



NAFOA: Powering Up, Financing Tribal Energy Projects



Payton Batliner *CHEROKEE NATION*
Economic Development Specialist
Acting Branch Chief, Business Services Branch





DIVISION OF ENERGY AND MINERAL DEVELOPMENT



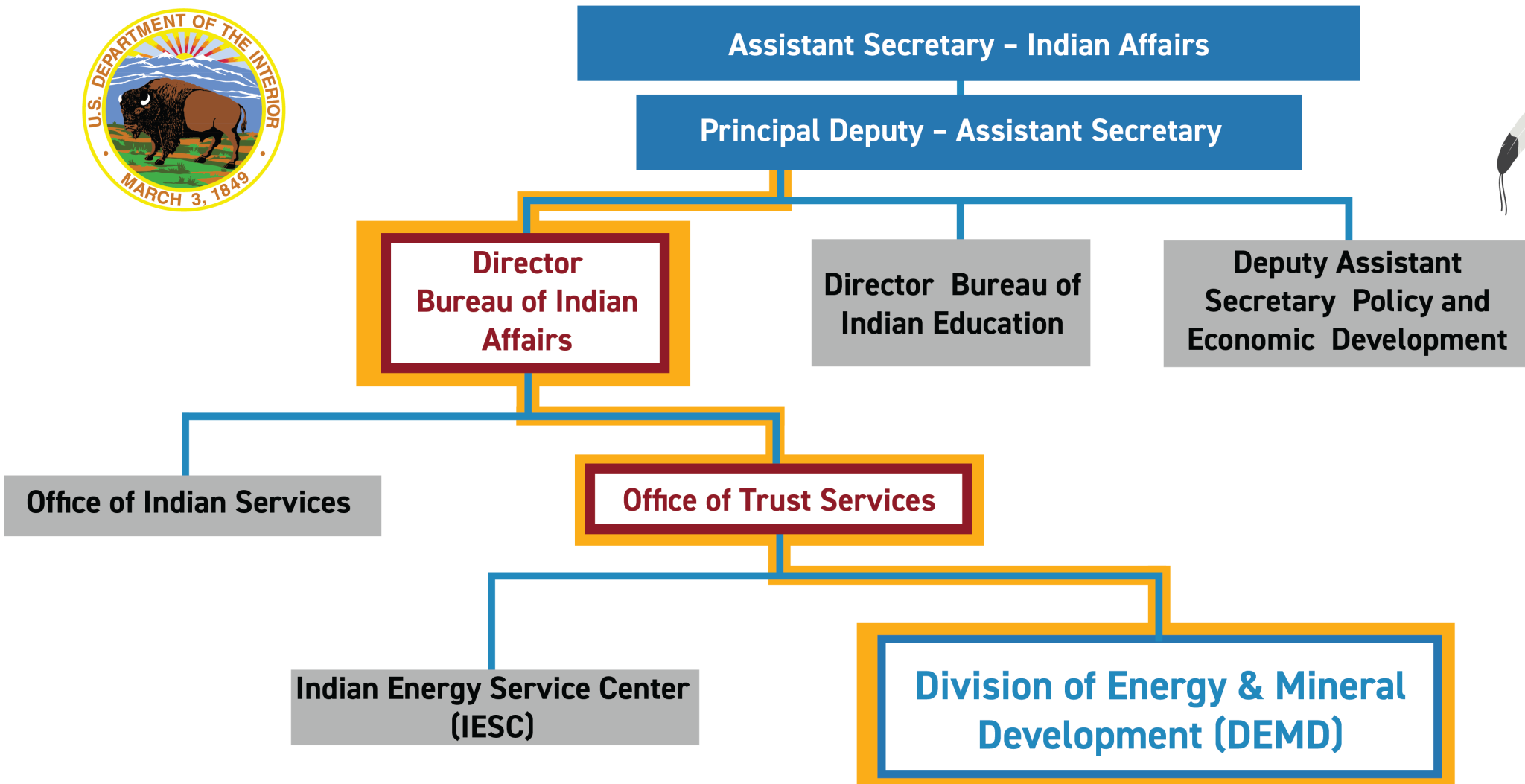
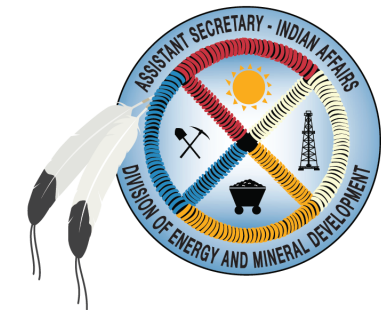
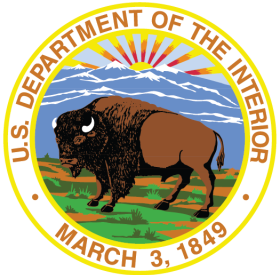
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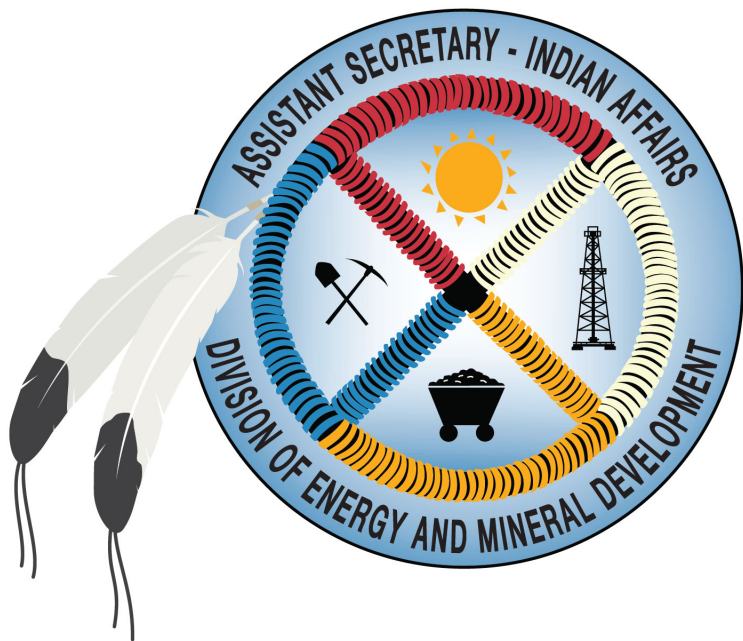
Payton Batliner is an Economic Development Specialist and Acting Branch Chief of the Business Services Branch within the Department of Interior's Division of Energy and Mineral Development (DEMD). He has worked at DEMD since 2009. He works across all commodity groups in the Division and specializes in business planning, financial analysis, and Tribal Utility Formation. Payton holds an MBA with an emphasis in finance and entrepreneurship from the University of Colorado at Boulder. He is an enrolled member of the Cherokee Nation of Oklahoma, and was born on the Pine Ridge Reservation in South Dakota.



