2603

Section 2603 contains two subsections. The first subsection requires the Secretary of Energy to 1) establish and implement demonstration programs to assist Indian tribes seeking energy self-sufficiency, 2) develop programs that promote the vertical integration of energy resources on the reservation, and 3) provide technical assistance to Indian tribes. Energy self-sufficiency programs are supported by three-year grants. These programs are designed to help tribes attain the level of management and technical proficiency necessary to develop tribal energy resources. The overall purpose of these programs being to reduce tribal unemployment, provide management training for tribal members, and improve tribal technical skills.

Vertical integration of tribal energy resources means that energy resources on an Indian reservation are used or processed on the reservation. Applicable energy resources and technologies include, but are not limited to, solar and wind energy; the generation and transmission of electricity; hydroelectricity; cogeneration; natural gas distribution; and clean, innovative uses of coal. The Act directs the Secretary of Energy to provide grants not exceeding 50 percent of the project's total cost for this purpose.

The second subsection of Section 2603 provides for low interest loans for the exclusive use of tribes in promoting energy resource development and vertical integration. Appropriations of $10 million per year for the fiscal years 1994 through 1997 are authorized for low interest loans to carry out each of the energy self-sufficiency, vertical integration, and technical assistance programs.

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[2] Kemper Securities, *An Introduction to Tax-Exempt Financing for Indian Tribes*, Portland, OR, April 1995.

2.4.3.2 Section 2606

Section 2606 of the Energy Policy Act of 1992 authorizes the Secretary of Energy to

> "...grant financial assistance to Indian tribal governments, or private sector persons working in cooperation with Indian tribal governments, to carry out projects to evaluate the feasibility of, developing options for, and encourage the adoption of energy efficiency and renewable energy projects on Indian reservations. Such grants may include the costs of technical assistance in resource assessment, feasibility analysis, technology transfer, and the resolution of other technical, financial, or management issues identified by the applicants for such grants."

Section 2606 requires the applying tribe to show evidence of coordination and cooperation with local educational institutions and local energy institutions. There is no set appropriation for this section.

2.5 Comparing On-Reservation Electric Utilities

Before summarizing the case studies it is useful to compare TOUA and AMPS with other electric utilities operating on Indian reservations. Table 2-1 contains a summary of the characteristics of six electric utilities operating on Indian reservations. The first three utilities listed (Navajo Tribal Utility Authority, TOUA, and AMPS) are owned and operated by the tribes on the reservations. The last three (Mission Valley Power, San Carlos Irrigation Project, and Colorado River Agency Electric System) are owned by the BIA. Mission Valley Power is operated under contract by the Salish and Kootenai Tribes. The San Carlos and Colorado River Agency systems are operated by the BIA itself.

As can be seen in Table 2-1, the organization of the three Indian-owned utilities is more complex than the BIA systems. The Navajo Tribal Utility Authority (NTUA) and TOUA each have been operating for at least 20 years. They both operate water, wastewater, and telephone services in addition to their electric utilities. Policy for these tribal utilities is set by a Board while policy for the BIA-operated utilities is the responsibility of the BIA Area Director[3]. The planning horizons for all three tribal utilities are ten years compared to the one-year planning horizon for the BIA-operated utilities.

The financial characteristics of the tribal utilities are more like private businesses than government agencies. Two of the tribal utilities, NTUA and TOUA, are Rural Electrification Administration (REA) borrowers. The ability to borrow money at low interest rates has allowed them to expand their service to most areas of their reservations.

The operating characteristics of the BIA-operated and tribal utilities are substantially different. The tribal utilities are not unionized and practice tribal hiring preferences. All six utilities develop annual operating reports but the BIA's reports do not conform to the commonly used FERC accounting and reporting standards.

The two case study utilities represent a young utility (AMPS) and a mature utility (TOUA). AMPS is still building to bring power to the entire reservation. With a great deal of expansion and development going on, it will be quite some time before AMPS' growth slows. TOUA, on the other hand, has brought power to almost all villages on the reservation and is now concentrating on upgrading its equipment and system while bringing new buildings on-line as they are built.

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[3]According to Federal Register listing 25 CFR 175, which sets forth the operating responsiblities and methodologies for BIA-administered electric utilities on reservations.

3.0 SUMMARY OF CASE STUDIES

3.1 Aha Macav Power Service

Aha Macav Power Service (AMPS) is an electric utility wholly owned and operated by the Fort Mojave Indian Tribe. The Fort Mojave Reservation covers 22,820 acres in parts of three states (Arizona, California, and Nevada) along the Colorado River. The tribe's headquarters are in Needles, CA. (See Figure 3-1.) The tribe also co-owns the Fort Mojave Tribal Utility Authority (FMTUA), a separate entity from AMPS, that provides telephone, water, and wastewater service to the reservation. FMTUA is co-owned by an Oklahoma utility that is under contract to the tribe to operate FMTUA.

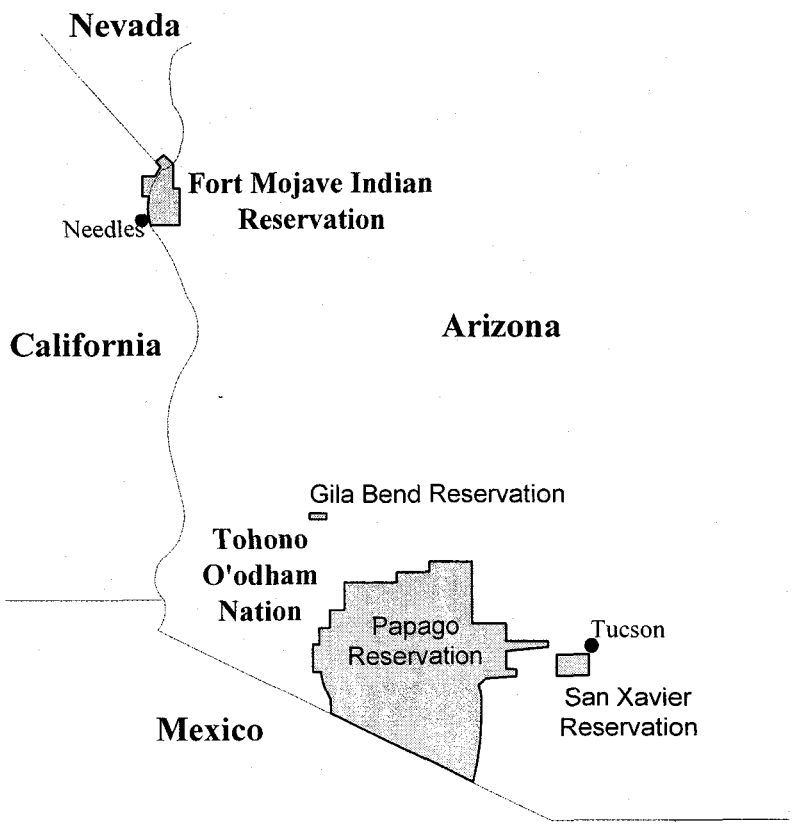

Figure 3-1. Locations of Fort Mojave Indian Reservation and Tohono O'odham Nation

AMPS was formed in 1991 because the tribe wanted to improve the economic situation on its reservation and because it wanted to provide electric service to a newly developed area on the reservation. AMPS' first connections were homes in Mesquite Creek, a new tribally-owned subdivision. The remaining residents and businesses on the reservation were already being served by two other utilities. A small tribal village and the tribal headquarters on reservation land located within the city of Needles are served by the City of Needles Department of Public Utilities while portions of the reservation in Arizona are served by Mohave Electric Cooperative. Eventually, AMPS plans to take over service to both these areas and be the sole provider of electric service on the

reservation. It has already begun the process of overbuilding distribution lines in Mohave Electric's service territory within the reservation.

In 1993, the tribe began developing 4,400 acres of tribal land in Nevada that will eventually include 40,000 residential units, shopping centers, a community center, a dozen casinos, and have a load of 120 MW in 20 years. The tribe approached Nevada Power for an estimate of the cost to provide power to the development area. Nevada Power's $6 million estimate was determined to be too expensive. Nevada Power was also unwilling to give a written estimate or describe in detail what operations and costs the estimate covered.

The tribe then approached the City of Needles which responded with an estimate of $600,000 to provide power to the Nevada site. However, Nevada Power negated Needles' bid pointing out that Needles, as a wholesale customer of Nevada Power, had a no resale clause in their power purchase contract. The tribe subsequently approached Mohave Electric Cooperative for an estimate. This option was turned down by Nevada business interests. The only remaining option for the tribe was to have AMPS provide power to the site. AMPS has since constructed a power line across the river to the development area where a casino and marina have already been built.

Insufficient transmission line capacity outside the reservation may prevent AMPS from receiving sufficient energy for the reservation. Currently, AMPS purchases all of its power from the Navajo/Central Arizona Project and wheels this power through Western and Citizens Power. The tribe is completing the final arrangements for the construction of a 720 MW gas combustion turbine, called the Nordic Gas Generator power plant, on the reservation. The power plant would be built, owned, and operated by Nordic Power of Michigan. Initially, AMPS would buy 6 MW as backup power from Nordic. In the future, AMPS intends to purchase as much as 25 to 30 MW from Nordic to meet the growing demands of the Nevada development. In addition, the BIA is assisting AMPS in applying for federal funding for a proposed 30 MW photovoltaic power plant to be built on the reservation.

The BIA was not actively involved in the formation of AMPS because, historically, there had been little BIA presence on the Fort Mojave Reservation. In the past, the BIA provided some resource planning, technical assistance, and lobbying that continues to the present. More recently, the BIA gave AMPS a 12-mile section of 69 kV transmission line. The line leads from the Bureau of Reclamation's Davis Dam on the Colorado River to a point about three miles north of the reservation. In the future, AMPS will connect the line to the rest of the reservation's grid. This will add a second point of service to AMPS' single existing point of service at the reservation's eastern border. The acquisition of this line was important to AMPS because it became AMPS' first major asset, with a value of $12.5 million. Owning the transmission gave them collateral to secure additional construction funding.

AMPS' General Manager is the same consultant that helped the tribe start the utility and was hired on a contract basis. Eventually, the tribe intends to have tribal members manage the utility. However, until they have enough experience, the tribe will continue to look outside of its membership to find qualified upper management personnel. AMPS has established an apprenticeship program to train tribal members to be linemen. The first three apprentices are mid-way through the program.

A Board of Directors oversees AMPS' operations. Its seven members serve rotating terms of three years. Eligible candidates for the Board are elected by the sitting Board members to fill vacant seats. The tribe requires candidates to posses knowledge and experience in one or more areas related to utility operation such as finance, law, engineering, or management.

The biggest challenge to AMPS' management will be to accurately forecast and secure power purchases to meet the growing load on the reservation, which is being driven by the development on the Nevada land. Load at the Nevada site is anticipated to grow from 2 to 150 MW in 20 years, an average growth of 7.4 MW per year. Acquiring additional power in increments similar to growth may be difficult if the development timetable is changed. In addition, the previously mentioned lack of transmission capacity into the reservation will make resource planning difficult for AMPS.

3.2 Tohono O'odham Utility Authority

The Tohono O'odham Utility Authority is owned and operated by the Tohono O'odham Nation. The Tohono O'odham Nation covers nearly 2.9 million acres in southern Arizona and is comprised of three separate reservations: what were formerly called the Papago Reservation, the Gila Bend Reservation, and the San Xavier Reservation (See Figure 3.1 on page 9). The Nation's headquarters and BIA Agency are located in Sells, AZ. TOUA operates the electric, water, wastewater, and telephone services on the reservation.

TOUA was formed in the late 1960's when the Nation's leaders decided to try to improve economic conditions within the Nation by taking more control of economic and development activities on the reservation. Up to that point, electric service on the reservation had been provided by an electric cooperative that served only the larger villages. The cooperative's main service area, as well as its customer base, management, and staff, were located off the reservation. There were approximately 27 small, remote villages that did not have electric power.

At that same time, two large mining companies held mineral leases on reservation land. The firms required large amounts of power and Arizona Public Service (APS), a large investor-owned utility (IOU), was ready to supply it. The Nation's leaders wanted TOUA to wheel the power from APS at the reservation boundary to the mines. Neither APS nor the mine operators were willing to recognize TOUA as a legitimate utility but they were unable to circumvent it entirely because of the Nation's jurisdiction over the reservation. Simultaneously, TOUA was negotiating with the cooperative serving the reservation to purchase the cooperative's on-reservation system. As the negotiations with the cooperative continued, TOUA reached an agreement with APS for wholesale power. TOUA began wheeling the power to the mines via a transmission line built by APS and paid for by the mining interests.

After the acquisition of the cooperative's system on the reservation, TOUA was officially recognized by the REA as a utility. However, unlike AMPS, TOUA was able to secure a loan without any assets for collateral. TOUA was able to do this by using its future earnings potential as collateral. With this funding, TOUA purchased the cooperative's on-reservation distribution system. Since that time, TOUA has been able to supply power to nearly everyone on the reservation who wants it. TOUA also took over operation of the reservation water and wastewater systems that had previously been built by Indian Health Services and operated by the BIA.

TOUA currently purchases power from several sources including the Western Area Power Administration. TOUA has been approached by entrepreneurs regarding the construction of power plants on the Nation's lands, but the Nation has not allowed development to take place.

The electric operations of TOUA are directed by the Operations Manager who, in turn, reports to the General Manager. The General Manager of TOUA heads the four systems. Like AMPS, TOUA has had to look outside the tribe for qualified utility management personnel. TOUA also has a lineman apprenticeship program with three tribal members participating. TOUA has operated this program

successfully almost since the beginning of operations. Three of TOUA's current journeyman linemen are graduates of their apprentice program.

The Board of Managers, which oversees TOUA's operations, is required to have at least three tribal members on it. Four of the members must have at least ten years of business management experience and three of these members must have had such experience in the utility industry. It is hoped that one day all the Board members will be tribal members.

Unlike the case for AMPS, TOUA does not have a power supply dilemma. TOUA's problem is that future economic growth on the reservation is estimated to be slow. The only near-term known energy consumption growth for TOUA will be some additional housing and the acquisition of utility service area on the reservation. The additional housing will result from construction on the reservation funded by the federal Department of Housing and Urban Development. TOUA will get 400 more residential customers when it purchases the electric system of a cooperative that still serves part of the San Xavier Reservation. Once this is done, TOUA will be the sole electric utility on the Tohono O'odham Nation.

4.0 CONCLUSION

This report identified four reasons why an Indian tribe may decide to own and operate its own electric utility. Both the Fort Mojave Indian Tribe and the Tohono O'odham Nation formed their respective electric utilities, most notably, for the purpose of increasing self-determination and improving economic conditions on their reservations. Because of their efforts and success, both tribes have been able to bring additional employment to their reservations. The Tohono O'odham Nation has also been able to improve the quality of electric service to its reservation by being able to bring electric service to all who want it. The Fort Mojave Tribe was able to bring power to an important new development on its reservation because of the existence of AMPS.

Since most Indian reservation are served by non-Indian utilities, there are potentially a great number of tribes that may wish to attempt utility ownership and operation. However, some of the roadblocks they will encounter include: lack of utility management experience, lack of startup capital, and the resistance by any existing utility on the reservation to the tribe's desire to appropriate or overbuild their system. This report has shown how both the Fort Mojave Tribe and Tohono O'odham Nation encountered these same problems and were able to surmount them.

Others tribes might learn from the Fort Mojave Tribe and the Tohono O'odham Nation by noting what they did in reaction to or in preparation for certain situations. The names of contacts at each utility and tribe are provided for further information.

