

HUALAPAI TRIBAL COUNCIL
RESOLUTION NO. 79-91
OF THE GOVERNING BODY OF THE
HUALAPAI TRIBE OF THE HUALAPAI RESERVATION

(Enactment of the Hualapai Trespass Ordinance)

WHEREAS, the Constitution of the Hualapai Tribe provides that the Tribal Council is the governing body of the Hualapai Tribe and sets forth the powers of the Tribal Council exercised in this Resolution; and

WHEREAS, the Constitution authorizes the Tribal Council to protect and regulate the use of tribal land; and

WHEREAS, various rights-of-way, easements and leases belonging to persons doing business on the Reservation have expired and are currently in trespass; and

WHEREAS, other rights-of-way, easements and leases will expire in the future; and

WHEREAS, the Tribal Council finds that it is in the best interest of the Hualapai Tribe to impose a penalty on any person operating on or using property located on an expired right-of-way, easement, or lease within the Hualapai Reservation or who is otherwise trespassing on tribal land for the purposes of compensating the Tribe for the unlawful and unauthorized use of tribal lands and protecting tribal land.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby enacts a Trespass Ordinance, attached hereto as Exhibit A, which imposes a penalty on any person operating on or using property located on an expired right-of-way, easement or lease located within the Hualapai Reservation or who is otherwise in trespass on tribal lands.

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 members of whom 7 constituting a quorum were present at a **Regular Meeting** held this **7th day of December, 1991**; and that the foregoing resolution was duly adopted by a vote of 7 for, 0 against, 0 not voting, and 2 excused, pursuant to authority of Article V, Section(a) of the Constitution of the Hualapai Tribe approved March 13, 1991.

Earl Havatone, Chairman
Hualapai Tribal Council

ATTEST:-

Christine Lee
Christine Lee, Secretary
Hualapai Tribal Council

EXHIBIT A

HUALAPAI TRESPASS ORDINANCE

ORDINANCE NO. _____

Section 1. Statement of Purpose. It is the policy of the Hualapai Tribe to reserve consent to use tribal land to the Tribal Council and to take such action as is necessary to prevent trespass. The purpose of this Ordinance is to protect tribal land, deter trespass and to impose civil penalties for non-compliance.

Section 2. Definitions. As used in this Ordinance:

(A) "Right-of-Way" or "Easement" means the right to use tribal land pursuant to the consent of the Tribal Council and a valid grant of right-of-way or easement by the Secretary of the Interior or his authorized representative under applicable federal law and regulations.

(B) "Tribal Administrator" means the Tribal Administrator of the Hualapai Tribe.

(C) "Trespass" means (1) entering upon, crossing, occupying or using tribal land for any purpose whatsoever without the consent of the Tribal Council; or (2) operating on, or using property located on an expired, cancelled or invalid right-of-way, easement or lease, which includes holding over on, failing to vacate, or failing to cease the use of tribal land, a right-of-way, easement or lease and any improvements thereon, after the expiration or cancellation or invalidation of a lease, right-of-way or easement.

(D) "Person" means any individual, corporation, partnership or other entity.

(E) "Tribal land" means (1) any land or any interest in land held in trust by the United States of America for the Hualapai Tribe or its members, (2) any lands subject to the jurisdiction of the Hualapai Tribe, including any and all lands within the exterior boundaries of the Hualapai Reservation, or (3) lands in the "Indian Country" of the Hualapai Tribe.

(F) "Tribal Council" means the governing body of the Hualapai Tribe.

(G) "Superintendent" means the Superintendent of the Truxton Canyon Agency, Bureau of Indian Affairs, Department of the Interior or successor agency.

(H) "Lease" means any lease of tribal lands to any person by the Hualapai Tribe duly approved by the Secretary of the Interior or his authorized representative under applicable federal law and regulations.

Section 3. Enactment Authority. Hualapai Constitution, Article V.

Section 4. Applicability. Any person who trespasses on tribal land shall be subject to the penalties and other enforcement actions set forth in this Ordinance.

Section 5. Notice of Trespass. The Tribal Administrator shall serve, or cause to be served, a written notice of trespass on any person trespassing on tribal land. The notice shall be delivered either in person or by mailing the notice to the last known address of the person in trespass. The notice shall specify the action to be taken by the person to correct the trespass, the time limits within which to correct such action and any penalties imposed. The Tribal Administrator shall deliver a copy of the Notice of Trespass to the Chairperson of the Hualapai Tribe and to the Superintendent.

Section 6. Enforcement by Tribal Administrator. In the event the trespass is not cured within the stated time limits set forth in the Notice of Trespass, and in addition to any penalties imposed, the Tribal Administrator may: (1) issue an order to the person trespassing on tribal land to cease activities or an order restricting access to tribal land, (2) request tribal or federal law enforcement officials to enforce an order previously issued or to impound or seize the property of the person trespassing on tribal land, (3) recommend to the Tribal Council that the Tribe file suit to enjoin the trespass or to exclude the person trespassing from the Reservation, or (4) take any other action the Tribal Administrator deems appropriate.