DIVISION OF ENERGY AND MINERAL DEVELOPMENT



In April 2021 DEMD was moved back under BIA - Office of Trust Services



DEMD Mission

Provide the best possible technical and economic advice and services in assisting Indian mineral owners to achieve economic self-sufficiency by creating sustainable economies through the environmentally sound development of their energy and mineral resources.



DIVISION OF ENERGY AND MINERAL DEVELOPMENT

FLUID MINERALS

Team of professionals provides technical support, mineral assessments, economic analysis, lease negotiations and recommendations for all oil and natural gas energy resources.

SOLID MINERALS

Solid Minerals staff supports Tribes and allottees in assessing and developing their mineral and aggregate resources, resource evaluation and bringing resources into production and profitable joint ventures.

GEOTECHNICAL DATA SERVICES

Geotechnical Data Team maintains seismic datasets and provides data to oil and gas companies or other investors who are interested in exploration and developing new reserves on Indian lands.

NIOGEMS

NIOGEMS is a map-oriented computer software application for managing reservation oil and gas lease, well, production, and other energy/mineral resource data. Training and support are all provided at no cost.

RENEWABLE & DISTRIBUTED GENERATION

Renewable and distributed energy team is committed to helping Tribes formulate and implement energy development strategies, pre-feasibility studies, and consultation to best fit with their unique circumstances and long-term visions.

BUSINESS SERVICES

Business Services provides strategic and economic planning guidance and business structure. Grant Programs and Marketing services.



DEMD Branches provide the best technical assistance to federally recognized Tribes, including Alaska Native Villages to identify and implement opportunities to maximize their revenue stream and resource development.



Business Services Branch

Provides strategic financial analysis, business structure consultation, and economic development planning guidance across all energy and mineral development projects.

Key Services offered to Tribes:

- » Business Planning, Entity Formation & Project Management
- » Deal Structuring & Evaluation
- » Financial Analysis
- » Assistance Accessing Grant Funding and Loan Guarantee Financing
- » Marketing Department offers a wide variety of marketing services to energy and mineral projects





DEMD Grants: TEDC & EMDP

229

Active Grant and Technical Assistance Projects

2020 Funding

\$8.1MM

Grant Funded to Tribes

2020 Funding

~\$6MM

Awarded Annually

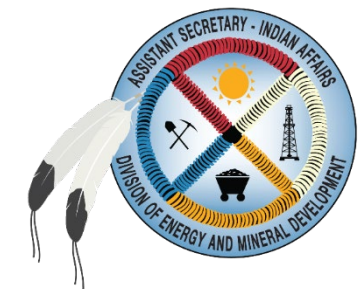
Energy and Mineral Development Program (EMDP) Grant

~\$1.5MM

Awarded Annually

Tribal Energy Development Capacity (TEDC) Grant

To develop tribal economies and promote development that maximizes the economic impact of energy resources on tribal lands