Aha Macav Power Service - Fort Mojave Indian Reservation

Fort Mojave Tribe:

Patricia Madueno
Tribal Chairperson
500 Merriman Avenue
Needles, CA 92363
(619) 326-4591 tel
(619) 326-2468 fax

Aha Macav Power Service:

Gary Harrell
General Manager
8780 S. Highway 95
Mohave Valley, AZ 86440
(520) 768-2200 tel
(520) 768-2262 fax

Tohono O'odham Utility Authority - Tohono O'odham Nation

Tohono O'odham Nation:

Edward Manuel
Tribal Chairman
P.O. Box 837
Sells, AZ 85634
(520) 383-2221 tel
(520) 383-3379 fax

Tohono O'odham Utility Authority:

Chuck Wiese
General Manager
P.O. Box 816
Sells, AZ 85634
(520) 383-2236 tel
(520) 383-2218 fax

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CASE STUDY #1

AHA MACAV POWER SERVICE

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APPENDIX A
Charter of the Aha Macav Power Service; Bylaws of the Aha Macav Power Service, and Amendments to the Bylaws of the Aha Macav Power Service

1.0 Introduction

The Fort Mojave Indians are one of the few tribes in the U.S. that have taken the initiative to build, own, and operate their own electric utility. This case study describes the process the Fort Mojave Indians followed to bring their electric utility into operation. Other tribes wishing to achieve the same goal can use this case study as a guide, not as a how-to guide, but as a description of what one tribe set out to do, the obstacles it encountered along the way, the solutions it found to those problems, and the results of its efforts. While Fort Mojave Indians' electric utility development effort has been underway for almost five years, this case study is best presented to show each of the activities involved in the development process.

Prior to starting its electric utility, Aha Macav Power Service, the tribe already owned a portion of the telephone, water, wastewater, and cable television utility on the reservation. However, it contracted to an outside firm to manage the day-to-day operations of the utility. When making the decision to start an electric utility, the tribe made a conscious decision to not only have complete ownership of the utility, but full control as well.

Ownership of a utility is a hurdle that few tribes are able to overcome due to limited financial resources. Few tribes have assets with which to use as collateral for loans and there is often insufficient cash for startup. Even if the financial hurdle is passed, there is the matter of managing the utility. Few Native Americans have electric utility management experience. Those that do, are often under the employment of their own tribe. There is also the lack of technical experience, however there are training programs to address this problem.

This case study will describe the Fort Mojave Reservation, the people who inhabit it, and the development of the Aha Macav Power Service. Included in Appendix A for reference purposes are the Charter of the Aha Macav Power Service, the Bylaws of the Aha Macav Power Service, and the Amendments to the Bylaws of the Aha Macav Power Service.

2.0 The Fort Mojave Reservation

The Fort Mojave Reservation spans the Colorado River north of Needles, California and consists of 22,820 acres within San Bernardino County, California; Mohave County, Arizona; and Clark County, Nevada. (Refer to Figure 2-1 for a map of the Fort Mojave Indian Reservation and significant features of the Aha Macav Power Service distribution system.) The terrain within the reservation is desert, except for the floodplain in California and Arizona which is very rich and suitable for agriculture.

The reservation east of the river is entirely within Arizona. The reservation west of the river is split between California and Nevada. Geographically, the reservation lands include the following areas in the each of the three states:

Arizona The Arizona portion of the reservation extends from the Colorado River at Needles southeast to a point six miles east of the river in Arizona, then north approximately 17 miles back to the river. Most of the Arizona reservation land is characterized by a checkerboard pattern with alternating sections belonging to the tribe.

California In California the reservation consists of three separate sections. Each of the sections within California are integral. The three sections are:

1. An area of several square blocks within the city limits of Needles within which the Fort Mojave tribal headquarters and a tribal "village" are located;
2. An area of approximately one-half square mile in California along Interstate 10 located five miles northwest of Needles; and
3. An area of approximately 10 square miles in California bordering the river six miles north of Needles and two miles south of the Nevada border. This land is very productive farming land and has no developments on it.

Nevada There are approximately six square miles of scrub land bordering on the river in the extreme southern tip of the state of Nevada. Like the California lands, the Nevada land is integral. Up until two years ago, this land had never been developed. Approximately ten years ago, the Tribal Council decided it was time to develop the Nevada land. In early 1995, the Fort Mojave Tribe completed the construction of a 350-room hotel-casino next to the river on this land. Plans call for several thousand housing units, commercial establishments, and a dozen casinos on this land within the next 20 years.

The Fort Mojave Reservation was authorized by Executive Order on September 19, 1880. Subsequent orders have modified the original Executive Order resulting in the current reservation lands. The reservation land is held in trust by the federal government and tribal members own undivided shares of land. This arrangement prohibits the ownership of reservation lands by non-Indians and even individual members of the tribe.

Agency headquarters for the Fort Mojave and three other nearby reservations is in Parker, Arizona which is also the tribal headquarters for the Colorado River Indian Tribes. Parker is located 60 miles south of the Fort Mojave Reservation along the Colorado River.

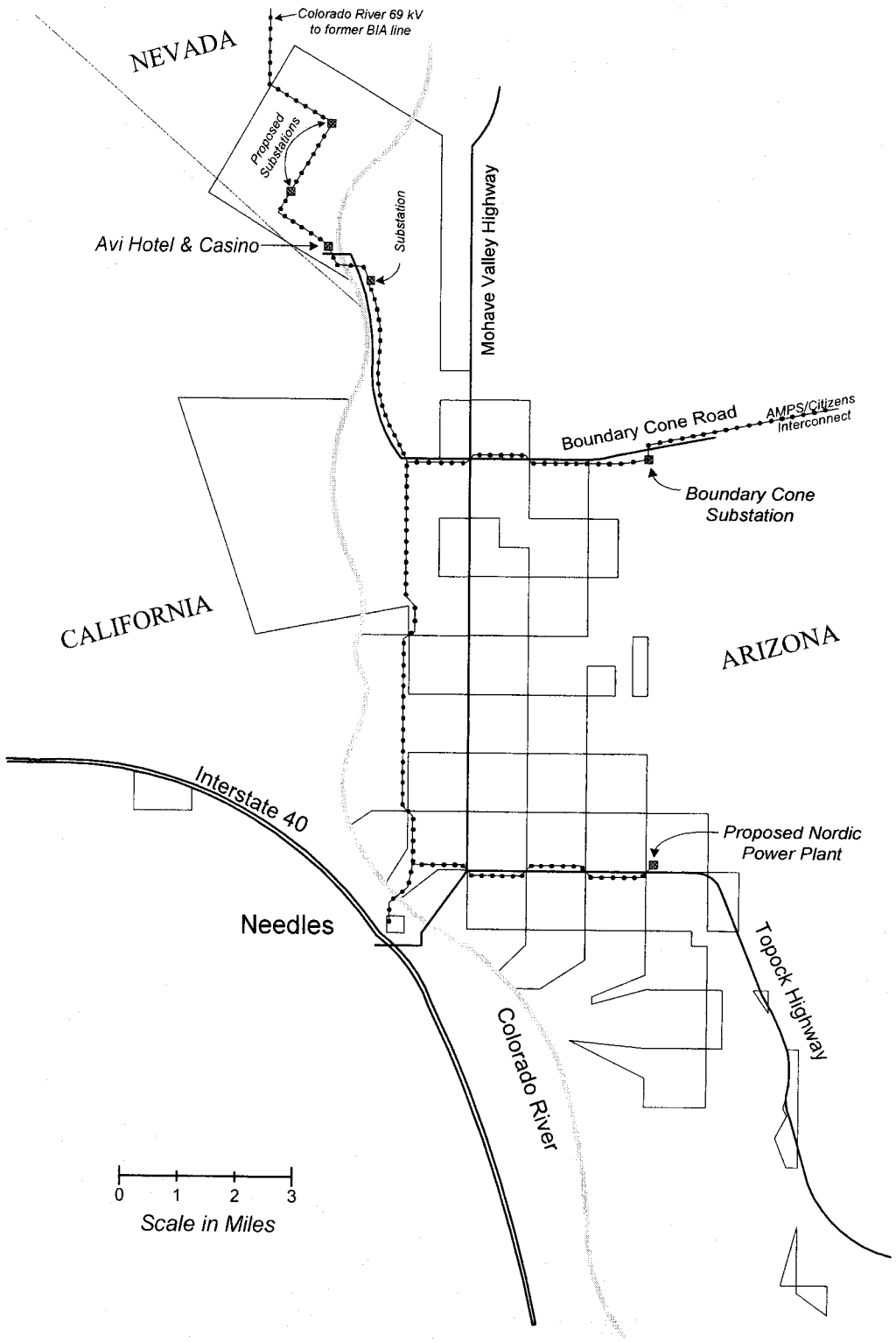

Figure 2-1. Fort Mojave Indian Reservation

3.0 The Mojave People and the Fort Mojave Indian Tribe

Mojave Indians are the primary residents of the Fort Mojave Reservation and members of the Fort Mojave Indian Tribe. The tribe currently has a membership of approximately 1,100 with nearly 770 living on the reservation. The on-reservation tribal members live in Arizona and in a "village" in Needles, CA. There are presently no permanent residents in the Nevada reservation land.

The Mojave people historically led a rancheria life style that entailed living in scattered dwellings forming loose settlements on farmlands along the length of the Colorado River between what are now Arizona and California. The Mojave subsisted on small-scale agriculture, gathering of edible wild plants such as mesquite beans, trapping beaver, hunting, and fishing. Crop irrigation was accomplished by allowing the river to flood the fields each spring. Crops grown included corn, melon, pumpkins, and herbs.

The river has since been contained within a rock lined channel. Coupled with the construction of Davis Dam 29 miles upriver of Needles, natural flooding of the river has been eliminated. Crops are irrigated by pumping water from the river into canals for distribution to the farming lands within the Arizona and California portions of the reservation. Unlike in the past, tribal members perform little farming. Most farming in the reservation is performed by non-Indian growers who lease the land from the tribe. These long-term leases provide a great deal of income for the tribe.

The opening of the new casino in the Nevada portion of the reservation has had a very positive impact on the members of the Tribe, according to tribal leadership. Unemployment, a chronic problem on almost every reservation, has begun to decrease and pride and optimism among tribal members have grown as well. These are the fruits of self-sufficiency and self-determination, according to tribal leaders.

4.0 Development of Aha Macav Power Service

This section describes the impetus to AMPS' development, the process followed by the leaders of the Fort Mojave Tribe in developing AMPS, the results of its work, and the pros and cons of tribal utility operation from the tribe's perspective.

4.1 Impetus for the Fort Mojave Tribe's Development of the Aha Macav Power Service

The impetus for the development of the Aha Macav Power Service (AMPS) was the Fort Mojave Tribe's desire to have more control over economic development on its reservation. This included creating jobs and job training programs for tribal members and keeping business on the reservation to benefit the tribe and its members.

The Fort Mojave Indian Tribe already owned a majority of the Fort Mojave Tribal Utility Authority (FMTUA) that provides water, wastewater, telephone, and cable television services on the reservation. An Oklahoma utility owns the minority share and manages FMTUA under contract to the tribe.

4.1.1 Utility Situation on the Reservation

The electric utility situation on the reservation is complex due to the reservation covering parts of three states. Electrical service is provided by two utilities besides AMPS: Mohave Electric Cooperative in Arizona, which serves the reservation east of the river and the City of Needles Department of Public Utilities which serves the reservation west of the river. Prior to AMPS, no service was available in the Nevada portion of the reservation.

Mohave Electric Cooperative (MEC) presently serves approximately 20,000 customers in Arizona along the Colorado River from Bullhead City south to Mohave Valley. MEC's average residential rate is approximately 9.2¢/kWh. MEC serves approximately 110 residential and several dozen commercial customers on the reservation.

The City of Needles Department of Public Utilities (Needles) presently serves approximately 2,900 customers in and around the City of Needles, California. Currently, Needles serves two areas of the reservation. The first is the small area encompassing the tribal headquarters and a tribal village within the city limits of Needles and the second is the large agricultural area located along the California side of the river six miles north of the City. Needles' average electric rate is 8.0¢/kWh.

4.1.2 Decision to Form a Tribally-Operated Electric Utility

In the late 1980's the tribe commissioned a utility managment consultant to study the feasibility of starting a tribal utility. The consultant determined that the tribe could start its own utility for roughly $2.5 to $3 million. Based on this information and the tribe's available financial resources, the Tribal Council made the decision to proceed with formation of a tribally-operated electric utility.

The name given to the new utility, Aha Macav, translates to "People Along the River." AMPS was formally chartered in 1991 to provide electric service to the residents and businesses within the Fort Mojave Reservation. Under it tribal charter, AMPS would remain separate from FMTUA. The utility management consultant that conducted the initial feasibility study was invited by the tribe to manage the new utility.

Two opportunities for the development and maturation of the utility presented themselves to the tribe soon after the chartering of AMPS: the start of construction of a large residential development in Arizona and the initiation of the tribe's master plan for the development of the Nevada reservation land.

4.1.3 Residential Development in Arizona

The tribe began construction of a major residential development called Mesquite Creek on the reservation in 1991. Mesquite Creek is owned by the tribe and is located along Boundary Cone Road in Arizona (refer to Figure 2-1 on page 3). The first phase of Mesquite Creek will be completed in the late 1990's and consist of about 600 single family homes covering an area of approximately 425 acres. As of mid-1995, about 90 homes have been completed. This became the first area of the reservation to have electric service provided by AMPS.

The developer of Mesquite Creek agreed to pay for the installation of all the electrical distribution lines and associated equipment within the development. The developer was given three years from the time of completion to have all the meters on line. Also under this agreement, AMPS will buy the distribution facilities from the developer over a 20-year period. This development is expected to increase the number of residential electric customers on the reservation by 650 percent when it is completed in the late 1990's. Eventually, Mesquite Creek is anticipated to add a load of at least 1 MW to the AMPS system.

4.1.4 Nevada Lands Master Plan

As long as forty years ago, the Fort Mojave Tribal Council knew the existing tribal land in Nevada was destined for gaming. Unsuitable for agriculture, the land was set aside for development at a latter time. In the early 1980's the Tribal Council decided that the time had come to develop the land so it commissioned the creation of a development Master Plan. The entire 4,400 acre area was still completely undeveloped, had no utility services, and limited physical access.

The resulting Master Plan calls for the construction of 40,000 residential units, shopping centers, a community center, and a dozen casinos over a 20-year development horizon. Besides providing jobs for thousands of people and housing for thousands more, the Master Plan would eventually result in a base electrical load of 150 MW, all of which would be provided by AMPS.

The first phase of the Master Plan development was finished in February 1995, with the opening of the 350-room Aví Hotel and Casino on the Colorado River. The casino has created an electric load of nearly 2 MW, and the load will grow with further development. The opening of the casino and the planned development on the Tribe's Nevada land are proving to be the largest influences on the growth of AMPS' system, although, at first, the Tribe did not plan to provide power to the Nevada development.

4.1.5 Initial Nevada Power Supply Studies

Since there was no existing power to the Nevada reservation land and AMPS' existing power supply contracts couldn't meet the anticipated load, the tribe had to find a way to supply the projected 150 MW energy needs for the site. The tribe found there were two principal options available to them: self-generation and franchise the operation to one of the other local utilities.

4.1.5.1 Self-Generation Option

The draft Master Plan included self-generation resources to meet part of the load forecasted for the project. Potential resources included natural gas-fired steam/combustion turbines and photovoltaic (PV) power. An early cost-effectiveness study of cost/benefit and economic analysis by the tribe's consultant concluded that neither option was cost-effective.

4.1.5.2 Franchise Option

The second option was to franchise the electric service to one of the three local electric utilities. The first utility approached was Nevada Power, an investor-owned utility providing service to southern Nevada. Mohave Station power plant, partially owned by Nevada Power, is located six miles north of the reservation. A 69 kV Nevada Power transmission line passes within one mile of the reservation boundary and could have been tapped for power. The verbal estimate provided by Nevada Power to supply the site with power was $6 million, considered by the tribe to be too costly.

The tribe next approached the City of Needles which appeared to be able to provide power since it had one 69 kV transmission line passing within a mile of the reservation. Needles said it could provide power to the site at an estimated cost of $600,000. This proposal was blocked by Nevada Power which sells power to Needles. Because Needles' power purchase contract with Nevada Power prohibits it from reselling the power.

The last potential local source of purchased power was MEC. However, the regional political ramifications were such that MEC crossing into Nevada was determined to be undesireable. Therefore, this option was not pursued.

Without other power supply options, the tribe began investigating serving the Nevada land itself and with the construction of Mesquite Creek, the tribe now had a point from which to serve it. This brought up the next obstacle, funding the expansion of AMPS to provide the needed service.

4.2 Funding the Development of AMPS

The tribe was fortunate in that it had funds sufficient for most of its start-up needs. As described earlier, the range of cost estimates to provide power to the site of the Nevada development was quite large. While the initial utility construction was self-funded, the tribe had to secure a loan from a private lender to construct the Aví Hotel and Casino with a 5 percent down payment.