Section 7. Enforcement by United States. The Superintendent is requested and authorized to enforce the provisions of any applicable federal law or regulations governing trespass on tribal lands and the provisions of this Ordinance.

Section 8. Civil Penalties. In addition to the enforcement action provided for under this Ordinance, the Tribal Administrator shall impose a civil penalty on any person trespassing on tribal lands for each day the trespass continues in the following amounts: (1) .005¢ per kilowatt hour transmitted through electrical lines on expired or invalid rights-of-way, easements or leases that are in trespass, (2) \$0.01 per MCF for all natural gas pipelines on expired or invalid rights-of-way, easements or leases that are in trespass, (3) \$0.06 per barrel of oil transported through pipelines on expired or invalid rights-of-way, easements or leases that are in trespass, and (4) up to \$1,000.00 per day as determined by the Tribal Administrator for all other use of rights-of-way, easements or leases that are in trespass or for any other trespass on tribal land. The Tribal Administrator shall serve the person with a written notice of assessment of penalties separately or along with the Notice of Trespass either in person or by mailing the assessment notice to the last known address of the person in trespass. The assessment shall be due and payable to the Tribe within ten (10) calendar days of the notice of assessment. Failure to pay any penalty imposed shall be considered an additional violation of this Ordinance and grounds for exclusion from tribal land.

Section 9. Interest on Penalties. Interest on any delinquent payment of penalties shall accrue at the rate of one percent (1%) per month until paid. Interest shall be prorated by the Tribal Administrator on an daily basis from the date due to the date of receipt.

Section 10. Appeals. Any person to whom a Notice of Trespass or Assessment is issued by the Tribal Administrator may appeal to the Tribal Council by filing a Notice of Appeal with the office of the Chairperson of the Tribe within fifteen (15) calendar days of the date a Notice of Trespass or assessment is received. The Notice of Appeal shall state the facts and the basis for the appeal. Filing of a timely appeal shall stay any enforcement action, but shall not stay the imposition of any penalties by the Tribal Administrator under this Ordinance, unless otherwise ordered by the Tribal Council. The decision of the Tribal Council shall be final and not subject to further appeal.

Section 11. Actions by Tribal Council. Upon receipt of an appeal, the Tribal Council shall set a date for a hearing at which it may allow the presentation of evidence or arguments as it deems appropriate. The Tribal Council may take any of the following actions after hearing an appeal filed pursuant to this Ordinance:

- (a) (1) affirm or reverse any decision or order of the Tribal Administrator, (2) issue other orders, or (3) take other appropriate action.
- (b) order the rebate of any penalties paid by a person receiving a Notice of Trespass and Assessment.

Section 12. Enforcement After Appeal. The Tribal Administrator and/or the law enforcement officers of the Tribe or BIA are authorized to enforce all orders of the Tribal Administrator and all orders and decisions made by the Tribal Council after hearing an appeal.

Section 13. Publication. This Ordinance shall be published in a newspaper of general circulation within the Hualapai Reservation, sent by mail to all known owners of rights-of-way, easements, or leases, and posted at the Tribal Administration Building for a period of ten (10) calendar days.

Section 14. Severability. If any part or application of this Ordinance is held to be invalid, the remainder of the Ordinance or its application to other persons shall not be effected.

Section 15. No Waiver of Sovereign Immunity. The Hualapai Tribe does not waive the sovereign immunity of the Tribe or any tribal officials, employees or agents, from suit in any court of any jurisdiction for any claim or appeal made under this Ordinance. Any action taken to enforce of this Ordinance shall not constitute a waiver of sovereign immunity or consent to be sued or counter-sued without any express written waiver of sovereign immunity approved by resolution of the Tribal Council.

Section 16. Effective Date. This Ordinance shall be effective on the date enacted.

Trepass fee

880,000,000 kWh/mo
 x 0.00005 / kWh

\$43,950 / mo

\$534,725 / yr

\$1465 / day

Negotiation

880,000,000 kWh
 x \$ 0.000017 / kWh (adjusted by CPZ)

\$ 14,943 / mo

\$ 181,806.50 / yr

\$ 498.10 / day

\$615,661

\$780,290

\$986,742

YR 1

YR 25
5%

YR 25
6%

YR 25
7%

average

\$398,733

\$481,048

\$584,274

X 25 yr

X 25 yr

X 25

\$9,968,337

\$12,026,206

\$14,606,862

TOTAL Rental

Present Value \$4,520,980 (of each based on \$0.000017 / kWh)

Cost to go around \$10,000,000