Active Grant and Technical Assistance Projects, 2020



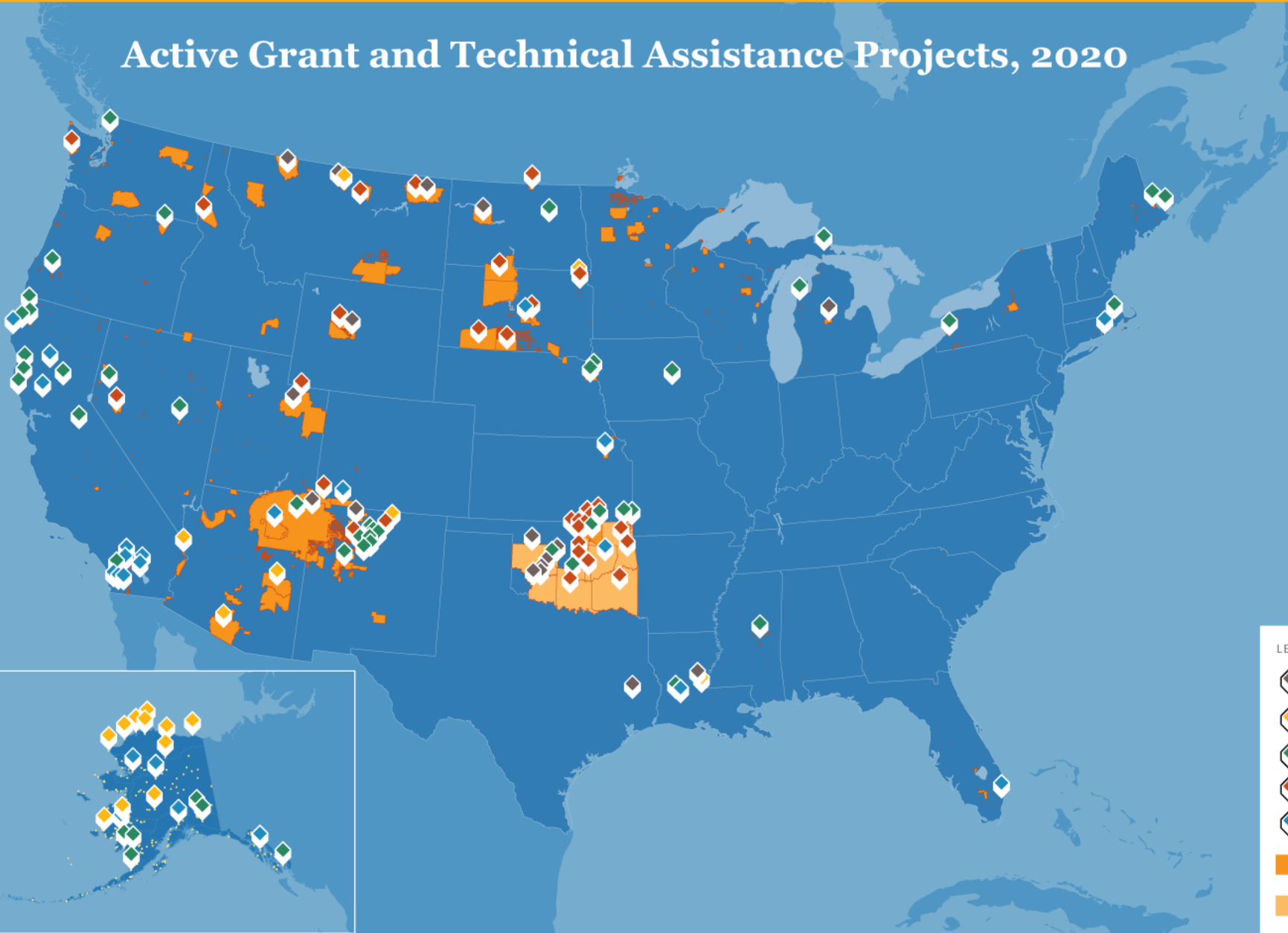
30
Fluid Minerals

36
Solid Minerals

71
Renewable and Distributed Generation

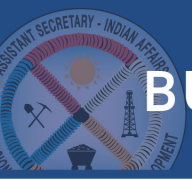
28
TEDC

64
NIOGEMS



LEGEND

- Fluid Minerals
- Solid Minerals
- Renewable and Distributed Generation
- NIOGEMS
- TEDC
- Native American Reservations Boundaries
- Oklahoma Tribal Statistical Areas
- Alaska Native Entities



Grant Programs and Services

✦ EMDP-Energy and Mineral Development Program

FOAs Coming Soon!

- Grant program to assess, evaluate and promote development of tribal energy and mineral resources
- \$5 Million to \$9 Million Annually



✦ TEDC-Tribal Energy Development Capacity Program

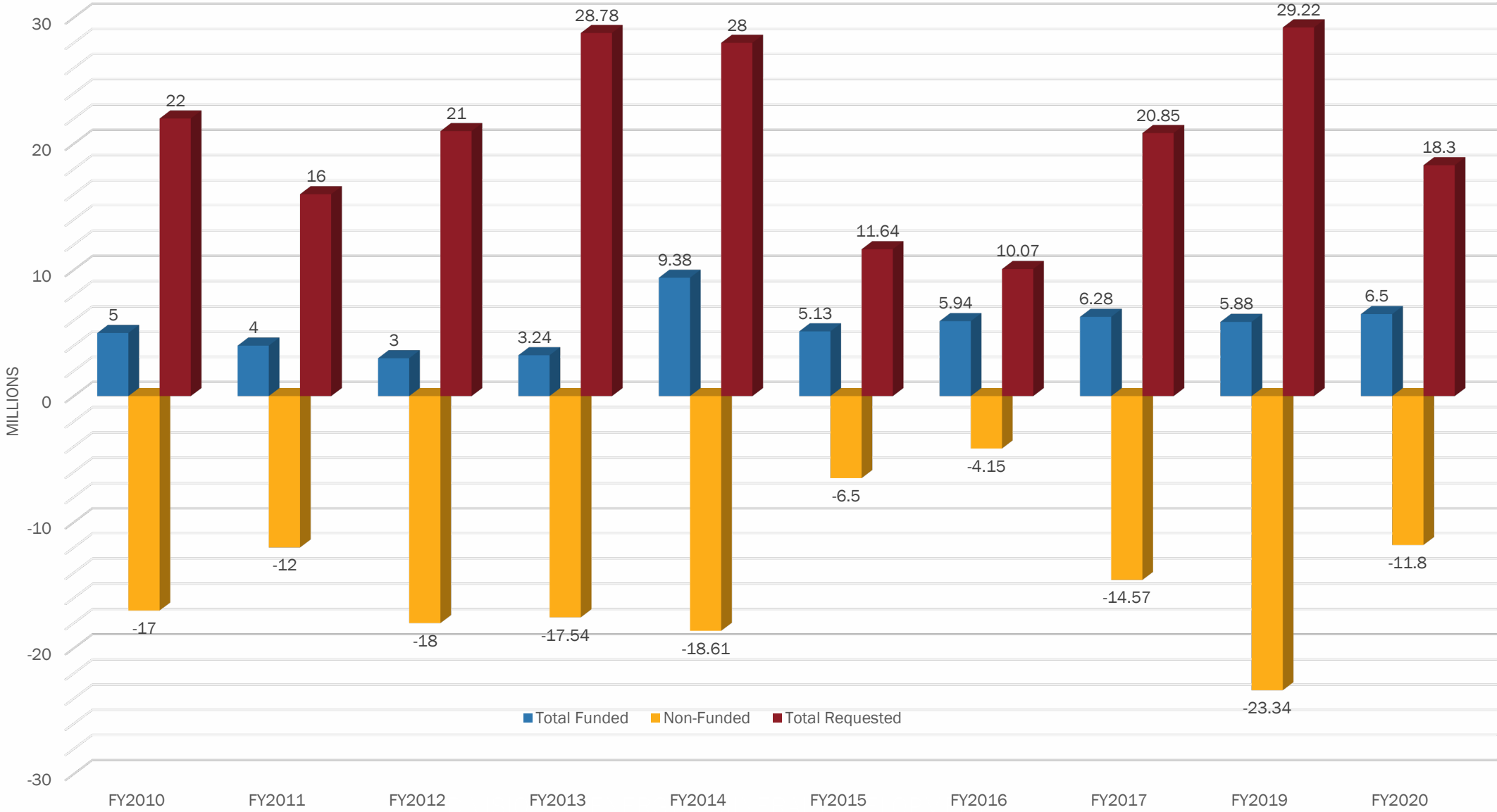
- Grant program to develop tribal managerial, organizational, and technical capacity to maximize the economic impact of energy resource development on Indian land.
- \$1 Million to \$1.5 Million Annually