4.2.1 Cost of Developing AMPS

The tribe's consultant estimated costs to the tribe for self-power to be $2.5 to 3 million. This estimate included providing service to the entire reservation over a period of several years. These costs would include the construction of distribution lines from existing substations served by other utilities to the Nevada site and constructing other substations as necessary.

4.2.2 Sources of Funds

A majority of the funds required for the development of AMPS and construction of required distribution equipment was supplied by the tribe from its own cash reserves. Other sources of funds for construction included fees paid by developers to AMPS for the establishment of service within the new subdivision in Arizona. AMPS' profits, if any, from operations will go back into the tribe's general fund. Future capital requirements will be met by general funds disbursement.

4.3 Third Party Involvement in the Development of AMPS

In addition to the tribe and the surrounding utilities, there were other parties involved in the development of AMPS. These included the tribe's consultant and several regulatory agencies at both the state and federal levels.

Early in the planning process the tribe contracted with a utility management consultant to help them determine how to acquire the power needed on the Nevada development site. This same consultant was retained by the tribe to conduct cost-effectiveness analyses throughout the process. Once it decided to establish AMPS, the Tribal Council decided that the best to manage it was the person who knew the most about it: the same consultant. He is currently employed to manage AMPS on a contract basis similar to the arrangement used by the Tohono O'odham Utility Authority on the Tohono O'odham Nation.

4.3.1 State Governments

One of the General Manager's first actions was to send letters to the Public Utility Commissions of Arizona, California, and Nevada informing them of AMPS' intentions and asking them to determine whether or not they would have jurisdiction over AMPS' operations. In all three cases, the Commission responded that as AMPS' remained a tribally-owned and -operated entity operating within the reservation, the state Commissions have no regulatory authority over AMPS' actions. Thus, the roles of ensuring fair rates and protection of the public interest commonly assumed by the Commission were left to the tribe.

4.3.2 Federal Government

Three federal agencies were directly involved in the development of AMPS and continue to have roles to the present. They are the Federal Energy Regulatory Commission, the BIA, and the Western Area Power Administration. In addition to these three agencies, other federal agencies whose

regulation AMPS must follow include OSHA (the Occupational Safety and Health Administration) and the EPA (Environmental Protection Agency).

The Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission (FERC) has jurisdiction over the sale of resale electricity. This applies to the wheeling of purchased power into the reservation and would also be applicable if the tribe were to resell power produced by the proposed Nordic and PV power plants. AMPS filed copies of its power purchase and wheeling contracts with the FERC and they were approved. AMPS has chosen to use the FERC accounting system and methodologies. This is a standard accounting methodology for electric utilities.

The Bureau of Indian Affairs

With respect to its normal day-to-day operations, the tribe has been trying to assume some of the responsibilities now held by the BIA. These responsibilities have dealt mainly with tribal land and include real estate management, land leases, and land ownership and title oversight. The BIA had no prior involvement in the operation of the electric utility on the reservation.

During the formation of AMPS, the BIA supplied a great deal of technical assistance. The BIA helped AMPS considerably when it gave AMPS a 12-mile section of the abandoned 69 kV transmission line from Davis Dam. Currently, the BIA supplies technical assistance when needed and lobbying efforts on behalf of AMPS.

Western Area Power Administration

The Western Area Power Administration (Western) wheels power to AMPS which gives Western some regulatory jurisdiction over AMPS. This is mostly limited to resource planning such as the requirement of all long-term power customers to submit integrated resource plans (IRP) beginning in 1996.

4.4 Inventorying and Acquiring Equipment from Existing Utilities

The completion of the Master Plan necessitated a complete geographic survey of the reservation, particularly the Nevada portion. To accomplish this task the tribe established its own Geographic Information Systems (GIS) Service Center. The GIS Service Center is currently inventorying the entire electrical system on the reservation including the assets of MEC and Needles. The GIS Service Center is using the system of global positioning satellites to accurately determine the position of poles, substations, roads, rights of way, etc. The tribe is also using an AM/FM (automated mapping/facilities management) system to develop a SCADA (supervisory control and data acquisition) system for AMPS. In addition to its utility uses, the tribe uses its GIS Service Center to map existing tribal land uses so as to supervise the long-term leases the tribe holds on its developed agricultural reservation land.

So far, AMPS has not acquired any existing equipment on the reservation belonging to other utilities. Negotiations and discussions are underway to determine how to continue but it appears that AMPS

will build into the areas now served by MEC as funds become available. This would give the customers in those areas the choice between AMPS and MEC as their electric utility. AMPS is confident that with its lower rates and fact that the areas are tribal villages, most customers would opt to go with AMPS.

4.5 Applications or Legal Documents Filed

The creation and establishment of AMPS as a legal entity required filing several applications and other legal documents with various federal agencies. The majority of the government dealings were with and continue to be with agencies of the federal government. Contact with the states was mostly for the purpose of formally pronouncing what was already understood.

AMPS holds a contract for the purchase of hydroelectric power from Western. Any energy resale and wheeling contracts must be filed with and approved by the FERC. Currently, AMPS is not producing or wheeling any power.

4.6 AMPS Organization

In many respects, the design of AMPS' organization is borrowed from other tribal electric utilities. The Charter, Bylaws, and organization were all inspired by those of the Navajo Tribal Utility Authority and the Tohono O'odham Utility Authority.

4.6.1 Charter and Bylaws

AMPS was incorporated under a Tribal Charter originally authorized by the Tribal Council in July 1991. The Charter enumerates the purpose and power of AMPS, its assets, and the make up of the Board of Directors. The Bylaws enumerate the Board's duties, qualifications, and its general composition and responsibilities. The Bylaws also specifies the duties of the Chairperson, Vice Chairperson, Secretary, and Treasurer of the Board. The Charter and Bylaw were amended in 1992 to provide for a Tribal Council member to sit on the AMPS Board and to provide for alternate members to the Board. (Refer to Appendix A for the Charter of the Aha Macav Power Service, Bylaws of the Aha Macav Power Service, and Aha Macav Power Service Resolution No. 9-21-91-1.)

4.6.2 Board of Directors

The AMPS Board of Directors, as established by the Bylaws, is responsible for managing the business activities of AMPS. The Bylaws state that the Board consist of seven members. The membership of the initial Board was chosen by the Tribal Council. Thereafter, members have been elected by the Board itself for a term of three years with no more than three seats up for re-election in any year. Non-members of the tribe may sit on the Board but no more than three at any one time. The Bylaws were amended to require the tribe to have at least one Tribal Council member sit on the AMPS Board of Directors with the voting powers of regular Board members. The same amendment allowed the Board to have alternate members who would vote in place of missing regular members.

The Bylaws state that to be eligible for election to the Board of Directors, nominees must possess knowledge and experience in one or more of the following areas:

- Financial management;
- Human and natural resources protection and development;
- Corporate management;
- Economic development;
- Law;
- Housing and utilities; and/or
- Health.

Board meetings must be held at least twice a year but special meetings may be called by as few as two Directors. AMPS Board Officers are appointed once a year by the Board. Four directors are needed for a quorum.

The Board of Directors has the power necessary to carry out the purposes of AMPS and controls and manages AMPS' business activities. The general purpose of AMPS is to provide electric power to everyone within the Fort Mojave Indian Reservation and any other utility projects that benefit the tribe. More specifically, the purpose of AMPS is to do everything necessary, proper, advisable, and convenient for the accomplishment of the following:

- To develop, operate, and manage the provision of electric power to all users on the reservation;
- To provide training and employment opportunities for members of the tribe in the construction, management, and operation of the utility;
- To facilitate economic development on the reservation and surrounding communities;
- To enhance and protect the health and welfare of tribal members and customers of AMPS; and,
- To manage electric utility endeavors owned or operated by AMPS in a prudent, efficient, and economic manner in accordance with tribal law.

4.6.3 The Role of the Fort Mojave Tribal Council in the Operation of AMPS

According to the AMPS Charter, the Tribal Council acts as an advisory board to the AMPS Board of Directors. The Tribal Council's purpose is to provide information to and advise the Board regarding political, cultural, and social issues that concern the tribe and its members with regards to the operation of AMPS. Thus, the Tribal Council acts as a form of public utilities commission. Changes in electric rates must be approved by the Tribal Council. Before changes in rates are instituted, the Tribal Council will hear any comments by tribal members. This gives everyone an opportunity to comment on rate changes before a non-partisan third party.

4.6.4 AMPS Management

The management of AMPS consists of a General Manager assisted by an Operations Manager and an Office Manager. Figure 4-1 shows the current organizational structure of AMPS management. The Operations Manager is in charge of the physical operation of AMPS, such as engineering, construction, and purchasing and the staff connected to these activities. The Office Manager also serves as an Administrative Assistant to the General Manager and is in charge of the administrative workings of AMPS, such as customer service, billing , and accounting.

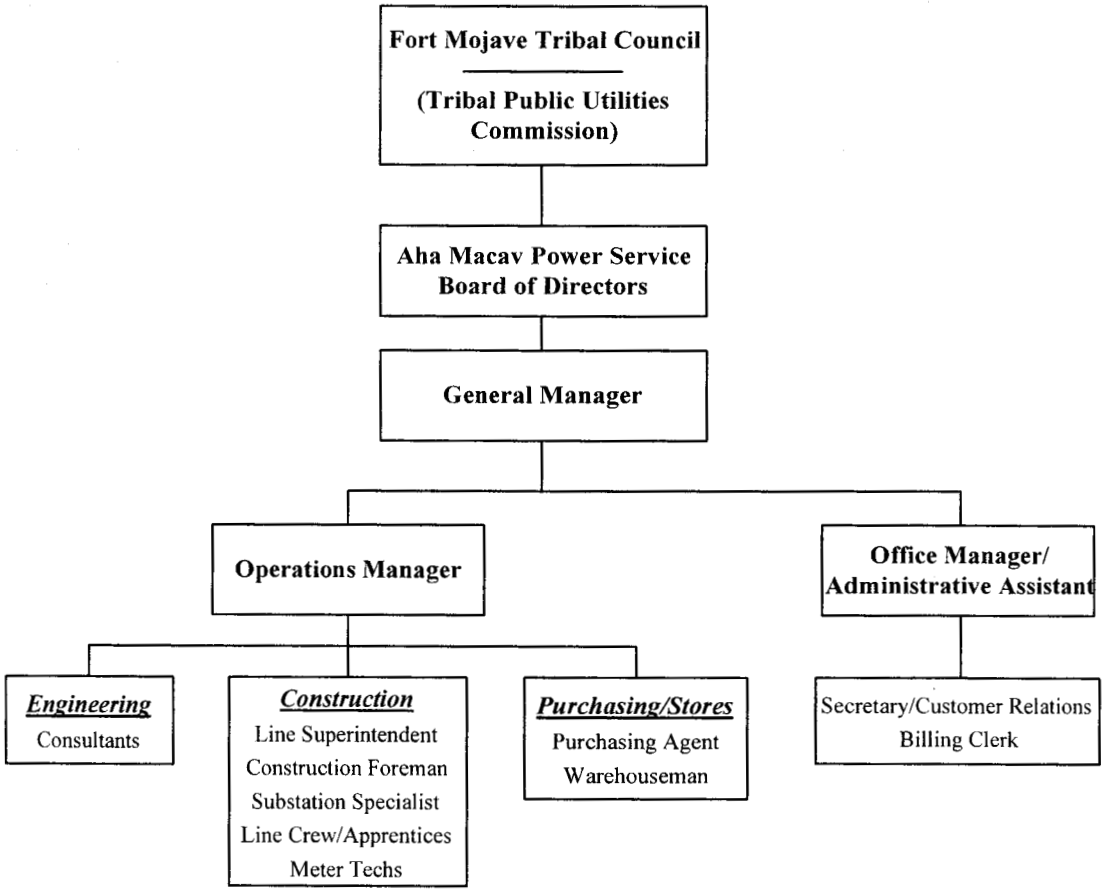

Figure 4-1. Organizational Structure of Aha Macav Power Service

4.7 AMPS' Current Operations

This section describes AMPS' operations includeing power suppliers, both current and future, operations planning, and personnel characteristics.

4.7.1 Current Power Supply

According to AMPS' management, what will limit AMPS' ability to acquire adequate power supplies for the future is not the lack of power available to purchase, but the lack of transmission capacity to get it to the reservation. AMPS currently purchases its power from the Navajo/Central Arizona Project (Navajo/CAP). To distribute the power throughout the reservation, AMPS has begun acquiring and constructing power lines. At this point in time there is one point of service with plans for two additional points of service in the future.

4.7.1.1 Salt River Project

In 1994 AMPS purchased approximately 8,800 MWh from Navajo/CAP. AMPS' currently has a five year power purchase contract for Navajo/CAP power. The reason AMPS chose to go with a short duration contract was to allow enough time for the management at AMPS to develop five years worth of operating statistics, such as demand and energy sales, before committing to longer term power contracts. Being a new utility, AMPS had no billing or other operating records with which to prudently negotiate a long-term power contract.

4.7.1.2 Western Area Power Administration and Citizens Utilities

Both Western and Citizens Utilities, in turn, wheel AMPS' power from Navajo/CAP to the reservation. AMPS paid Western and Citizens together an average of 1.1¢/kWh for wheeling services. AMPS contractual rate of delivery from Western is 1,970 kW in summer and 1,200 kW in winter. Western takes delivery of the power at McCulloch, AZ and delivers it to Citizens at Hilltop, AZ. Citizens then delivers it to AMPS' Boundary Cone Substation. Citizens is an investor-owned utility serving the City of Kingman and Lake Havasu City in Arizona.

4.7.1.3 Tribally-Owned Transmission Lines

Currently, the tribe owns two transmission lines. The first is the single circuit 69 kV "AMPS" line that interconnects with Citizens Electric starting at the Boundary Cone Substation, the delivery point for Navajo/CAP power. The "AMPS" line runs west from the Boundary Cone Substation for three miles before turning north along the river to the substation in Arizona which serves the Aví Hotel and Casino. The Boundary Cone Substation was built especially to handle the load from the Mesquite Creek development. It will also be the delivery point for energy from the proposed PV power plant.

The tribe's second transmission line is the "Davis/AMPS" line, the 12-mile section of single circuit 69 kV line that runs southwest towards the reservation from the Davis Dam generating station. The previously abandoned line was given to AMPS by the BIA and Bureau of Reclamation. The line terminates three miles outside the reservation. AMPS has plans to connect the reservation to the transmission line in the summer of 1995 via a nine-mile double circuit 69 kV line. This line, the "Colorado River" line, will serve two proposed substations in the Nevada portion of the reservation before crossing the Colorado River to connect with the existing substation across the river from the Aví Hotel and Casino. The "Davis/AMPS" line will become a double circuit when the "Colorado River" line is completed.

Another proposed AMPS transmission line is a 69 kV single circuit line connecting the AMPS transmission line with the tribal village in Needles and the proposed Nordic power plant. The AMPS to Needles segment will be built in 1996 and the Needles to Nordic segment will be built in 1997. The construction of these lines is favored by the City of Needles despite the fact that AMPS will be taking part of its load. This is because the City of Needles will have an additional service point. Historically, the City of Needles has had problems due to undependable power supply. With the new transmission lines, Needles will be able to receive power through AMPS' when its needed and available.

4.7.2 Potential Future Power Supplies

AMPS has two potential sources of future energy located on the reservation: a non-utility generator and a photovoltaic power plant.

4.7.2.1 Proposed Nordic Generating Plant

The Nordic Power Company of Ann Arbor, MI has begun development of the 720 MW Nordic Gas Generator Plant (Nordic) on the reservation. Nordic Power will also operate the combustion gas turbine power plant after its estimated start of operations in June 1997. The environmental impact statement (EIS) for Nordic is currently being drafted. Construction is scheduled to begin in early 1996. AMPS is currently negotiating for energy from Nordic. Initially, AMPS would like to rely on Nordic for backup capacity of approximately 6 MW. In the future, AMPS may need as much as 25 to 30 MW from the plant to meet its forecasted load growth.

4.7.2.2 Proposed Tribal Photovoltaic Power Plant

The BIA is aiding AMPS in the pursuit of funding for the development of a 30 MW fixed plate PV power plant on the reservation. Funding for the proposed power plant is being sought through the provisions of Section 2606 "Tribal Government Energy Assistance Program" (25 U.S.C. 3506) of the Energy Policy Act of 1992. The PV power plant, as proposed by the BIA, would ultimately cover 320 acres adjacent to the Mesquite Creek residential development. The fixed plate panels would be installed in annual increments of 5 MW beginning in 1995 until the total capacity of 30 MW is reached in the year 2000. The project would be located on a one-half section (320 acres) area of the reservation southeast of and adjacent to the Mesquite Creek development. The power generated would be transmitted through the existing Boundary Cone Substation one mile north of the power plant site.

4.7.3 Utility Planning

Much of AMPS' energy use and demand forecasting and power supply planning is currently performed by AMPS with assistance from the BIA. However, as AMPS' management gains more experience, its goal is to take over all of the forecasting and planning. This may occur once AMPS completes its first IRP for Western.

4.7.4 Personnel

The staff of AMPS is still quite small even after four years of existence. Beginning with six persons at its inception in 1991, AMPS currently has eight staff members. Staffing levels will increase with the growth in the number of customers and load brought about by the continuing development of the Master Plan and Mesquite Creek. Like other similar, small utilities, AMPS has a core of highly technical staff supported by non-technical personnel. The highly technical personnel tend to be non-tribal members while the non-techncial personnel are tribal members. AMPS' management expects the personnel distribution to change over time as tribal members gain training and experience as these types of opportunities are opened to them.

4.7.4.1 Personnel Skills Required and Source of Trained Personnel at the Start of Operations

The tribe, recognizing that they needed someone familiar with the reservation and the existing electrical system and with experience in the area of utility management, hired its own utility consultant to manage AMPS at the start. The remaining staff were obtained through the tribe, personal contacts, and classified advertisements in professional journals.

4.7.4.2 Existing AMPS Personnel

In general, AMPS has been and continues to be willing to employ non-tribal members to fill the highly technical positions when no tribal members have the necessary qualifications. AMPS advertises its employment openings in relevant professional journals. Positions for non-technical personnel are filled through the tribal government.

At the present time, AMPS has on its staff three apprentice linemen who are tribal members. The program which AMPS' apprentices are a part of is one of several nationally recognized non-union apprenticeship programs. These programs provide training for the participants that will enable them to become journeyman linemen after four years of on-the-job training concurrent with four years of self-study. After completing the four years and passing 41 exams, they are eligible for lineman jobs with any type of electric utility.

4.8 AMPS' Experience With Utility Operations

Overall, the staff and management of AMPS are proud of their accomplishments and would recommend that other tribes follow their lead based on the improvements the transition has brought to the tribe and reservation.

4.8.1 Fort Mojave Indian Tribe's Advantages and Disadvantages of Running Its Own Utility

AMPS and the tribal council have observed several advantages related to operating the utility service. The foremost consideration is that the tribe is realizing direct economic savings as a result of AMPS providing less costly power than alternative sources. The primary provider of power on the reservation, MEC, offers residential and irrigation rates that are 20 and 15 percent higher than AMPS rates, respectively. Although true monetary savings are low at present because there are relatively few AMPS customers, the monetary gain may become substantial as the number of connections grows.

Another advantage for the Fort Mojave Tribe is AMPS' tribal hiring preferences. Tribal members are offered employment opportunities that would not be available if AMPS did not exist. At present there are six tribal AMPS employees and the number of employees should grow as the utility expands to meet increased power demand.

Disadvantages include rates that may change in the future because AMPS does not currently have a long-term power purchase contract. Power contracts with a relatively short duration, such as AMPS' current five-year deal, are more expensive than long-term contracts. While the rates are low now, they may not remain that way. With the high rate of load growth expected due to the development on the Nevada land, AMPS could be in trouble if it is unable to secure sufficient future capacity. The inability to secure sufficient future capacity may delay or halt the Nevada development which could hinder the tribe's progress.

4.8.2 Would the Tribe Do It Again?

Despite the struggles and the red tape encountered along the way, tribal leaders admit they would probably do it again. Tribal unemployment has decreased from 80 percent to 34 percent. There has also been an increase in tribal pride. Although it appears that the decrease in unemployment and the growth in tribal pride are due more to the opening of the Aví Hotel and Casino than the formation of AMPS, there have been marked effects on tribal unemployment and pride from AMPS' operations.

4.8.3 Advice the Fort Mojave Indian Tribe Would Give to Other Tribes Considering Starting Their Own Electric Utility

The tribe has some suggestions for other tribes considering starting their own electric utilities. All are related to finances. All are suggestions based on what the tribe would do differently if they had the chance to do it again. They suggest:

- Take sufficient time to make the transition to tribal operations. However, the management at AMPS does admit that if they had more money to begin with, they could have completed the transition in less time.

- Give sufficient thought to the financial end of the transition. AMPS situation was unique in that most of the financial assistance sought was for the purpose of constructing the Aví Hotel and Casino. But the casino construction loan was not approved until the lender saw evidence of the ability to provide electrical power to the casino site.

- Do not use a significant proportion of the tribe's financial reserves in the transition.

4.9 The Future of AMPS

AMPS faces many challenges in the next decade. The execution of the tribe's ambitious Master Plan will lead to considerable increases in power demand. The rate at which the Master Plan is implemented will be a function of economic cycles, demand for the various elements of the Plan, and the ability of the tribe to meet market requirements related to real estate development. The provision of power will be a central element in the execution of the Master Plan and the power requirements must be carefully forecasted and planned. AMPS will need to acquire additional resources to meet the system demand and energy requirements. The rate at which these acquisitions are made will mark a fine line between the ability of the system to pay for the resources and the rate of development of the Master Plan.

An on-going issue is the resolution of the status of MEC service and property on the Fort Mojave Reservation. MEC has a long history of provision of electrical service to the reservation. AMPS has stated that it intends to buy out the MEC equipment and become the sole provider of electricity service on the reservation. The process by which AMPS and MEC achieve an equitable understanding will be long and uncertain.

Acronyms:

AM/FM..... Automated Mapping/Facilities Management
AMPS..... Aha Macav Power Service
BIA..... Bureau of Indian Affairs
FERC..... Federal Energy Regulatory Commission
GIS..... Geographic Information System
IRP..... Integrated Resource Plan
kV..... KiloVolt
MEC..... Mohave Electric Cooperative
MW..... MegaWatt
MWh..... MegaWatt Hour

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APPENDIX A

CHARTER OF THE AHA MACAV POWER SERVICE; BYLAWS OF THE AHA MACAV POWER SERVICE; and AMENDMENTS TO THE BYLAWS OF THE AHA MACAV POWER SERVICE

(Retyped from the original document for easier readability)

CHARTER OF THE
AHA MACAV POWER SERVICES

ARTICLE I

Name

The Fort Mojave Indian Tribe, acting through the Council of the Fort Mojave Tribe and the Fort Mojave Constitution and Bylaws, hereby authorizes this Charter under Article IV of the Constitution of the Fort Mojave Tribe as amended. The name of this tribally chartered authority is the Aha Macav Power Services (AMPS). The Fort Mojave Tribe confers on AMPS all of the Tribe's rights, privileges and immunities as if it engaged in the activities undertaken by AMPS, including, but not limited to, the Tribe's rights of eminent domain, taxation and sovereign immunity.

ARTICLE II

Duration

The period of existence of AMPS shall be perpetual, except that AMPS may have this charter amended or restated or AMPS may be dissolved in accordance with the Fort Mojave Tribal Constitution, as amended.

ARTICLE III

Purposes and Powers

A. General. The purposes for which AMPS is organized are to provide electric power to all users of such power within the Fort Mojave Indian Reservation and any other utility projects which would benefit the Tribe and that are approved by the Fort Mojave Tribal Council. The Fort Mojave Tribal Council hereby finds and declares that the creation of AMPS is necessary and desirable in order to promote the development of the Tribe's resources, to promote the prudent economic vitality of the Reservation and surrounding communities, to protect the health and welfare of tribal members and to provide employment and training opportunities for tribal members.

B. Enumerated Purposes. The purposes for which AMPS is organized are as follows:

1. To develop, operate and manage the provision of electric powers to all users of electricity within and/or on the Fort Mojave Indian Reservation or owned by AMPS unless the Fort Mojave Tribal Council specifically excludes a specific electricity user from AMPS control.

2. To develop, manage and control all other utilities operated within the Fort Mojave Indian Reservation when so requested by resolution or ordinance of the Fort Mojave Tribal Council.

3. To provide training and employment opportunities for members of the Tribe in the construction, management and operation of providing electric power to the users of electricity within the Fort Mojave Indian Reservation.

4. To facilitate economic development on the Reservation and in surrounding communities.

5. To enhance and protect the health and welfare of tribal members and the electric utility customers of AMPS.

6. To manage all electric utility enterprises owned or operated by AMPS in a prudent, efficient and economic manner in accordance with Tribal law.

C. Ancillary. To do everything necessary, proper, advisable or convenient for the accomplishment of the purposes hereinabove set forth, and do all things incidental thereto or connected therewith, which are not forbidden by law.

D. Enumerated Powers. AMPS shall have the following enumerated powers:

1. To sue and be sued in courts of competent jurisdiction.

2. To enter into contracts and agreements affecting the affairs of AMPS's service area and to accept all funds resulting therefrom.

3. To contract with private persons, associations, or corporations for the provision of any service within or without its boundaries and to accept all funds and obligations resulting therefrom.

4. To borrow money and incur indebtedness and other obligations and evidence the same by certificates, notes or debentures and issue general obligation or revenue bonds, or any combinations thereof.

5. To refund any bonded or other indebtedness or special obligations of AMPS without an election.

6. To acquire, dispose of and encumber real or personal property, including, without limitation, rights and interests in property, including leases and easements necessary to accomplish the purposes of AMPS.

7. To acquire, construct, equip, operate and maintain facilities to accomplish the purposes of AMPS.

8. To manage, control and supervise all the business affairs and properties of AMPS.

9. To adopt, by resolution, rules and regulations consistent with federal, state and tribal law which are necessary, appropriate or incidental to any authorized services provided by AMPS.

10. To delegate the management of the day-to-day operation of AMPS to others, and in exercising its authority hereunder, may rely on its officers and other experts. AMPS shall establish policies and retain responsibility for the ultimate direction and affairs of AMPS but may give usual and essential latitude to AMPS Manager and his delegated employees.

11. To fix and collect taxes, rates, fees, tolls and other service charges pertaining to the services of AMPS, including, without limitation, minimum charges and charges for availability of the facilities or services relating thereto.

12. To construct, establish, and maintain works and facilities; (a) in, across, or along any easement dedicated to a public use, or any public street, road or highway; (b) in, upon, or over any vacant public lands; and (c) in, across, or along any stream or water course.

13. To plan for the development within the service area served by AMPS including, but not limited to, review of all comprehensive plans of tribal government located within AMPS's service area, and review of all capital construction of other federally funded projects proposed by any governmental entity within the boundaries of AMPS's service area for which review is required by federal, state or tribal law.

14. To require all commercial and residential units within the Reservation to connect to the electric service provided that said unit is within AMPS's designated service area.

15. To have and exercise all powers necessary, convenient or incidental to the express powers identified above.

E. Exercise of AMPS's Powers. AMPS shall exercise its authorized powers in good faith and in a manner which is believes to be in the best interests of the Fort Mojave Indian Tribe and the interests of those within AMPS's service area.

F. Interpretation. The purpose specified herein shall be construed as both purposes and powers.

ARTICLE IV

Ownership

To enable AMPS to carry out its purposes, the Fort Mojave Tribal Council may, from time to time at the request of the Board of Directors of AMPS, vest AMPS with the power to exercise all of the Fort Mojave Tribe's powers with respect to designated tribal properties, both, real and personal, in accordance with the purposes and powers under Article III of this Charter. Such properties transferred to AMPS shall not be revocable by the Fort Mojave Tribal Council during the period AMPS is authorized to exercise control and possession of the transferred properties.

ARTICLE VI

Assets

Subject to such contractual rights of others, including the Fort Mojave Tribe, AMPS shall have as its assets, and the authority to acquire, manage, own, use, pledge, encumber, or otherwise dispose of the following:

A. Tribal Property. Tribal properties of a real or personal nature subject to any conditions set out in the Tribal Council's resolution authorizing the transfer of such properties to AMPS.

B. Funds. All funds which AMPS may acquire by grant, gift, loan or other means.

C. Other Real and Personal Property. All interests in real and personal property whether of a tangible or intangible nature, AMPS may acquire by grant, gift, loan, purchase, lease or other means.

D. Other assets. All earnings, interest, dividends, accumulations, contract rights, claims and other proceeds arising from the above listed assets.

ARTICLE VII

Control of Assets

All cash assets shall be deposited, invested, re-invested or paid out pursuant to the contractual obligations of AMPS and in accordance with the standards of prudent business practices so as to ensure the continued existence, integrity and viability of AMPS. Such decisions are reserved exclusively to the Board of Directors of AMPS.

ARTICLE VIII

Asset Distribution/Dissolution

AMPS shall determine in its sole discretion as to when a payment is to be issued and the amount of any such payment. Upon dissolution of AMPS, the remaining assets, after payment of all debts and liabilities, shall be returned to the Tribe. In no event shall the Fort Mojave Tribe be liable for any debts or liabilities of AMPS.

ARTICLE IX

Board of Directors

The Board of Directors of AMPS shall consist of seven (7) members and is hereby vested with all powers necessary to carry out the purposes of AMPS. The initial members shall be selected by the Fort Mojave Tribal Council. There are no prohibitions against the Fort Mojave Tribal Council serving as the Board of Directors. Members of the Board need not be enrolled members of the Fort Mojave Tribe. However, no more than three (3) Board members of AMPS may be non-members of the Fort Mojave Indian Tribe. The Board members' term of office and their qualifications shall be specified in the Bylaws.

ARTICLE X

Registered Office and Registered Agent

The address of AMPS's registered office is Office of the Chairperson of AMPS, Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, California 92363, and the registered agent at this address is the Chairperson of AMPS.

ARTICLE XI

Advisory Board

The Tribal Council of the Fort Mojave Tribe shall act as the Advisory Board to the Board of Directors of AMPS for the purpose of providing information and advice to the Board regarding political, cultural and social issues that concern the Tribe and its members.

ARTICLE XII

Trustee

AMPS is the trustee of all assets owned or controlled by AMPS on behalf of the Fort Mojave Indian Tribe.

ARTICLE XIII

Litigation

The Fort Mojave Tribe reserves the right to challenge in whatever forum all matters involving AMPS which, in the opinion of the Fort Mojave Tribe, affect its rights, privileges and immunities as a sovereign government. Before initiating or entering an appearance in any such litigation or administrative proceeding, AMPS shall give at least thirty (30) days, or such time as the court rules allow, prior written notice to the Chairperson of the Fort Mojave Tribe.

ARTICLE XIV

Waiver of Immunity

The acts or omissions of AMPS, whether pursuant to the powers enumerated in Article III or otherwise, shall not create any liability, obligation or indebtedness either of the Fort Mojave Indian Tribe or payable out of assets, revenues or income of the Tribe, and only the assets, revenues and income held by or in the name of AMPS shall be subject to, to the extent otherwise permitted herein and by law, to the debts, obligations or other liabilities created or incurred by AMPS. Any waiver of immunity of or by AMPS shall not be construed to waive any immunity of the Fort Mojave Indian Tribe or any other covered persons and entities or extend any liability to any assets, revenues or income of the Fort Mojave Indian Tribe.

RESOLUTION

BE IT RESOLVED, that the foregoing Charter of the Aha Macav Power Service, be and the same is hereby adopted, as amended. Upon adoption of the amended Bylaws of the Aha Macav Power Service by the Board of Directors, two signed duplicate originals shall be delivered to the office of the Tribal Secretary of the Fort Mojave Tribal Council.

BE IT FURTHER RESOLVED, that the Chairperson and the Secretary of the Fort Mojave Tribe are authorized and instructed to sign this resolution for and on behalf of the Fort Mojave Tribal Council.

Certification

We, the undersigned, Chairperson and Secretary of the Fort Mojave Tribal Council, hereby certify that the Fort Mojave Tribal Council met on this day and by a vote of 6 in favor and 0 opposed in a duly called and convened meeting of the Council, adopted the foregoing resolution.

Dated this 13th day of July, 1991.