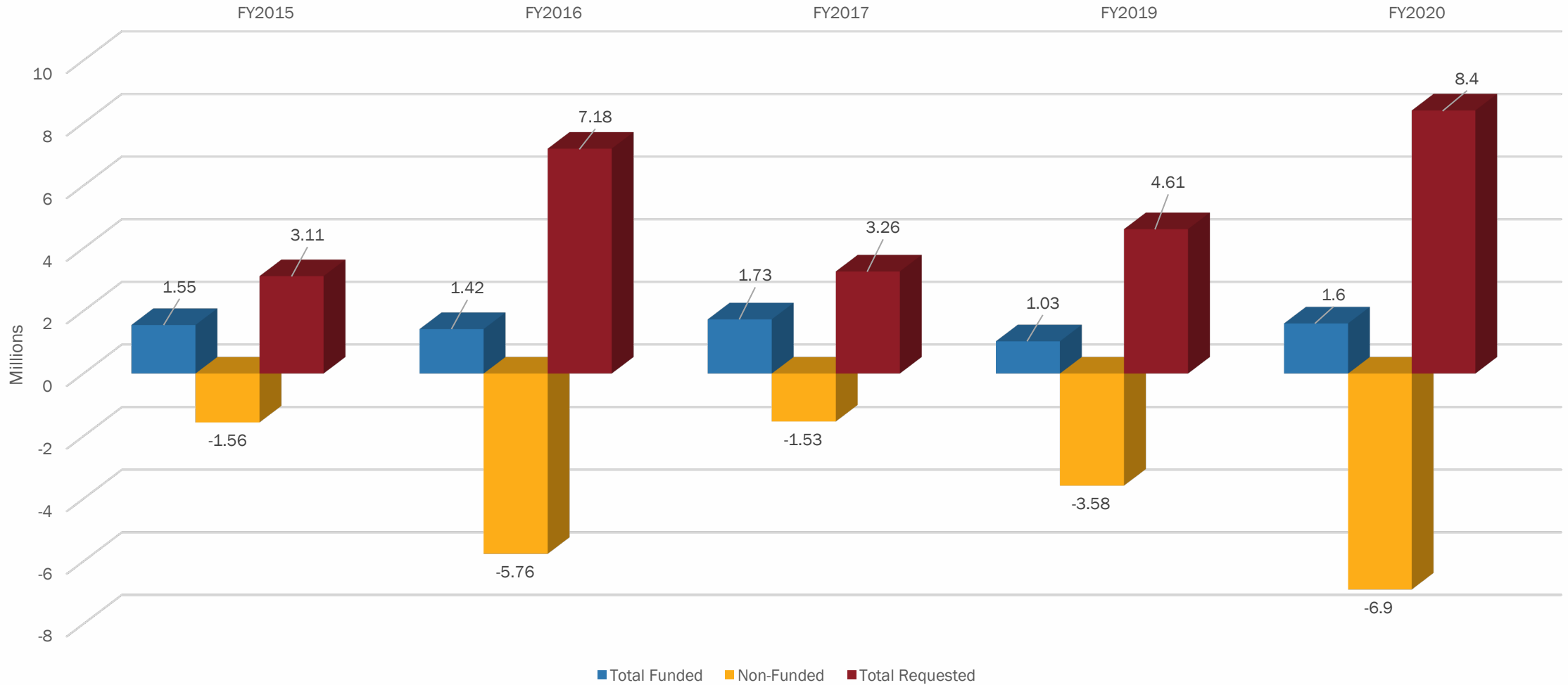
✦ Technical Assistance

- Liaison between Tribes and Industry
- Consultation on developing business models on reservations
- Assist Tribes with negotiation of resource development agreements
- Strategic and economic planning

Energy and Mineral Development Program (EMDP) Grants - Unmet Need



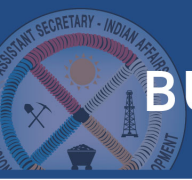
Tribal Energy Development Capacity (TEDC) Grants - Unmet Need



TRIBAL ENERGY DEVELOPMENT CAPACITY (TEDC) GRANT PROGRAM

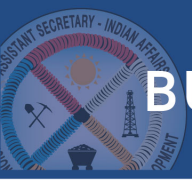
- ❖ **Grant program to develop tribal managerial, organizational and technical capacity to maximize the economic impact of energy resource development on Indian land**
 - Establish business entity structures and/or organizational structures related to energy resource development Business development capacity
 - Develop or enhance key regulatory activities
- ❖ **FY 2015 over \$1.5 Million awarded**
 - 10 Total Project Awards
- ❖ **FY 2016 over \$1.4 Million awarded**
 - 16 Total Project Awards
- ❖ **FY 2018 \$1.488 Million awarded**
 - 16 Total Project Awards
- ❖ **FY 2019 \$1 Million awarded**
 - 12 Total Project Awards
- ❖ **FY 2020 \$1.55 Million awarded**
 - 16 Total Project Awards





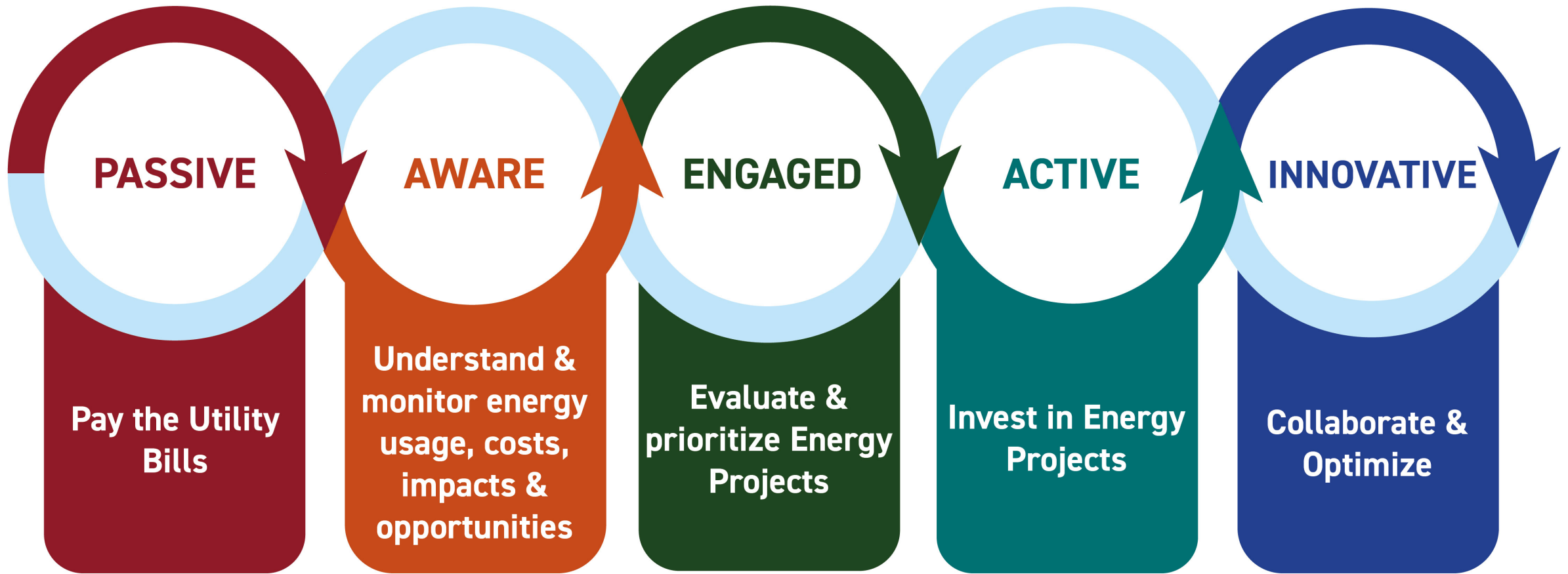
TEDC Grant Program Activities

- ❖ Developing legal infrastructure for business formation
- ❖ Establishing tribally chartered corporations under tribal corporation codes
- ❖ Establishing tribal business charters under federal law (IRA Section 17 corporation)
- ❖ **Establish Tribal Utility Authority**
- ❖ Developing or enhancing tribal policies, codes, regulations, or ordinances related to regulating and developing energy resource(s)
 - Land lease regulations for energy development purposes
 - Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act
- ❖ Adopting secured transaction codes and subsequent joint power agreement with the tribe's respective state.