(signature) _____
Chairperson
Fort Mojave Tribal Council

ATTEST:

(signature) _____
Secretary
Fort Mojave Tribal Council

CASE STUDY #2

TOHONO O'ODHAM UTILITY AUTHORITY

CASE STUDY #2:

TOHONO O'ODHAM UTILITY AUTHORITY

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Tohono O'odham Utility Authority Second Restated Plan of Operation

1.0 INTRODUCTION

The Tohono O'odham Nation is one of the few tribes in the U.S. that have taken the initiative to build, own, and operate their own electric utility. This case study describes the process the Tohono O'odham Nation followed to bring its electric utility to operation and continued growth. It is presented to show each of the activities involved in the development process that began over twenty-five years ago.

Prior to starting its own electric utility, the Nation already had electric service provided by an outside utility but only to the larger villages and the water and wastewater systems on the reservation were in poor condition. The Nation decided to try to improve conditions on the reservation by taking control of these systems and operating them to the benefit of the reservation's residents. Thus, the Tohono O'odham Utility Authority was created to operate these three utilities. Since then, telephone service has been added to its operations.

Ownership of a utility is a hurdle that few tribes are able to overcome due to limited financial resources. Few tribes have assets for loan collateral and there is often insufficient cash for startup as well. Even if the financial hurdle is passed, there is the matter of managing the utility. Few Native Americans have electric utility management experience. Those that do, are often under the employment of their own tribe. There is also the lack of technical experience, however there are training programs to address this problem.

This case study will describe the Tohono O'odham Nation, its people, and the development of the Electric Operations Division of the Tohono O'odham Utility Authority. Included in Appendix B for reference purposes is the Tohono O'odham Utility Authority Second Restated Plan of Operation.

2.0 THE TOHONO O'ODHAM NATION

The Tohono O'odham Nation (Nation) occupies a total of 2,855,980 acres in southern Arizona. The Nation consists of three separate reservations upon which the Papago people reside. The three reservations are the Papago (or Sells) Reservation with 2,774,370 acres; the Gila Bend Reservation with 10,409 acres; and the San Xavier Reservation with 71,201 acres.

The Papago Reservation is the main reservation and is the seat of the Nation's government (see Figure 2-1). It stretches from the Mexican border north to within ten miles of the city of Casa Grande, Arizona, and is 90 miles from east to west. The San Xavier Reservation was established near the city of Tucson in 1874. The Gila Bend Reservation was created in 1882 near the town of Gila Bend, Arizona. Through a number of executive and congressional acts over the period of 1911 to 1940, the Papago Reservation was created from a patchwork of Indian lands. Papago tribal members ratified the tribal constitution and bylaws in 1936. In 1991, the three reservations together became known as the Tohono O'odham Nation.

The Nation is divided into eleven political districts: one for Gila Bend and San Xavier and nine for the Papago Reservation. Each district has its own council with no less than five members. Each district also elects two persons to sit on the Tohono O'odham Tribal Council.

Most of the Nation's inhabitants live in one of four population centers: Sells, Chuichu, Santa Rosa, and San Xavier. The remaining inhabitants live in approximately 40 settlements spread across the Nation. Sells is the largest community with a population of approximately 2,750 and is the center of government within the Nation. Sells is also the location of the Bureau of Indian Affairs (BIA) agency and the Indian Health Services (IHS) complex for the Nation.

The terrain within the Nation is Sonoran desert with short but jagged mountain ranges rising up to 1,500 feet above the surrounding flat alluvial plains and valleys. Natural vegetation is typical of Sonoran desert, with ocotillo, mesquite, saguaro cacti, creosote, paloverde, and dry grasses in abundance. Rainfall is sparse with totals ranging from four to twelve inches annually. There are two periods of rain during the year: the winter and summer.

Long ago, the summer rain allowed only undependable small-scale farming. Without any permanent streams or lakes within the Nation, and only widely separated springs, all irrigation water must be supplied by wells. The groundwater supply is abundant enough to allow large-scale farming. Within the Nation, 7,000 acres are irrigated with about 1,200 of these in the San Xavier District. Wells are also the sole source of domestic water for the Nation's water systems.

There is some small business in the Nation, most in a business park in the San Xavier District. Because of the vast size of the Papago Reservation, there is little small business besides the basic businesses serving the inhabitants of the reservation. The only industry within the Nation is a large copper mine in the northern area of the Papago Reservation.

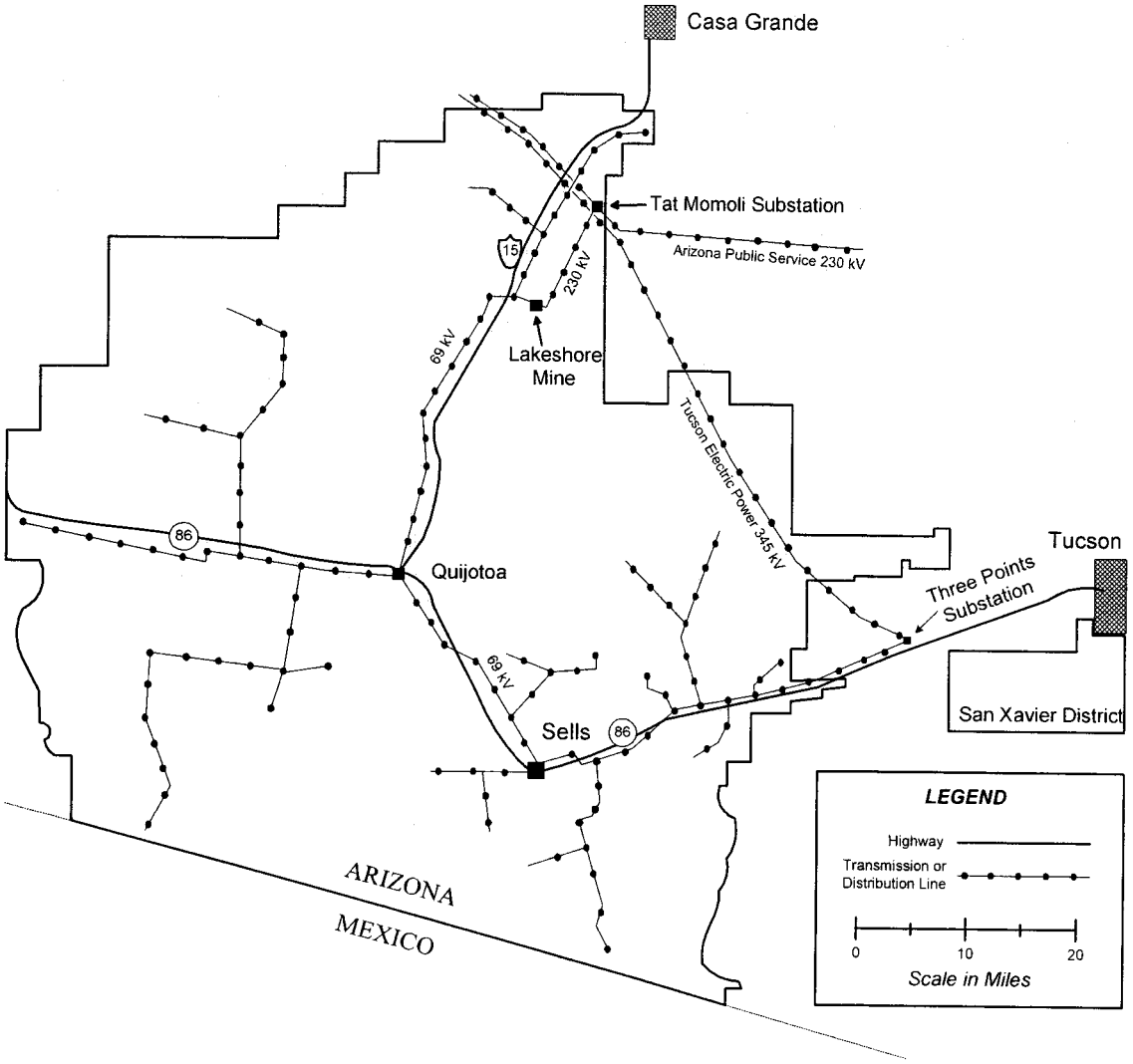

Figure 2-1. Tohono O'odham Nation Service Area of Tohono O'odham Utility Authority

3.0 THE TOHONO O'ODHAM PEOPLE

The name Tohono O'odham means "desert people." The Tohono O'odham are still commonly referred to as Papago. They are found on each of the three reservations that make up the Tohono O'odham Nation. In 1990, a little over half of the approximately 18,000 registered Tohono O'odham Indians lived within the Nation's lands. About 8,400 lived on the Papago Reservation; about 300 on the Gila Bend Reservation; and 1,200 lived on the San Xavier Reservation. These numbers fluctuate as economic conditions and job openings change.

Historically, the Tohono O'odham people practiced some farming but did not rely on it since rainfall could be limited. They did hunt for small game and gathered food as they traveled. Travel was often necessary just to find water. The summer rains allowed them to move from their permanent villages in the hills to the plains where they would farm and collect food. Crops grown included maize, beans, pumpkins, gourds, and cotton.

The remote location and desolate nature of their lands limited contact with Europeans. Before the Gadsden Purchase in 1853, the aboriginal lands of the Tohono O'odham were in Mexico. After the Gadsden Purchase, their lands became part of what is now Arizona and were considered available for non-Indian settlement. The land around natural springs and grazing areas were soon claimed and settled by ranchers. At the time there were no programs to protect the land of the Tohono O'odham. Such programs were not effective until the twentieth century when the pressures from increasing numbers of cattle ranchers and miners made the creation of a reservation a necessity.

Since then, the Tohono O'odham have launched their own cattle operations. At first, the operations were plagued with difficulties due to lack of experience, water, and proper funding. With help, the cattle operations have become a source of income for the Nation. In addition, a copper mine in the northern part of the Nation has provided employment for several hundred tribal members. Because other economic opportunities are scarce on the reservation, some tribal members leave the Nation to find better opportunities. This emigration has dampened overall growth and placed a burden on the public utilities on the reservation as they attempt to pay back loans with static revenues.

4.0 DEVELOPMENT OF TOHONO O'ODHAM UTILITY AUTHORITY

The public utility serving the needs of the residents of the Tohono O'odham Nation began its existence in 1970 as the Papago Tribal Utility Authority. Since then, it has progressed and grown and in 1991 the utility's name was changed to the Tohono O'odham Utility Authority. (For the purposes of this case study, the name Tohono O'odham Utility Authority (TOUA) will be used to refer to the present operation as well as its predecessor the Papago Tribal Utility Authority.)

This section describes the impetus to TOUA's development, the process followed by the Nation's leaders in developing the TOUA, the results of its work, and its views of the pros and cons of tribal utility operation. While TOUA's responsibilities currently include the provision of electric, water, sewer, and telephone service, this case study will concentrate on TOUA's electric system.

4.1 Impetus for the Tohono O'odham Nation's Development of the Tohono O'odham Utility Authority

In the late 1960's the leaders of the Tohono O'odham Nation desired to improve the conditions in which the reservation community lived. The existing electric power system within the Nation was inadequate, the water systems were antiquated, and the sewer systems were virtually nonexistent. The majority of the water and wastewater systems were under the management of the BIA and few residents received electric service. In 1970, with the goal of building an organization that would provide utility services throughout the reservation community, the Tribal Council passed Council Resolution 8-70 which created TOUA (then called the Papago Tribal Utility Authority). Figure 2-1 on page 3 shows the Papago, or main, reservation and the San Xavier District next to Tucson. While this figure does not show the entire Tohono O'odham Nation, it does show the portion of the Nation served by TOUA.

4.1.1 Utility Situation Within the Nation

At the time of TOUA's formation the existing electrical system within the Tohono O'odham Nation was owned and operated by Trico Electric Cooperative (Trico) in Tucson. Trico served only the larger villages on the Papago Reservation leaving approximately 27 villages within the reservation without utility electric service. Trico had little interest in expanding service to remote villages within the reservation because providing service to these far-flung customers would be too expensive due to the great distances between villages and the small number of residents in each village. If those customers on the reservation that wanted electric service were asked to pay for the cost of providing their own service, few could afford it. Also, Trico did not have the infrastructure or desire to provide service to all the residents of the reservation.

The Tribal Council hoped to rectify this situation through the formation of TOUA. It was anticipated that, with proper and adequate funding, TOUA could provide electric service to all the reservation's residents. To do this would be in the best interest of the reservation's residents. It would provided them with a necessary service, it would provide jobs, and it would increase the self-sufficiency of the reservation as a whole.

4.1.2 Decision to Form a Tribally-Operated Electric Utility

In the late 1960's, the Tribal Council commissioned several studies on the feasibility of developing a tribally-operated utility. Only one study, by a national consulting firm, was determined to be reliable. This resulted in the decision by the Tribal Council to form the tribally-operated utility.

At its inception in 1970, TOUA operated the electric, water, and wastewater utilities on the reservation. Since then, TOUA has taken over operation of the telephone service as well. None of these systems were under Indian control until TOUA took them over. The goal was simply to provide utility services throughout the reservation to whoever desired them.

4.1.3 The Beginning of Operations

At the beginning of operations in 1970, there were two companies interested in developing mineral deposits on the reservation. Hecla Mining Company and Newmont Mining Company both held leases for potentially large copper mines. Both needed large amounts of power, anticipating 50 MW loads from their operations. One of the first actions of the new utility was to attempt to negotiate the purchase of wholesale power for resale to the two mining operations. Arizona Public Service (APS) in Phoenix had the closest transmission lines to the proposed mining sites. TOUA desired to purchase the power from APS then resell it to the mines even though it did not own any transmission lines. The only rights TOUA could claim to be able to do this was the jurisdiction it held on the reservation.

Neither APS nor the two mines were willing to recognize TOUA as a viable and legitimate utility because of management's lack of experience and lack of assets. APS insisted on power purchase guarantees from the two mines before it would recognize TOUA. At this point, Newmont dropped out, deciding not to develop its claim on the reservation.

TOUA realized that it would not be recognized as a viable and legitimate utility unless it had transmission facilities. To meet this objective, TOUA began negotiating for the purchase of Trico's transmission and distribution facilities on the reservation and searching for financing. At the same time, TOUA was negotiating with Tucson Electric Power for transmission rights of way across the reservation. TOUA took a major step toward official recognition when it reached an agreement on price with Trico for its on-reservation system. With this agreement came official recognition from the Rural Electrification Administration (REA).

In 1972, TOUA began electric service to the Hecla mine through a new 230 kV transmission line paid for by Hecla and built by APS. The same year, TOUA completed its first resource plan and submitted a loan application to REA for the purchase of the Trico system. Two-and-a-half years later, REA funded the loan and TOUA was able to purchase the Trico system. From there, TOUA has expanded service to the 27 villages without power and to anyone else within the Nation who wants power.

4.2 Funding the Development of TOUA

In its first ten years of existence, TOUA borrowed over $3.8 million from the REA and $100,000 from the Tohono O'odham Tribal Council. The funds borrowed from the REA were for the sole purpose of expanding and improving the existing electrical system on the reservation. The funds provided by the Council were for start up and general operating expenses.

Upon its creation, TOUA was given a $75,000 appropriation from the Tribal Council in 1970. The Nation was unable to provide additional funding for TOUA to purchase any assets. As a result, TOUA had no offices, no cash, no credit rating, and no assets with which to secure loans or other funding. This hindered TOUA's ability to acquire loans during its first few years of existence.

In 1972 REA officially recognized TOUA after it successfully negotiated the purchase of Trico's on-reservation system. With this recognition, TOUA was able to apply for an REA loan in 1973. TOUA sought $1.15 million to acquire Trico's facilities and $1.32 million to construct the "backbone" 69 kV transmission line, related substations, and village extensions. Initial approval of the loan by the REA came in 1974. However, final approval was withheld after the REA determined that it could not hold a mortgage on tribal land. This dilemma was not overcome until 1975 when TOUA guaranteed its future electric revenues as loan collateral.

In the meantime, TOUA was again running out of money. The continued delay of the loan approval by the REA put the utility in danger of collapse. To stay solvent, TOUA asked for and received a $25,000 loan from the Tribal Council.

In March 1975, two years after TOUA's initial application for loan, the REA approved the loan for the full amount. Four months later, TOUA took possession of Trico's on-reservation facilities. The remaining money went towards the construction of the backbone transmission line. In 1976, it became evident to TOUA that the initial REA loan would not be sufficient to cover the costs of completing the backbone transmission line. Consequently, $834,000 in additional funds from REA were applied for and received in 1977. With these funds, TOUA was able to complete the transmission line construction. Another REA loan in 1979, this time for $503,000, paid for the installation of new feeder lines and protective equipment to allow TOUA to expand service to more villages.

TOUA no longer qualifies for 100 percent REA loans. The REA reserves 100 percent funding loans for cooperatives operating under conditions of extreme hardship such as having electric rates that are 20 to 25 percent higher than neighboring utilities. Currently, TOUA can borrow 70 percent from the REA. Therefore, it has to look elsewhere for supplemental funds. Another source of funding for TOUA has been the National Rural Utilities Cooperative Finance Corporation (CFC). The CFC was formed by the National Rural Electric Cooperative Association (NRECA) in 1969 to provide a source of needed additional funding for the rural electrification program. The CFC is the primary source of private market financing to the program and supplements financing provided by the REA.

4.3 Third Party Involvement

There have been several other parties involved in the development of TOUA. These have included consultants performing feasibility studies, contractors constructing transmission lines and substations, and several government agencies with various duties. Due to the nature of the reservation system and the concept of a reservation being recognized as a sovereign nation, state regulatory agencies have no jurisdiction in the operation of utilities operating within a reservation. However, some federal regulation does apply to TOUA. Other federal government entities involved with TOUA include the Federal Energy Regulatory Commission, the Bureau of Indian Affairs, the Rural Electrification Administration, and the Western Area Power Administration.

4.3.1 Consultants

In the late 1960's and early 1970's, before the Nation formed TOUA, several consultants were called upon to study the feasibility of tribal operation of the reservation's utilities. Since the Nation was interested in the operation of all the existing utilities (water and wastewater in addition to electricity), the commissioned reports all dealt with the multiple utility perspective of tribal operation. Only one of the studies proved to be reliable and useful to the tribe in the long-run. However, even this study was not sufficient for the REA when TOUA applied for loans. For the REA loan application, the TOUA had to complete and submit its own feasibility study.

4.3.2 Contractors

Since its inception, TOUA has used construction contractors numerous times for transmission and distribution system work. Contractor-performed projects have included the construction of the 42-mile backbone 69 kV transmission line from the Lakeshore Mine to the Sells Substation, the reconductor of the Sells feeder, and distribution line construction on the San Xavier District.

4.3.3 State Governments

It is unknown if there was any formal declaration by the State of Arizona regarding the regulatory relationship between it and the Tohono O'odham Nation. It is well known and widely recognized that Indian Tribes conducting business wholly within their reservations are not subject to state regulation. This includes TOUA and its operations. Thus, the state has no jurisdiction in TOUA's operation. The functions usually performed by the state, such as approval of rate increases, are performed by the Board of Directors. TOUA's Plan of Operations has a provision whereby any disputes over rate increases may be settled by a review panel consisting of an independent party hired by the tribe.

4.3.4 Federal Government

Three federal agencies were directly involved in the development of TOUA: 1) the Federal Energy Regulatory Commission, 2) the Bureau of Indian Affairs, and 3) the Rural Electrification Administration. All three agencies also have roles in the continuing operation of TOUA as does the Western Area Power Administration. TOUA is also subject to OSHA (the Occupational Safety and Health Administration) and EPA (Environmental Protection Agency) regulations.

The Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission (FERC) has jurisdiction over the resale of electricity. This applies to the wheeling of purchased power into the reservation. TOUA files its power purchase contracts with the FERC for approval. TOUA also complies with FERC accounting systems and methodologies.

The Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) was not directly involved in electric utility operations on the Tohono O'odham Reservation. The only requirement from the BIA was that TOUA's Plan of Operation was submitted to the Secretary of the Interior when TOUA was formed. The BIA was involved mostly in developing the water and wastewater facilities on the reservation in conjunction with Indian Health Services.

Rural Electrification Administration

The REA has been TOUA's greatest source of funding. The REA officially recognized TOUA when Trico and TOUA agreed on a price for Trico's on-reservation system. With TOUA's recognition came the ability to borrow money from the REA. The REA's initial $2.5 million loan was TOUA's only source of funds for development and expansion of the electric system on the reservation. To date, TOUA has borrowed approximately $7 million from the REA.

Western Area Power Administration

The Western Area Power Administration (Western) markets and transmits power from 54 federal hydroelectric power plants and markets the federal government's 547 MW entitlement from the Navajo Generating Station in northern Arizona. TOUA purchases wholesale power from Western (See Section 4.7.1.1 for additional information) which gives Western some regulatory control over TOUA. All of Western's long-term firm power service customers, including TOUA, will be required to submit integrated resource plans (IRP) in the future. Customers that fail to submit IRPs may lose a portion of their power allotment or be subjected to rate surcharges.

4.4 Acquiring Electric System from Trico Electric Cooperative

TOUA realized early that they would have difficulty being recognized as a legitimate utility without transmission facilities. The only existing transmission facilities on the reservation were owned and operated by Trico Electric Cooperative. In 1971, TOUA first approached Trico about purchasing its facilities. In 1972, after difficult negotiations, TOUA and Trico reached an agreement on the purchase price. Later that same year frictions arose due to Trico's unwillingness to build service extensions and to adequately maintain the facilities to be sold. Finally, TOUA acquired the on-reservation facilities by assuming Trico's note on the equipment in 1975.

By the end of 1995, TOUA will have acquired Trico's remaining service territory on the San Xavier District. This will give TOUA ownership and control of the entire electric system on the Tohono O'odham Nation.

4.5 Applications or Legal Documents Filed

The creation and establishment of TOUA as a legal entity required filing several applications and other legal documents with various federal agencies. The majority of the government dealings were with and continue to be with agencies of the federal government.

TOUA has filed power purchase contracts for approval by FERC. TOUA's first Plan of Operations was approved by the Secretary of the Interior. Subsequent Plans of Operations have been filed with the Department of the Interior through the BIA but TOUA management is unclear as to whether future revisions of the Plan of Operations must be approved by the Secretary of the Interior or by the Secretary of Energy.

4.6 TOUA Organization

TOUA's Plan of Operation and organizational structure are modelled closely upon those of the Navajo Tribal Utility Authority (NTUA). The NTUA has long been a model for tribal utility operation because it is recognized as being the first tribally-operated utility system in the country as well as the largest.

4.6.1 Plan of Operation

TOUA's Plan of Operation was created before the Tribal Council even created TOUA. Upon creating TOUA, the Tribal Council appointed the first Management Board and presented its members with the Plan of Operation and $75,000 to get started. The Plan enumerates TOUA's purpose and organization; purpose, duties, and powers of the Management Board as a whole; the qualifications necessary to serve on the Board; and the powers and duties of individual Board members. (Refer to Appendix B for the Tohono O'odham Utility Authority Second Restated Plan of Operation.)

4.6.2 TOUA Directors

The TOUA Plan of Operation specifies that operation and management of TOUA be the responsibility of the Management Board. The Plan of Operation also designates an Executive Committee that consists of members of the Management Board. The Executive Committee may act in the place of the Management Board in the interval between meetings of the Board.

4.6.2.1 TOUA Management Board

The TOUA Plan of Operation states that a Management Board comparable to a Board of Directors will have control of and operate the utility. The TOUA Management Board (Board) is authorized to direct the operations to fulfill the purpose of TOUA as stated in the Plan of Operation. This includes setting rates. If there are disputes regarding rates, the Board sets up a review panel to hear grievances.

Members of the Board are called Directors and serve terms of three years. The Board consists of seven Directors, all of whom are appointed by the Chairman of the Tohono O'odham Nation and approved of by the Council as a whole. No employee of the BIA or member of the Tribal Council

may be a Director. Three of the Directors must be tribal members who have sufficient education and experience to qualify them for learning the utility business and the operation of the utility. Four Directors must be persons who have at least ten years of business management experience. Of these four Directors, three must have had such experience in the utility industry. The tribe hopes that one day, all the Directors will be tribal members.

Meetings are held at least quarterly with an annual meeting in July. Special meetings may be called by the Chairman, or Secretary, or any three Directors. To avoid holding meetings in the absence of tribal members, a quorum is designated as five Directors.

4.6.2.2 TOUA Executive Committee

Also designated by the Plan of Operation is the Executive Committee. However, its exact purpose is not spelled out. The Management Board may appoint four Directors to serve as the Executive Committee, two of which must be tribal members. The Board may also increase the size of the Executive Committee at any time. The Chairman of the Executive Committee may also be the Chairman of the Board and is elected by the Board from among the members of the Executive Committee. Three Executive Committee members constitutes a quorum.

4.6.2.3 Principal Officers of the Management Board and Executive Committee

Both bodies, the Management Board and Executive Committee, have the following principal officers: Chairman, Secretary, and Treasurer. The Chairman may hold the same office in both bodies. Neither the Secretary nor the Treasurer needs to be a member of either body. The General Manager is a principal officer of TOUA but is not a member of the Board.

If the Board wishes, there may also be a Vice-Chairman, Assistant Secretary, and Assistant Treasurer. Each officer's term of office is one year beginning at the Board's annual meeting. The Chairman of the Board is required to make a formal report to the Chairman of the Tohono O'odham Nation and the Tohono O'odham Council annually.

4.6.3 The Role of the Tohono O'odham Tribal Council in the Operation of TOUA

Besides appointing the Directors to the Management Board, the Tribal Council has no explicit role in the operation of TOUA. In fact, the TOUA Plan of Operations prohibits members of the Tohono O'odham Council from being members of the TOUA Management Board. This is in contrast to the Fort Mojave Tribal Council which acts as an advisory board to the Aha Macav Power Service Board of Directors and attempts to have at least one Council member sit on the Board of Directors.

4.6.4 Management

The management of TOUA consists of a General Manager and an Operations Manager for each of the four utilities: electricity, water, wastewater, and telephone. While each of the Operations Managers is in charge of the day-to-day operations of their utility the General Manager is in charge of all four utilities. Table 4-1 illustrates the current organizational structure of TOUA's management.

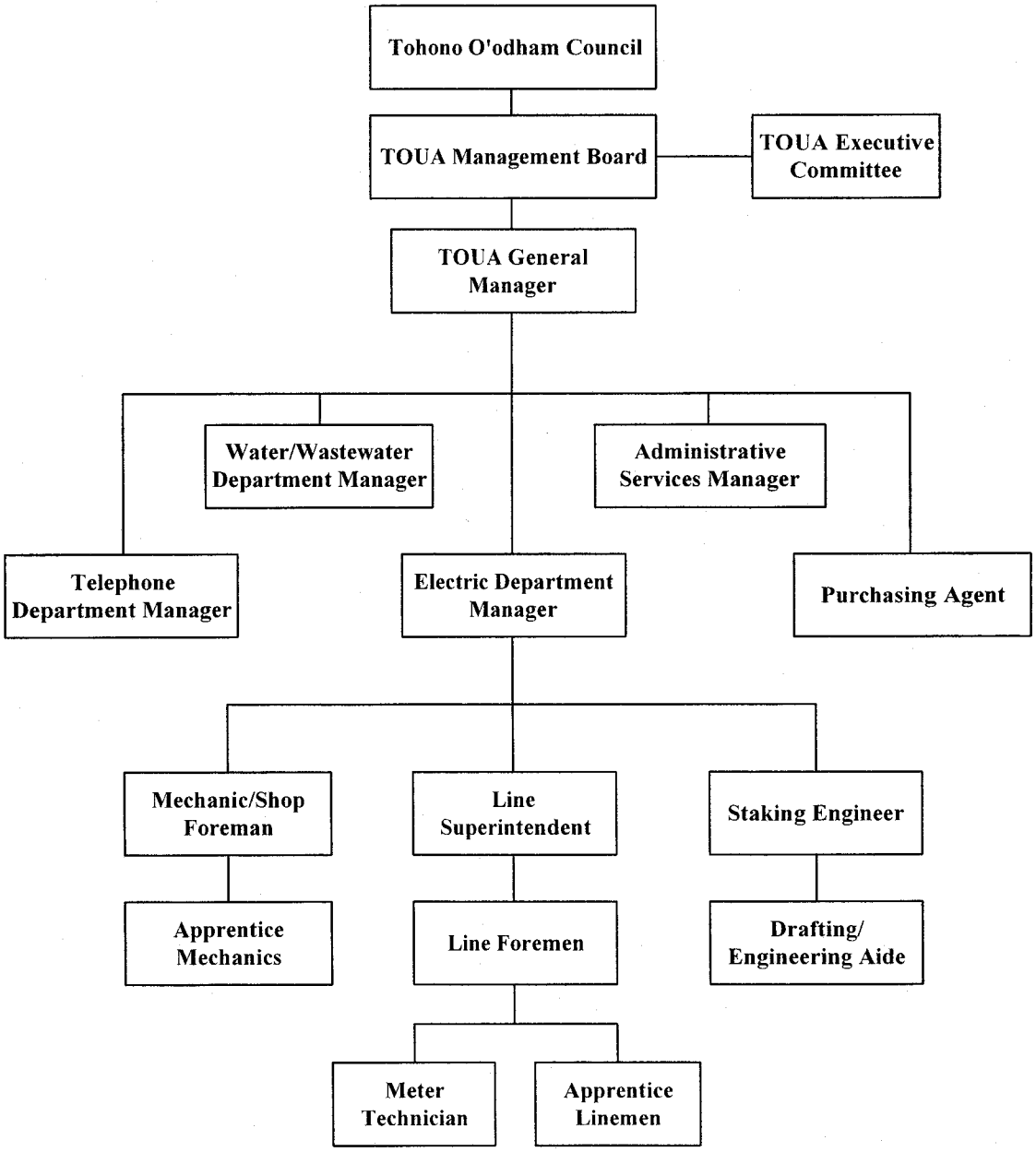

Table 4-1. Organizational Structure of Tohono O'odham Utility Authority and Electric Department

The General Manager of TOUA is appointed by and reports to the Board as the principal operating executive. The General Manager is employed under contract. The Plan of Operation states that the General Manager cannot be a member of the Management Board. Long-term operations of the electrical system are directed by the General Manager. These operations include securing power supplies, forecasting and planning, and personnel issues.

4.7 TOUA Electric Operations

Day-to-day operations of the TOUA electrical system are managed by the Manager of Electric Operations who has a staff of approximately ten. He is assisted in his work by TOUA's new SCADA (Supervisory Control and Data Acquisition) System. So far, TOUA has data acquisition capabilities but not supervisory control capabilities. This allows TOUA to see real-time and historical energy use and demand characteristics of each of its substations.

4.7.1 Power Supplies

The electrical systems on the Papago and San Xavier reservations are not physically connected and have different suppliers. As of mid-1995, TOUA purchased power from four suppliers: Western, Trico, Arizona Power Authority, and APS. By the end of 1995, TOUA will end power purchases from Trico and add Tucson Electric Power as a supplier.

4.7.1.1 Western Area Power Administration

TOUA began purchasing power from Western in 1987. Western's rates are significantly lower than TOUA's other suppliers. In 1994, TOUA purchased 13,941 MWh of electricity from Western at a total cost of $152,517 or an average cost of 1.1¢/kWh. TOUA's contractual rate of delivery is 2,887 kW in Summer and 2,353 in Winter. Power from Western is delivered through APS to TOUA's Tat Momoli Substation in the northern region of the Nation.

4.7.1.2 Trico Electric Cooperative

Currently, half of the San Xavier Reservation is served by TOUA with power purchased from Trico. The winter and summer peak loads on the San Xavier District are 1,200 and 500 kW, respectively. The unusual winter peak is due to the large number of customers using electricity for heating. Conversely, the summer cooling load is low due to the use of evaporative coolers rather than air conditioning. In 1994, TOUA purchased 2,017 MWh from Trico at an average cost of 10.4¢/kWh. This cost includes wheeling charges for power purchased by TOUA from Arizona Power Authority (APA). TOUA will serve the remainder of the San Xavier Reservation once it purchases Trico's remaining system there by the end of 1995. When this happens, Trico will cease to be a supplier for TOUA.

The current load on TOUA's system within the San Xavier Reservation is mostly electric residential heating. When TOUA takes over Trico's system on the reservation, the load will level out since the Trico service area is more commercial in nature.