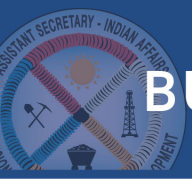


ENERGY DEVELOPMENT CAPACITY

Capacity Development Process



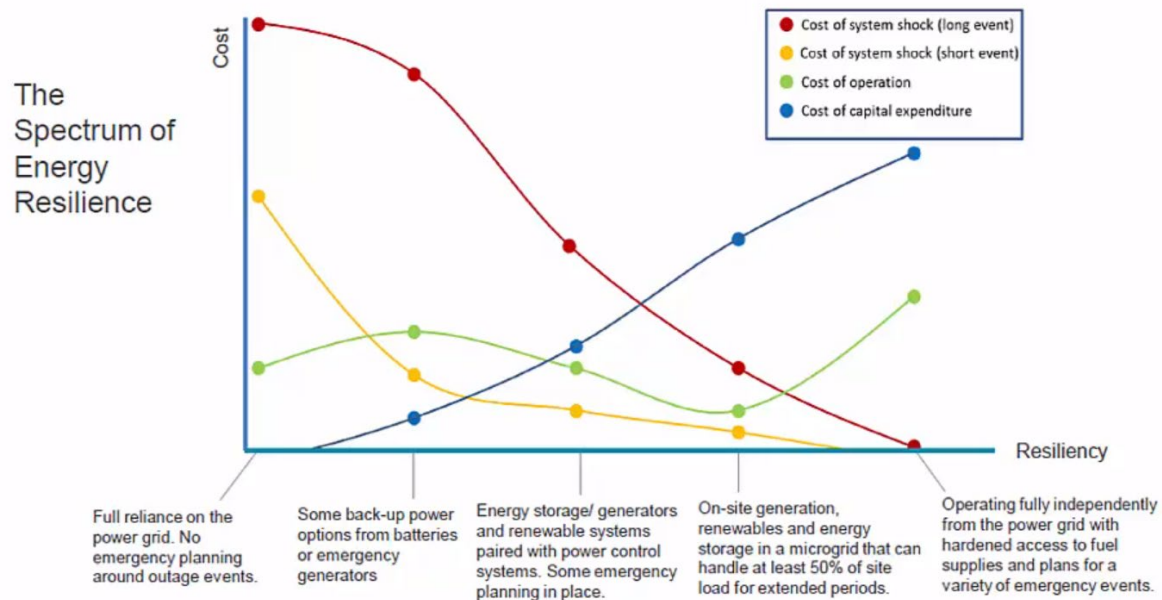
Source: Midwest Tribal Energy Resources Association (MTERA)



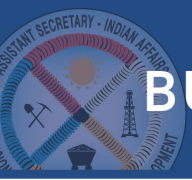
Planning With Resilience In Mind

✚ Comprehensive Energy Infrastructure Planning and Deployment

- Range from low to high preparedness

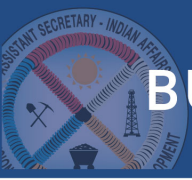


- **Microgrids** - identify critical functions, design the best system to maintain during crisis.
- **Tribal Utility Authority** - first step in taking true ownership of critical utility functions including resiliency planning for critical infrastructure



Why Focus On Utility Development?

- ❖ Tribes spend on average \$2-\$3 million per year on electric power.
 - This can range from a low of a couple hundred thousand up to \$20+ million for large casino/resort tribes.
- ❖ Extrapolated to all Federally recognized tribes this is a \$1-\$2 billion dollar annual market.
- ❖ The Utility market on Tribal lands is largely owned, operated, and controlled by **third party incumbent utilities** who may or may not have the tribe's best interests in mind.
- ❖ Tribes need to, and are, taking a more active role in managing these assets.



BUSINESS SERVICES

THE TRIBAL ENERGY DEVELOPMENT CAPACITY (TEDC) GRANT PROGRAM HAS FUNDED NEARLY 30 TUA PROJECTS IN FY 2015 - FY 2019. THE BELOW INFORMATION IS A CASE STUDY FROM A FY 2015 TEDC PROJECT.

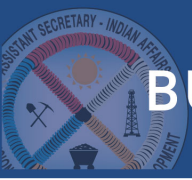
**TRIBAL
UTILITY
AUTHORITY
FEASIBILITY
WORK**

ANALYZE ENERGY INFRASTRUCTURE

REVIEW LEGAL & REGULATORY ISSUES

ASSESS BUSINESS ENTITY OPTIONS

FINANCIAL ANALYSIS



ANALYZE ENERGY INFRASTRUCTURE

Existing Infrastructure

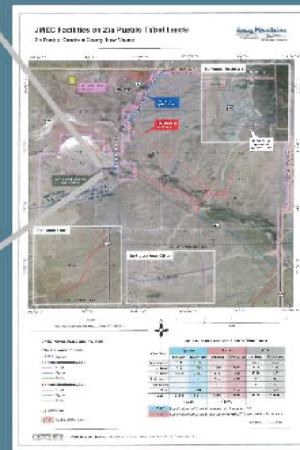
TRIBAL
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AUTHORITY
FEASIBILITY
WORK

Electrical

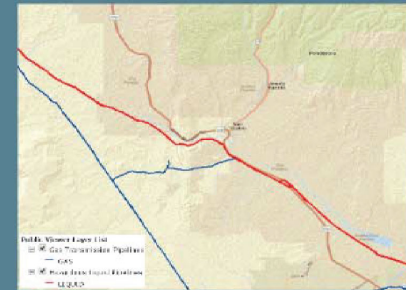


A sub-station is located on Tribal lands
- Offers access to wholesale market.

Total distribution lines:
23.96 miles



Gas



A gas pipeline with a pressure reduction station sits within the Pueblo (but does not appear to lie on Pueblo lands)

There is local gas and electric infrastructure that could provide ready access to wholesale markets



ANALYZE ENERGY INFRASTRUCTURE

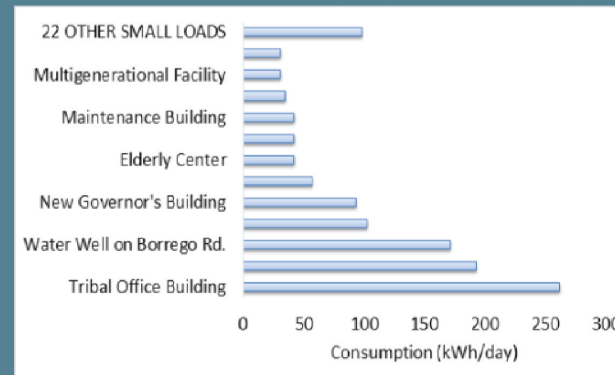
Current Consumption Electric

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Largest consumer of electricity is estimated to be the residents of the Pueblo - 84% of load.

Tribal office building also a large load, followed by water wells

TG spend is estimated at \$58k/year



Estimated total electrical load:
~2,234 MWh/year

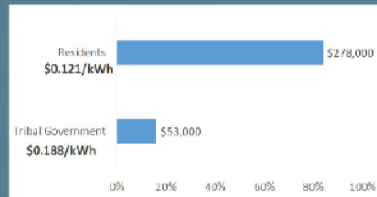


ANALYZE ENERGY INFRASTRUCTURE

Cost-of-service

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WORK**

Total Spend



Average blended rates (including fixed charges) on Pueblo lands: **\$0.132/kWh**

Total Spend: **\$331,000/year**

The "rate to beat" is \$0.132/kWh
Annually, the tribe pays \$331,000 of which \$132k is for 'non-energy'

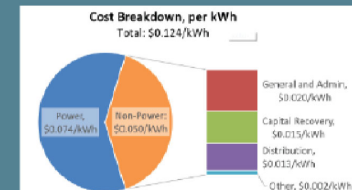
JMEC system costs

Blended Rates

60% of cost covers power
General and Admin, Capital Recovery, and Distribution Costs each make up 10-15%

Equivalent Annual Spend on Pueblo of Zia lands

\$198k on energy
\$53k on JMEC General and Administration
\$41k on JMEC Capital Recovery
\$35k on distribution operations and maintenance
\$5k on other JMEC expenses



Bench-mark	POZ TUA	JMEC
Customer per line mile	10.5	7.9
kWh sold per line mile	93,239	96,692

Generation vs. Distribution Payments

Blended Rates

Rates broken 60/40 into energy charges and operation of the distribution utility

Estimated spend:

\$199k on energy
\$132k on distribution



REVIEW LEGAL & REGULATORY ISSUES

Right-of-ways

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Expired JMEC ROWs

JMEC is in trespass
JMEC assets exist
in trespass on 123.1 acres,
including 63.2 acres serving
the 'system'

Other tribes in JMEC service area have settled expired
ROWs for \$millions

Line Type	System		Local		Total	
	Line Miles	ROW Acres	Line Miles	ROW Acres	Line Miles	ROW Acres
Transmission	2.71	13.30	-	-	2.71	13.30
D-Road	7.0	17.03	13.03	17.03	20.73	55.40
Underground	10.53	23.52	6.76	16.25	17.29	41.97
Substations	-	-	1.97	3.80	1.97	3.80
Overhead	-	2.04	-	1.15	-	3.89
Total	19.24	55.89	21.96	38.23	41.20	123.10
		85.2%		48.8%		

System (uses the parcel's owner's title within JMEC customer base)
Local (uses the parcel's owner's local customer within Zia's geographical boundaries)

Other ROWs

TriState Right-of-ways

TriState has a 69kV transmission line running
across the Pueblo and owns the sub-station.
These are also understood to be in trespass.

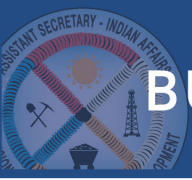


Gas Pipelines

The natural gas facility is located on private
property, however, the pipeline runs across
the Pueblo. We believe that this right-of-way
is current.



Zia has significant leverage over JMEC
as a consequence of the expired ROWs



REVIEW LEGAL & REGULATORY ISSUES

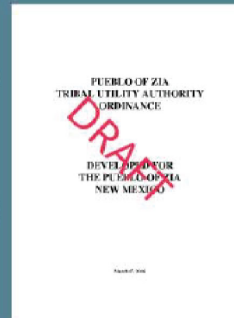
State and Tribal Laws

**TRIBAL
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AUTHORITY
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WORK**

Tribal Law: Utility Ordinance

Utility Ordinance is drafted for Water, Waste Water, and Solid Waste. The Tribe can expand this to include electricity.

Ordinance creates an organization with some separation from the Tribe: See Organizational Assessment

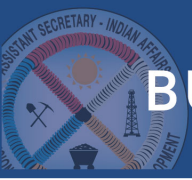


Other Legal Issues

Based on 'Rate Rider 19', JMEC can pass part of the ROW costs back to customers located within Tribal territory. This 'blunts' the leverage available through this trespass but it still exists.

Based on the asset map of JMEC Facilities on Pueblo of Zia's lands, 48.7% of the cost of any ROW settlement would be passed on to Zia members.

Baker Tilly has not identified any legal/regulatory "fatal flaws", but legal counsel is needed



ASSESS BUSINESS ENTITY OPTIONS

Organizational options

**TRIBAL
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Federally Chartered Corporation (Section 17)

Pros

- Clearly separates assets and liabilities
- Preserves integrity of business decisions
- Same tax status as tribe

Cons

- Typical "sue and be sued" clause may waive tribal immunity
- Must be wholly owned by tribe (no outside partners)
- Subjects the corporation extensive oversight

Tribally Chartered Corporation

Pros

- Sovereign immunity preserved
- Can be easily set up if the laws are in place
- Generally relatively flexible

Cons

- Tax status not clear, and depends on circumstance

Unincorporated agency or division of tribe

Pros

- Likely receives privileges of tribal sovereign immunity and tax status
- Relatively easy to form

Cons

- Not a separate legal entity from the tribe
- No separation of assets, property, or decision-making

Political sub-division of tribe

Pros

- Retains sovereign immunity
- Can be delegated powers
- Can be governed by a separate Board of Directors while retaining ultimate control by the Tribe
- Can serve as a holding company for tribal businesses

Cons

- To avoid subjection to federal taxation, specific powers must be delegated (to tax, to exert eminent domain, or to police)
- Process can be timely and slow
- May be a barrier to seeking outside investment