4.7.1.3 Arizona Power Authority

Arizona Power Authority is a wholesale utility providing Hoover Dam power to TOUA through Trico. In 1994, TOUA purchased 1,304 MWh from APA at an average cost of 3.44¢/kWh.

4.7.1.4 Arizona Public Service

Arizona Public Service became TOUA's first power supplier in 1972 when TOUA began selling power purchased from APS to the Hecla Mine. Today, APS remains TOUA's largest power supplier. TOUA currently contracts for approximately 7.5 MW of capacity from APS. In 1994, TOUA purchased 73,268 MWh at an average cost of 7.64¢/kWh. TOUA recently renegotiated its contract with APS and will be receiving a refund from APS. By mid-1995, TOUA's average cost of power from APS was 5.1¢/kWh. APS's point of delivery for power to TOUA is the Tat Momoli Substation.

4.7.1.5 Tucson Electric Power

TEP will replace Trico as a power supplier to TOUA by the end of 1995. Power purchases from TEP will cover those loads that are currently supplied by Trico on the east side of the San Xavier District near the Tucson Airport. As of mid-1995 no details of the contractual rate of delivery or price were available.

4.7.1.6 Self Generation

In the late 1970's and early 1980's, TOUA produced some of its own power through a small experimental photovoltaic (PV) system in the village of Schuchuli (Gunsight). Schuchuli is at the western edge of the reservation nearly 40 miles from TOUA's backbone transmission line. This 12-volt, 3.5 kW PV system was designed by TOUA in 1978 and built to REA specifications and financed by Indian Health Services (IHS) and NASA. It was the first PV system in the world to power an entire village. The system powered water pumps, lights, refrigerators, and sewing and washing machines for the village's 95 residents until the early 1980's when Schuchuli was connected with the grid.

Since that time, TOUA has had no interest in getting back into self-generation. Several developers have approached TOUA proposing closed system waste-to-energy plants that would be built within the Nation but the Tribal Council has not been interested.

4.7.2 Electric Utility Planning

At various times, TOUA has prepared both short- (2-year) and long-range (10-year) action plans. Early on, these plans were prepared by consulting engineers. Now TOUA has the resources to develop these plans itself. TOUA has also prepared long-range financial forecasts, which were especially important for securing REA loans.

Unlike Aha Macav Power Service on the Fort Mojave Reservation, TOUA does not currently have a geographic information system (GIS). Therefore, TOUA contracts out to an engineering firm to assist with circuit diagrams and design. Due to the benefits of GIS and the fact that TOUA operates four separate utilities, TOUA is considering purchasing a GIS system.

Since 30 to 35 percent of TOUA's non-mine load is due to federal government projects (i.e., Housing and Urban Development housing developments and IHS clinics), government spending dictates the level of growth. There is very little private capital within the Nation. The only recent government spending has been Housing and Urban Development (HUD) projects but there have been no new grants recently. The long-term growth rate for TOUA's power sales is estimated to be 5 percent.

However, due to spending cuts, growth each of the last two years was 3 percent. Two new HUD projects will begin construction in late 1995, but they are the only known federal development within the Nation for the next couple of years.

4.7.3 Personnel

The staff at TOUA is complex since it manages the operation of four separate utilities: electricity, water, wastewater, and telephone. The General Manager oversees the operation of the four utilities with the assistance of an Operations Manager for each utility. A single administrative staff supports all four utilities.

4.7.3.1 Personnel Skills Required and Source of Trained Personnel at the Start of Operations

TOUA's had two basic personnel requirements when starting operations: 1) people with experience in managing and operating an electric utility, particularly a rural electric cooperative, and 2) people who were interested in starting up a new utility. There were no tribal members experienced in utility operation so TOUA had to look for experienced workers off the reservation. The city nearest the reservation is Tucson which is an hour from Sells, the location of TOUA's headquarters. In addition, the new utility could offer no benefits to its employees. Thus, TOUA had a difficult time finding experienced people who were interested in a one hour commute each way and no benefits.

TOUA's first General Manager was hired in 1972. He had several years experience in successfully managing electric utilities, especially those requiring REA financing. The General Manager's experience combined with the support of a progressive Tribal Chairman created a rich environment for growth and expansion for TOUA.

4.7.3.2 Existing TOUA Personnel

TOUA has found it necessary to hire non-tribal members to fill the highly technical positions such as General Manager and the Department Managers since no tribal members are presently qualified. TOUA located qualified personnel by placing advertisements in trade journals and national publications. This strategy was successful at the beginning of operations and continues to be today because of TOUA's unique situation and needs.

Additionally, TOUA operates an apprentice lineman program. Two apprentices are supervised by three journeymen. Both the apprentices are tribal members. There are several recognized apprenticeship programs for linemen. Some programs are affiliated with electricians unions. The program which TOUA's apprentices are a part of is one of several nationally recognized non-union apprenticeship programs. These programs provide training for the participants that will enable them to become journeyman linemen in four years. At that point, they can get jobs with any type of electric utility.

4.8 TOUA's Experience With Utility Operations

Overall, the staff and management of TOUA is proud of their accomplishments and would recommend that other tribes follow their lead based on the improvements the transition has brought to the Tohono O'odham Nation.

4.8.1 Tohono O'odham Nation's Advantages and Disadvantages of Running Its Own Utility

The management at TOUA is most proud of providing training and employment for tribal members, being able to secure the best employees whether they are tribal members or not, and having an excellent service record which has earned TOUA the respect and support of its customers. TOUA provides employment for approximately 25 people, about 15 of which are tribal members. TOUA's excellent service record was proven in 1994 when a tornado knocked down six power poles carrying power to the water pumps for the town of Sells late one evening. TOUA's crews responded so quickly that by dawn the next morning, all but one pole had been replaced. Having the electric utility owned and operated by the Tohono O'odham Nation ensures that TOUA is operated in the best interest of the tribe. For example, since electric operations began in 1975, TOUA has raised its rates only twice.

On the negative side, TOUA would like the tribe to be less dependent upon the federal government for economic growth. With such a large reservation and few natural resources besides scattered mineral deposits, there aren't many opportunities for economic development apart from the enterprises typically associated with reservations: casinos and waste processing.

4.8.2 Would the Nation Do It Again?

The management of TOUA, including one of the founding managers of the utility, agreed that they would do it again if given the opportunity. They felt TOUA's customers would agree. Service has been provided to almost everyone and it has been improved as well.

4.8.3 Advice the Tohono O'odham Nation Would Give to Other Tribes Considering Starting Its Own Electric Utility

The management of TOUA had these suggestions for a tribe setting up its own utility:

- Set up a genuine Board of Directors with members who have outside experience in utility operation and/or business. This is reflected in the requirements for candidates to the Management Board that are stated in TOUA's Plan of Operations.

- Stay out of tribal politics. TOUA does not allow Tribal Council members or BIA employees on the Management Board. This serves to separate the political end of tribal operations from the service end as provided by TOUA.

- Don't run the utility like a typical tribal business — don't play favorites with customers. This suggestion is closely related to the previous suggestion to stay out of tribal politics. TOUA has even shut off service to Management Board members who haven't paid their bills. This instills the trust of the tribal membership as a whole.

4.9 The Future of TOUA

TOUA is a mature utility. It was one of the first tribally-owned and -operated electric utilities in the nation. Its phase of rapid growth due to the rush to provide service to all customers is over. Now growth must come as a result of new customers rather than existing customers who never had electricity. Until recently, growth of energy consumption on the Tohono O'odham Nation had been 5 percent annually. For the last two years, growth has been only 3 percent per year. With the purchase of Trico's remaining service area in the San Xavier District, 400 mobile homes will be added to the load. Other than that, the only known development within the two reservations are developments for more housing by HUD. Besides providing service to the HUD developments, TOUA has no plans for additional construction on its electrical system. The Hecla Mine is not operating at capacity because of a change in the method of extraction from block caving to open pit mining. This will continue for another couple of years until the copper ore is reached. Then ore processing will begin and the mine's load should return to normal levels.

TOUA will survive even with a low load growth rate. After 25 years, the tribe and the management of TOUA have learned how to handle almost any situation. It is an excellent example of how a tribe can benefit itself and its members by taking control of its resources.

Acronyms:

AM/FM..... Automated Mapping/Facilities Management
BIA..... Bureau of Indian Affairs
FERC..... Federal Energy Regulatory Commission
GIS ..... Geographic Information System
GM ..... General Manager
kV..... KiloVolt
MW..... MegaWatt
SCADA ..... Supervisory Control and Data Acquisition
TOUA..... Tohono O'odham Utility Authority

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APPENDIX B

TOHONO O'ODHAM UTILITY AUTHORITY
SECOND RESTATED PLAN OF OPERATION

(Retyped from the original document for easier readability)

TOHONO O'ODHAM UTILITY AUTHORITY
SECOND RESTATED PLAN OF OPERATION

Section 1: **Name, Location and Place of Business**

A. **Name.** The name of the Authority shall be Tohono O'odham Utility Authority, formerly known as Papago Tribal Utility Authority.

B. **Location.** The principal place of business and the office of the Authority shall be at Sells, Arizona, and the post office address of the principal office is P.O. Box 816, Sells, Arizona 85634.

C. **Place of business.** The Authority may also have offices at such other places as the Management Board may from time to time authorize.

Section 2: **Seal**

The seal of the Authority is described as follows:

> Seal shall be in the form of a circle and shall bear the full name, "TOHONO O'ODHAM UTILITY AUTHORITY" and the word "ARIZONA" and the figure "1970."

Section 3: **Duration**

The duration of the Authority is perpetual.

Section 4: **Purposes**

A. **General.** The purposes for which the Authority is organized are as follows:

1. To plan for, provide and furnish utility services to all areas within the Tohono O'odham Nation, where such services are determined to be feasible and economic.

2. To promote the use of utility services where available in order to improve the health and welfare of the residents of the Tohono O'odham Nation.

3. To acquire, construct, operate, maintain, promote and expand utility systems furnishing electric, gas, water, sewer and telephone services within the Tohono O'odham Nation.

4. To initiate, acquire, operate, maintain, provide and provide, alone or in conjunction with others, cellular radio services and facilities both within and beyond the boundaries of the Tohono O'odham Nation.

5. To provide utility service to the Tohono O'odham at the lowest possible cost consistent with prudent fiscal responsibility

6. To use the revenues of the Authority for the following purposes, which are listed below in the order of the priority of use:

   a. To pay the costs of operations and maintenance.

   b. To amortize the loans of the Authority.

   c. To fund an adequate Renewal and Replacement fund.

   d. To educate the Tohono O'odham in the proper, efficient and economical use of all utilities.

   e. To accelerate the retirement of long term debt.

   f. To provide a fair return to the Nation on its investment.

B. **Ancillary.** To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein above set forth, and to do all things incidental thereto or connected therewith, which are not forbidden by law, this Plan of Operation for the Authority or the Constitution of the Tohono O'odham Nation.

Section 5: Easement Franchises and Grants of Use

A. **Easement Franchises.** The authority shall have, and is hereby granted, subject to any prior valid existing right or adverse claim, the franchise, right, permit, easement and privilege of placing, erecting, constructing, repairing, removing, replacing, maintaining, using and operating public utility systems, lines and facilities for the furnishing of electric, gas, water, sewer, telephone and cellular radio services, and necessary or useful adjuncts thereto, whether laid thereon or therein, together with the right of ingress and egress when necessary for such purposes, on, over, under and across unallotted lands of the Tohono O'odham Nation which are useful or convenient for the construction, maintenance, operation and repair of such utility systems, lines or facilities, provided, that in placing, erecting or constructing any new lines or facilities the Authority shall comply (a) with all applicable federal laws and the laws of the Tohono O'odham Nation and (b) with the provisions of any applicable land use plan adopted by a District Council which was duly approved by the Tohono O'odham Council and, provided further, that before placing, erecting or constructing any new transmission or distribution lines or facilities (excluding service lines as defined in 25 C.F.R. § 169.22) on, over, under or across unallotted lands of the Nation, the Authority shall first obtain (a) the prior review and approval of the Tohono O'odham Legislative council and (b) the prior written consent of the District Council of the District in which such lands are located, which consent shall not be unreasonably withheld. The Authority shall furnish to be Superintendent of the Sells Indian Agency copies of plats or maps delineating the utility systems, lines and facilities located on, over, under and across such lands in sufficient detail and number to permit recording in the Southwest Title Plant of the Bureau of Indian Affairs, Albuquerque, New Mexico.

B. **Grant of Easement Use.** The Authority shall have, and is hereby granted, subject to all applicable federal laws and the laws of the Tohono O'odham Nation, as the agent or permittee of the Tohono O'odham Nation, the right to use any franchise, right, permit, privilege, easement or right of way standing in the name of or granted to the Nation in connection with the construction, maintenance, operation or repair of public utility systems, lines or facilities furnishing electric, gas, water, sewer, telephone or cellular radio services.

Section 6: **Control of Operations**

It is intended that control and operation of the Authority shall be patterned as closely as is feasible on the lines of a chartered public service corporation of similar magnitude with a Management Board comparable to a Board of Directors of such a corporation.

Section 7: **Management Board; Purpose; Duties and Powers**

A. **Direction of purpose and exercise of powers by Management Board.** Subject to applicable laws and regulations of the Tohono O'odham Nation or the United States, the Management Board shall direct the purposes and exercise the following powers and duties:

1. The Management Board of the Authority is delegated authority and responsibility for the management and operation of the Authority.

2. The Management Board is authorized to direct the operations to accomplish the purposes set forth in Section 4 above and to exercise the powers set forth in subsection B below without previous authorization or subsequent approval and all parties dealing with the Authority shall have the right to rely upon any action taken by the Management Board pursuant to such authorization.

3. The Management Board shall exercise full power and shall be responsible for the custody and management, operation, inventory and maintenance of all utilities and facilities; the planning, construction and operating of all new facilities; and for the taking of any and all usual, necessary and convenient actions incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, and the making of contracts or commitments necessary to the functioning of the organization.

4. The Management Board shall function in much the same capacity as an elected Board of Directors of a chartered pubic service corporation, and shall be responsible for making investment decisions, subject to the limitations contained herein or in any advance of funds; for the establishment and maintenance of effective operating policies; the selection of management personnel; and for continuous supervision of performance.

5. The Management Board shall exercise its authorized powers in the best interests of the Tohono O'odham Nation, with the limits of responsible business judgment and with the stipulation that it shall not incur contract obligations in excess of the ability of the Authority to make payment on due date.

6. It shall select from its own membership a Chairman of the Board and other officers; and it shall adopt such rules as it may determine necessary for the orderly conduct of its business.

7. Copies of the minutes of each meeting of the Board shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by authorized representatives of the Tohono O'odham Nation and, upon notice to the Chairman of the Tohono O'odham Nation, by representatives of the Secretary of the Interior.

8. Members shall be reimbursed for expenses incurred in attending meetings and performing directorship duties and the Board may, at its discretion, set a reasonable fee to be paid to its members on a per-meeting-attended or other basis. Any such fee may be changed from time to time as conditions dictate.

9. The Chairman of the Board shall make a formal report to the Chairman of the Tohono O'odham Nation and to the Tohono O'odham Council not less often than annually and in such report shall include a summary of the budget which the Management Board has approved for the coming fiscal year.

10. The Management Board shall establish purchasing policies and procedures, giving usual and essential latitude to the General Manager and his delegated employees, but establishing limitations on amounts which may be expended without specific approval of the Board.

11. No contract or other transaction between the Authority and any one of the members of the Management Board, or between the Authority and any corporation, partnership, firm or other legal entity in which one or more of the Management Board has an interest, directly or indirectly, shall be valid for any purpose, unless the entire interest of the Director or Directors in such corporation, firm or other legal entity is fully disclosed to the board and the proposed contract or transaction shall be approved, ratified or confirmed by the affirmative vote of at least a majority of the entire Management Board who are not so interested.

12. The Management Board, in its discretion, may submit any such contract or act for approval or ratification at any regularly called or noticed meeting of the Tohono O'odham Council; and any contract or act that shall be approved or ratified by the vote of the majority of the Council shall be valid and binding upon the parties.

13. The Management Board shall submit any contract or act wherein a public officer or employee of the Tohono O'odham Nation may have an interest, directly or indirectly, in the matter or transaction to any regularly called or noticed meeting of the Tohono O'odham Council for approval. Any contract or act that shall be approved or ratified by the vote of the majority of the Council shall be valid and binding upon the parties.

B. **Enumerated powers.** Subject to approval by the Tohono O'odham Council where required and to all applicable laws and regulations of the Tohono O'odham Nation and the United States, and solely in furtherance of the limited purposes set forth in Section 4 above, the Management Board shall have the following powers:

1. **Facilities.** The Management Board shall exercise full authority and shall be responsible for the custody, management and operation of all utility property and facilities, including easements and rights-of-way granted therefor, owned and operated by the Tohono O'odham Nation, including such expansions and enlargements thereof as shall be authorized; for the planning, construction and operation of additional utility facilities, including the negotiation and execution of engineering and construction contracts; and for taking of any and all usual, necessary and convenient actions incident thereto.

2. **Capacity to act.** To have the capacity to act and direct the officers of the Authority to act in the same capacity as that of natural persons, but to have authority to perform only such acts as are necessary, convenient or expedient to accomplish the purposes set forth in Section 4 above, and such as are not repugnant to laws and regulations applicable to the Authority.

3. **To appoint officers and agents.** To elect or appoint officers, agents, engineers, auditors, and such professional consultants as in the opinion of the Board may be needed from time to time, and to define their duties and fix their compensation. The Management Board, at Authority expense, shall require the bonding of all officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of the Authority.

4. **To act as agent.** To act in any state, territory, district, or possession of the United Stated, or in any foreign country for and on behalf of the Authority.

5. **To deal in real property.** To negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise), utilize, improve, manage, operate, and to negotiate the sale, lease, or mortgage of, either alone or in conjunction with others, real estate of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in Section 4 above, except as prohibited by law. Title to all such real property shall be taken in the name of the Tohono O'odham Nation and title to all trust or restricted real property shall be and remain in its trust or restricted status.

6. **To deal in personal property, generally.** To acquire (by purchase, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in, and dispose of, either alone or in conjunction with others, personal property and interests therein, and commodities of every kind, character and description necessary or incidental to the purposes set forth in Section 4 above.

7. **To deal in inventions, copyrights, and trademarks.** To acquire (by application, assignment, purchase, exchange, lease, hire or otherwise), to hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names, provided that title of all such acquisitions shall be taken in the name of the Tohono O'odham Nation.

8. **To execute guaranties.** To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Authority,

to the extent that such guaranty is made in pursuance of the purposes et forth in Section 4 above, provided, that no such guaranty shall be made without the prior written approval of the Tohono O'odham Council if the current aggregate indebtedness of the Authority, including such guaranty, shall exceed the sum of twenty-five mission dollars ($25,000,000).

9. **Depository.** To designate and approve all depositories used for the deposit of funds of the Authority.

10. **To make contracts.** To enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purpose pertaining to its business necessary or incidental to the purposes set forth in Section 4 above, including the negotiation of contracts subject to R.S. ▪2103, 25 U.S.C. ▪81 (1964), which shall, as therein provided, become effective only upon the approval of the Secretary of the Interior.

11. **To approve budgets.** To give initial approval to annual Authority budgets, and to take final approval action with reference to the use of funds under the exclusive control of the Authority for operating and capital addition purposes.

C. **Ancillary powers.** To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Authority is organized.

D. **No construction of powers as purposes.** The powers enumerated herein shall not be construed as purposes but the Authority shall have and exercise such powers solely in furtherance of, but not in addition to, the limited purpose set forth in Section 4 above.

Section 8: **Indemnification of Officers, Employees and Members of the Management Board**

The Authority shall indemnify any officer, employee or member of the Management Board or former officer, employee or member of the Management Board of the Authority, or any person who may have served at its request as an officer, employee or member of the Management Board, against reasonable expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being, or having been such officer, employee or member of the Management Board except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty, or except in relation to matters in which such employee was acting beyond the scope of his employment. The Authority shall also reimburse to any officer, employee or member of the Management Board reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Management Board, other than Directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Authority and the Tohono O'odham Nation that such settlement be made and that such officer, employee or member of the Management Board was not guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee or member of the Management Board may be entitled to receive.

Section 9: **Membership on Board; Qualification; Term of Office**

A. **Number.** The Management Board shall consist of seven persons, all of whom shall be appointed by the Chairman of the Tohono O'odham Nation with the approval of the Tohono O'odham Council.

B. **Qualification.** The members of the Management Board shall be called Directors, and shall have the following qualifications:

1. Three of the Directors shall be members of the Tohono O'odham Nation who have sufficient education and experience to qualify them for learning utility business, practices and procedures, to participate in Management Board meetings and functions, and to make sound judgments.

2. Four Directors shall be persons having not less than ten years experience in business management of substantial character, and at least three of such persons shall have had such experience in the management and operation of a utility business.

3. No employee of the Bureau of Indian Affairs or member of the Tohono O'odham Council shall be a member of the Board.

C. **Term of Office.** Directors shall be appointed for the following terms of office and shall hold office until the qualification and selection of their successors:

1. The initial Management Board shall be appointed for a period of one year or until their successors have been appointed and qualified.

2. Beginning the second year, the Directors shall be appointed in three groups, the first group of three to serve one year, the second group of two to serve for two years, and the third group of two to serve for three years. Thereafter, all terms shall be for three years, starting on the first day of July of the year of their respective appointments. Directors shall be eligible for reappointment. They shall hold their offices until their successors have been appointed and qualified or until their death, resignation or removal in the manner provided herein.

Section 10: Removal

Any member of the Management Board may be removed by the Chairman of the Tohono O'odham Nation after a majority of the Management Board recommends such removal where, in the Board's best judgment, the best interests of the Authority shall be served by such removal.

Section 11: **Resignation and Vacancies**

Any member of the Management Board may resign at any time by giving written notice to the Chairman and Secretary of the Board and to the Chairman of the Tohono O'odham Nation. Resignations shall become effective at the time specified in said notice and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Director who fails to attend three consecutive properly called and noticed meetings of the Board or who fails to attend two-thirds (2/3) of all Board meetings properly noticed in any calendar year shall, unless excused from attendance for a justifiable cause, be considered to have resigned his directorship. The Chairman of the Nation shall be so notified and the Director shall be reappointed or replaced as set forth in this Section. Any vacancy on the Board because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term by the Chairman of the Tohono O'odham Nation with the approval of the Tohono O'odham Council.

Section 12: **Meetings of the Board**

A. **Annual meeting.** The annual meeting of the Management Board shall be held each year in the month of July at such time and place as the Board shall fix.

B. **Regular meetings.** The Management Board shall meet at least quarterly upon notice fixing the time and place.

C. **Special Meetings.** Special meetings of the Board may be held upon notice given by the Chairman, or Secretary, or by any three members of the Board, at such time and place as the Board shall direct or as shall be fixed by the notice.

D. **Notice.**

1. Notice of all meetings of the Board, stating the time and place, shall be given in writing by letter, telegram or radiogram properly addressed to each member according to the latest available Authority records, not later than five days nor more than thirty days immediately preceding the meeting, excluding the day of the meeting.

2. Notice may be waived in writing signed by the member or members entitled to such notices, whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at a meeting shall constitute a waiver of notice.

E. **Quorum.** Five members of the Management Board shall constitute a quorum for the transaction of any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board.

Section 13: **Executive Committee**

A. **Designation of committee.** The Management Board, by resolution duly adopted, may designate four members of the Board, two of whom shall be members of the Tohono O'odham Nation, to constitute an Executive Committee. The designation of such Executive Committee and the delegation of the authority herein granted, shall not operate to relieve the

Management Board or members thereof of any responsibility imposed upon it or them by law or this Plan of Operation. No member of the Executive Committee shall continue to be a member thereof after he ceases to be a member of the Management Board. The Management Board shall have the power at any time to increase the number of members of the Executive Committee, to fill vacancies thereon, to change any member thereof, and to change the functions or to terminate the existence thereof.

B. **Powers of the Executive Committee.** During the intervals between meetings of the Management Board, and subject to such limitations as may be required by resolution of the Management Board, the Executive Committee shall have and may exercise such authority as may be delegated by the Board.

All minutes of meetings of the Executive Committee shall be submitted to the next succeeding meeting of the Management Board for approval, but failure to submit the same or to receive the approval thereof shall not invalidate any completed or uncompleted action taken by the Authority upon authorization of the Executive Committee prior to the time at which the same was submitted as above provided.

C. **Procedure, meetings.** A Chairman of the Executive Committee shall be elected by the Management Board from among the members of the Executive Committee and shall preside at meetings of the Executive Committee and perform all duties incident to the office of the Chairman of the Executive Committee, and such other duties as, from time to time, may be assigned to him by the Management Board or the Executive Committee. The Secretary of the Authority shall keep a record of the acts of the Executive Committee and its proceedings. In the absence of the Secretary, the Chairman of the Management Board shall designate a person to act in said capacity.

D. **No individual authority.** The members of the Executive Committee shall act only as a committee, and the individual members shall have no power as individuals.

E. **Notice.** Notices of all meetings of the Executive Committee shall be given by the Chairman, the Secretary, or any member thereof, in the manner provided in Section 12D, and may be waived as therein provided.

F. **Quorum.** The presence of not less than three members shall be necessary to constitute a quorum for the transaction of business and the act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Committee.

Section 14: Officers: Powers and Duties

The principal officers of the Authority shall consist of the following:

A. **Chairman.** The Chairman of the Management Board and Chairman of the Executive Committee, which positions may be, but need not be, held by the same person, shall be members of the Management Board. The Chairman shall:

1. preside at all meetings of the Board at which he is present;

2. sign, with the Secretary, any instruments which have been authorized by the Board to be executed on behalf of the Authority, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or this Plan of Operation to some other officer or agent of the Authority, or shall be required by law to be otherwise signed or executed; and

3. in general, perform all duties incident to the office of Chairman and such other duties as may be prescribed by the Board from time to time.

B. **Secretary.** The Secretary may, but need not be, a member of the Management Board or of the Executive Committee. The Secretary shall be responsible for:

1. keeping the minutes of the meetings of the Management Board and the Executive Committee in books provided for that purpose;

2. seeing that all notices are duly given in accordance with the provisions of this Plan of Operation;

3. the safekeeping of the books and records and the seal of the Authority, and affixing the seal of the Authority to all documents, the execution of which on behalf of the Authority under its seal is duly authorized in accordance with the provisions of this Plan of Operation;

4. keeping on file at all times complete copy of this Plan of Operation of the Authority containing all amendments thereto; and

5. in general, performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board.

C. **Treasurer.** The Treasurer may, but need not be, a member of the Management Board or of the Executive Committee. The Treasurer shall be responsible for:

1. custody of all funds and securities of the Authority;

2. the receipt of and issuance of receipts for all monies due and payable to the Authority, and for the deposit of all such monies in the name of the Authority in such bank or banks as shall be selected in accordance with the provisions of this Plan of Operation; and

3. in general, performing all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board.

D. **Other officers.** in the discretion of the Management Board, there may be a Vice Chairman of the Board, Assistant Secretary, and Assistant Treasurer. Any two of these positions may be held by the same person. A Vice Chairman shall be a member of the Management Board and may, but need not, be a member of the Executive Committee. An Assistant Secretary or Assistant Treasurer may, but need not be, a member of the Management Board or of the Executive Committee. If a Vice Chairman is elected he shall, in the absence of the Chairman or in the event of his inability or refusal to act, perform the duties of the Chairman, and when so acting shall have all the powers and be subject to all the restrictions upon the Chairman.

Such officers shall perform such duties as from time to time may be assigned to them by the Board.

E. **General Manager.** The General Manager shall not be a member of the Management Board. He shall be the principal operating executive of the Authority and shall have direction of all parts of actual operations. He shall be responsible to the Board as a principal operating executive of a public service corporation normally would be. He shall render reports to the Board and perform all other functions and duties specified for the General Manager in Section 19 below.

Section 15: Election; Term of Office; Qualification

The officers, with the exception of the General Manager, shall be chosen annually by the Management Board at its annual meeting, or as soon after such annual meeting as newly appointed Directors shall have qualified. Each officer shall hold office until his successor is chosen and qualified, or until his death, or until he shall have resigned, or shall have been removed in the manner provided herein.

Section 16: Removal

Any officer or agent elected or appointed by the Management Board may be removed by the Board whenever, in its judgment, the best interest of the Authority will be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed, provided, however, the General Manager may be removed only pursuant to any approved contract provisions.

Section 17: Resignations; Vacancies

Any officer may resign at any time by giving written notice to the Management Board, or to the Chairman, or Secretary. Such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

Section 18: Other Officers and Agents

The Management Board may appoint such other officers and agents as it deems necessary or expedient, and may determine the duties of them as well as the terms of their holding office.

Section 19: **General Manager; Functions; Duties**

A. The General Manager shall be employed under a written employment contract and shall be responsible to the Management Board.

B. The function of a General Manager shall be analogous to that of the president of a public service corporation. He shall, among other things, execute the general policies formulated by the Management Board and organize the operation of the Authority into departments, each with its own specific duties and responsibilities.

C. He shall exercise his best judgment in the determination of the ways and means by which general policy set forth by the Management Board is to be effectuated.

D. He shall be the active, operating executive of the Authority and shall prepare plans and annual budgets; and make suggestions as to policies and any proposals for improvements.

E. He shall have the full authority and control over all employees of the Authority and shall be responsible for all department heads or other executives carrying out their assignments.

F. He shall be responsible for the general supervision of the performance of staff in respect to all such matters as conformance to approved budgets and to policies and procedures approved by the Management Board relating to standards, programs inspections, cost control, employee relations and in-service training.

G. He shall render regular reports to the Board and perform all other functions and duties specified in the Plan of Operations for the General Manager.

H. He shall be furnished with ample transportation and shall be reimbursed for any personal expenses he may incur in carrying out his responsibilities.

I. The General Manager shall employ competent department heads for the usual functional responsibilities for each department.

Section 20: **Financial Transactions; Miscellaneous**

A. **Contracts.** Except as otherwise provided in this Plan of Operation, the Management Board may authorize any officer or officers, or any agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Authority, and such authority may be general or confined to specified instances.

B. **Checks; drafts; etc.** All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority shall be signed by such officer or officers, agent or agents, or employee or employees of the Authority and in such manner as shall from time to time be determined by resolution of the Management Board.

C. **Deposits.** All funds, except petty cash, of the Authority shall be deposited from time to time to the credit of the Authority in such bank or banks as the Management Board may select.

D. **Accounting.** A modern accounting system shall be established and installed by a reputable consulting firm in conformity with accounting principles generally accepted in the utility operation field. The accounting system shall insure the availability of information as may be necessary to comply with all applicable regulatory requirements.

E. **Records; inspection; audits.** The books, records and property of the Authority, including current financial and operating statements, shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by authorized representatives of the Tohono O'odham Nation and, upon notice to the Chairman of the Tohono O'odham Nation, by representatives of the Secretary of the Interior. The accounts and records of the Authority shall be audited by an independent Certified Public Accountant at the close of each fiscal year. The results of such audit shall be included in the reports by the Chairman of the Management Board to the Chairman of the Tohono O'odham Nation and the Tohono O'odham Council required by subsection 7A (9) above.

F. **Fiscal year.** The fiscal year of the Authority shall be the same as the fiscal year of the Tohono O'odham Nation.

G. **Insurance.** Insurance, including liability insurance, adequate and sufficient to protect the interests of the Authority and the Tohono O'odham Nation from losses by fire or other disaster shall be carried on all property of the Authority.

H. **Policies; rules and regulations.** The Management Board shall have the power to make and adopt such policies, rules and regulations, not inconsistent with law and this Plan of Operation, as it may deem advisable for the management of the business and affairs of the Authority.

Section 21: Rates and Charges

A. The Management Board shall adopt all rates and charges for utility services which, when adopted, shall become effective at such time as the Board shall determine. Upon a petition being filed by five percent (5%) of the affected customers, the Authority shall, after giving such notice as the Board may determine to be adequate, hold a formal public hearing to review such rates and charges.

B. Procedures shall be established by the Tohono O'odham Council to provide for appeals of rate decisions following a public hearing by the Authority to an impartial review board composed of specialists on utility rates.

C. The Management Board may, in its sole discretion, negotiate with large users of a particular utility service for special rates and charges, provided, however, that such negotiated rates shall be demonstrated to be fair and equitable to all other customers or users of the services of the Authority.

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