State law entity

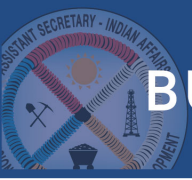
Pros

- Limitation of liability
- Centralizes management of the entity
- Separates organization governance from Tribal governing body
- Relatively easy and familiar to outside parties

Cons

- Not protected under sovereign immunity
- Subject to state and federal taxation
- Subject to state law

A number of organizational options exist



ASSESS BUSINESS ENTITY OPTIONS

Possible Changes

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1. Provisions for Policy Governance
2. Training of Commissioners
3. Outside Commissioner(s) expertise
4. Outsource Management
5. Sheltering the Tribe
6. Cost of Service Studies as basis for rate setting

SECTION 3.04 TRIBAL UTILITY COMMISSIONS - POWERS AND RESPONSIBILITIES: The Tribal Utility Commission shall manage projects of the public utilities of the Tribe and **participate in the selection and disbursement of funds to be used for planning, construction, operation, maintenance, training, and expansion of the Tribal public utilities.**

The Council shall ensure that at least one of the five commissioners shall not be a member of the Tribal Council, and that at least one of the five commissioners shall have professional utility experience from outside the Tribe. Members of the Tribal Utility Commission shall be known as Utility Commissioners.

SECTION 4.01 MANAGEMENT PERSONNEL: The Tribal Utility Commission shall manage the business and operating affairs of the Tribal Utility Division. The Tribal Utility Commission may provide for hiring, training and continuing education for the care and maintenance of the Tribal public utility facilities. Hiring shall be in accordance with tribal personnel policies, and shall establish compensation rates consistent with the Tribal Utility Division approved budget. The Tribal Utility Commission may delegate with these management duties that are not specifically designated as duties to be performed exclusively by the Tribal Utility Commission.

Key Takeaway: Tribal Utility Commission should be trained in utility management and personnel. Commissioners should be subject to public personnel and utility rate setting in a transparent and performance-based manner for evaluation.

SECTION 4.07 PERSONNEL: The Tribal Utility Commission shall have the full authority to hire, hire, evaluate and discipline on the Executive the personnel required to manage, operate and maintain the Tribal Utility. The Tribal Utility Commission may hire and employ by the Tribal Utility. The Tribal Utility Commission may enter into management agreements through agreements approved by the Tribal Council and the Tribal Utility Commission. The specific personnel policies of the Tribe shall be in force. All compensation of all employees will be developed and defined.

Key Takeaway: The Tribal Utility Commission should be trained in utility management and personnel.

SECTION 4.11 NON WAIVER OF SOVEREIGN IMMUNITY: The Tribal Utility Commission shall have the authority to waive the Tribe's sovereign immunity, and the Tribe shall not be held liable for any damages or claims arising out of or in connection with the Tribal Utility. The Tribal Utility Commission shall have the authority to waive the Tribe's sovereign immunity, and the Tribe shall not be held liable for any damages or claims arising out of or in connection with the Tribal Utility.

Key Takeaway: Tribal Utility Commission should be trained in utility management and personnel.

SECTION 7.01 FEE SCHEDULE ESTABLISHMENT: The schedule of fees for utility services shall be established annually by the Tribal Utility Commission. The fee schedule shall be based on the historical and projected average annual costs for operation of all utility services. The fee schedule shall include a base rate for all services and other fees, charges, penalties and discounts which the Tribal Utility Commission shall have the authority to establish and enforce. Payment for the base services shall be required of each customer regardless of whether, at the option of the customer, the customer elects to use the services. The fee schedule may be adjusted to meet utility operating expenses.

Key Takeaway: Tribal Utility Commission should be trained in utility management and personnel.



ASSESS BUSINESS ENTITY OPTIONS

TRIBAL UTILITY AUTHORITY FEASIBILITY WORK

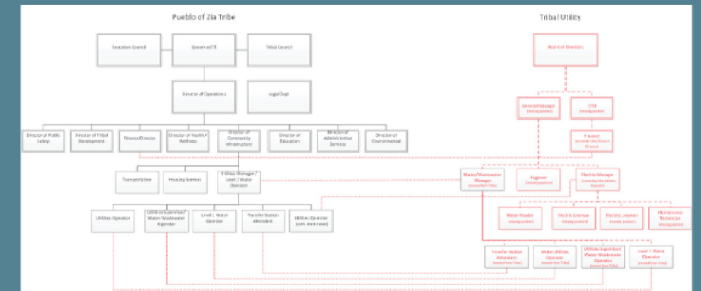
Preferred Org. Options

Preferred organization option is a subordinate unit of government, the "Tribal Utility Commission", with Divisions reporting to the commission (water, waste water, solid waste, and electricity)

Management and Governance should be delineated
Training of commissioners is important

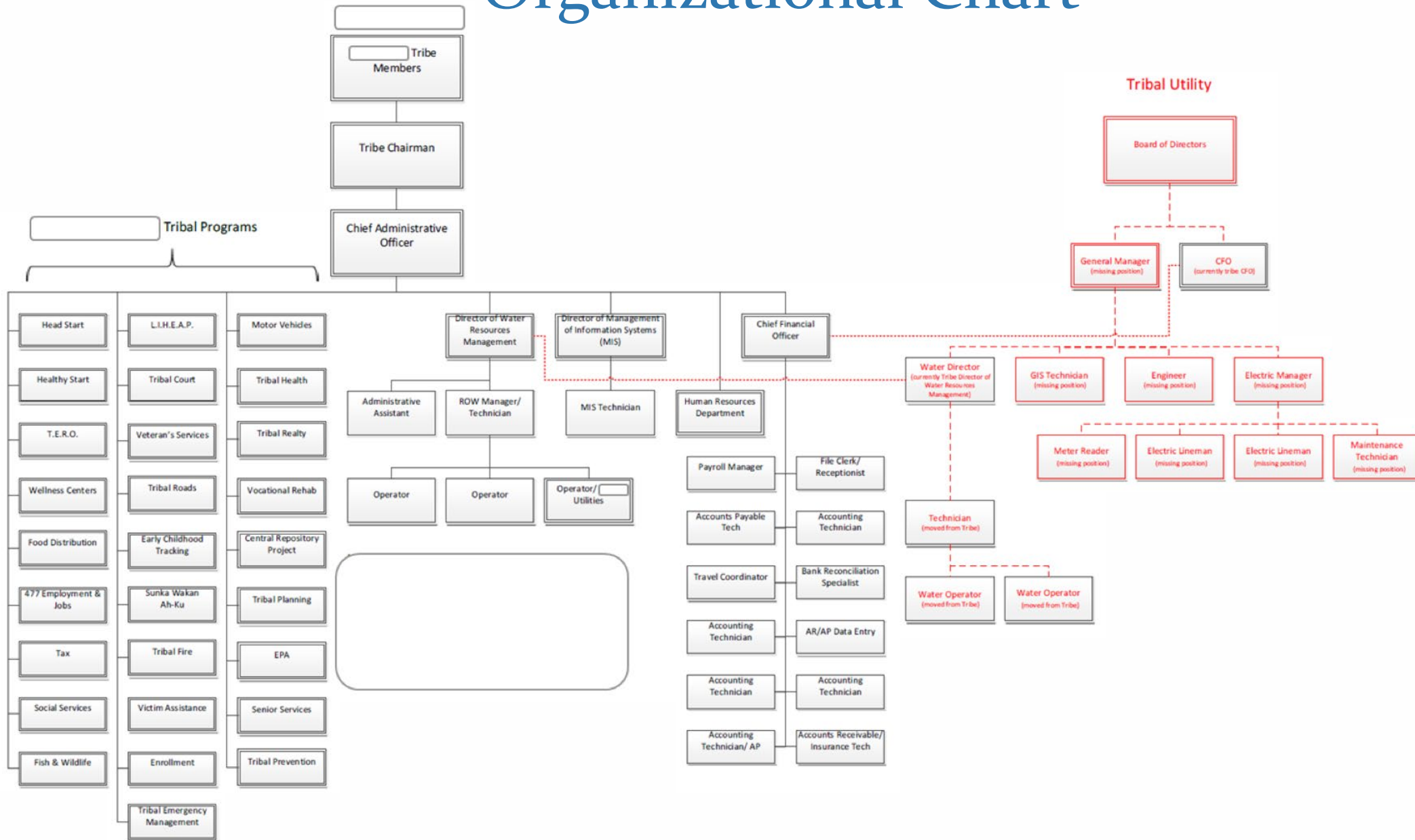
Org. Chart

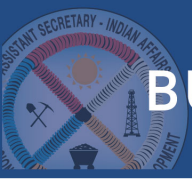
- **Key position: GM!**
- The same positions exist in water, waste water, and electric utilities
- Big opportunities for efficiency!



Many positions exist today, or can be filled by contract. Exceptions: GM and Meter Reader

Organizational Chart

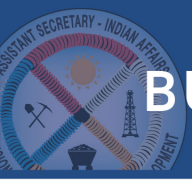




FINANCIAL ANALYSIS

TRIBAL UTILITY AUTHORITY FEASIBILITY WORK

	Tribal Utility Alternative	Estimated Upfront Cost	Potential Annual Savings	Benefits	Potential Issues & Risks
More Complex	1 Full Tribal Utility	\$5-10 Million	0%* <i>*Unlikely to achieve short term savings</i>	<ul style="list-style-type: none"> Reinvest utility revenues Full control over power supply and cost Ability to add jobs 	<ul style="list-style-type: none"> Tribe solely responsible for service reliability High up-front cost
	2 Outsourced Tribal Utility	\$2-8 Million	9%	<ul style="list-style-type: none"> Reinvest utility revenues Full control over power supply and cost Possibility to add jobs in future 	<ul style="list-style-type: none"> Need to coordinate with third parties to ensure service reliability
	3 Control Power Supply Only	\$0-800 Thousand	4%	<ul style="list-style-type: none"> Full control over power supply and cost No change in provider 	<ul style="list-style-type: none"> Need to establish regulatory framework Need to negotiate with Trico to allow power purchase
Less Complex	4 Control Service Territory Only <i>(Not a Tribal Utility)</i>	\$0-800 Thousand	15%	<ul style="list-style-type: none"> Ability to select electric service provider Residential rates most likely to go down 	<ul style="list-style-type: none"> No benefits of tribal utility Likely to pay charges related to infrastructure Fully reliant upon new provider No control over future cost or power supply
	- Status Quo <i>(Not a Tribal Utility)</i>	\$0	0%	<ul style="list-style-type: none"> No change to Trico service 	<ul style="list-style-type: none"> Reliant upon Trico No control over cost or power supply



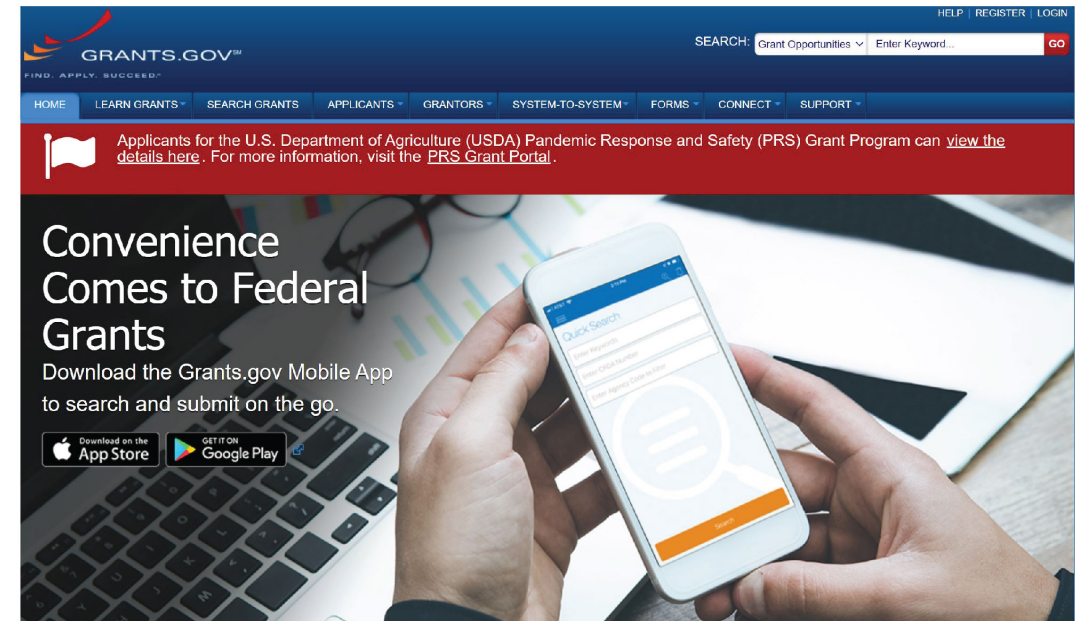
For more information on **EMDP and TEDC**
Both grant FOAs can be found on **Grants.gov**

Technical Assistance:

- » Microgrid
- » Solar
- » Wind
- » Biomass



Grants.gov





DIVISION OF ENERGY AND MINERAL DEVELOPMENT

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