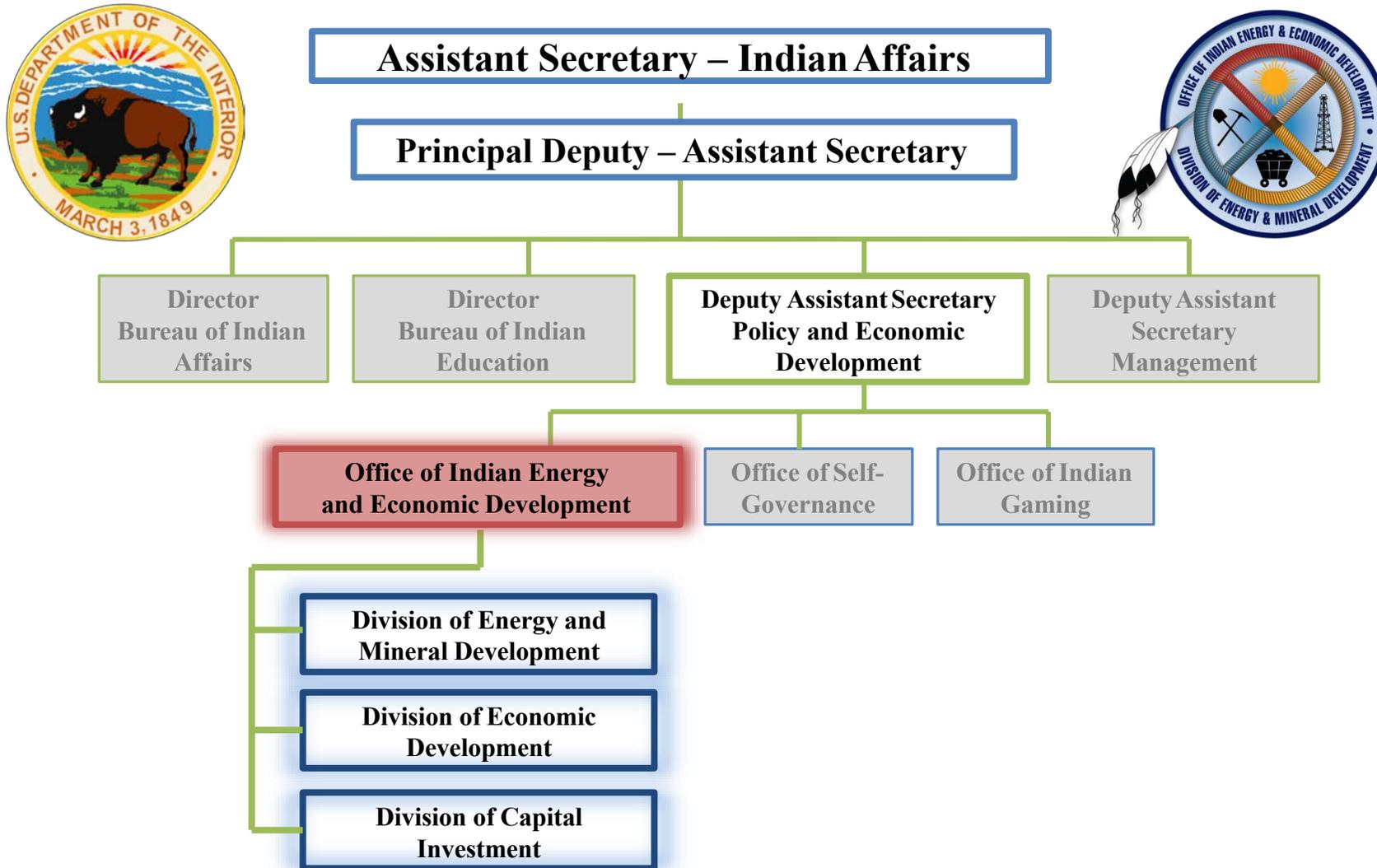




# DOE WEBINAR SERIES



In May 2005 DEMD was moved to the Assistant Secretary – Indian Affairs



# Programs and Services

## ✦ Energy and Mineral Development Program

- Grant program to assess, evaluate and promote development of tribal energy and mineral resources
- \$5 Million to \$8 Million Annually

## ✦ 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



# Other IEED Programs and Services

## ✦ Division of Economic Development: Native American Business Development Institute (NABDI) Grant

- Feasibility study on the viability of an economic development project, opportunity, enterprise, business or technology.
- All economic development projects and businesses pose some element of risk. Economic development feasibility studies weigh these risks to determine whether a project is worth pursuing.
- They empower tribes to make informed decisions regarding their economic futures by distinguishing viable economic opportunities from investments and enterprises that have a high likelihood of failure.

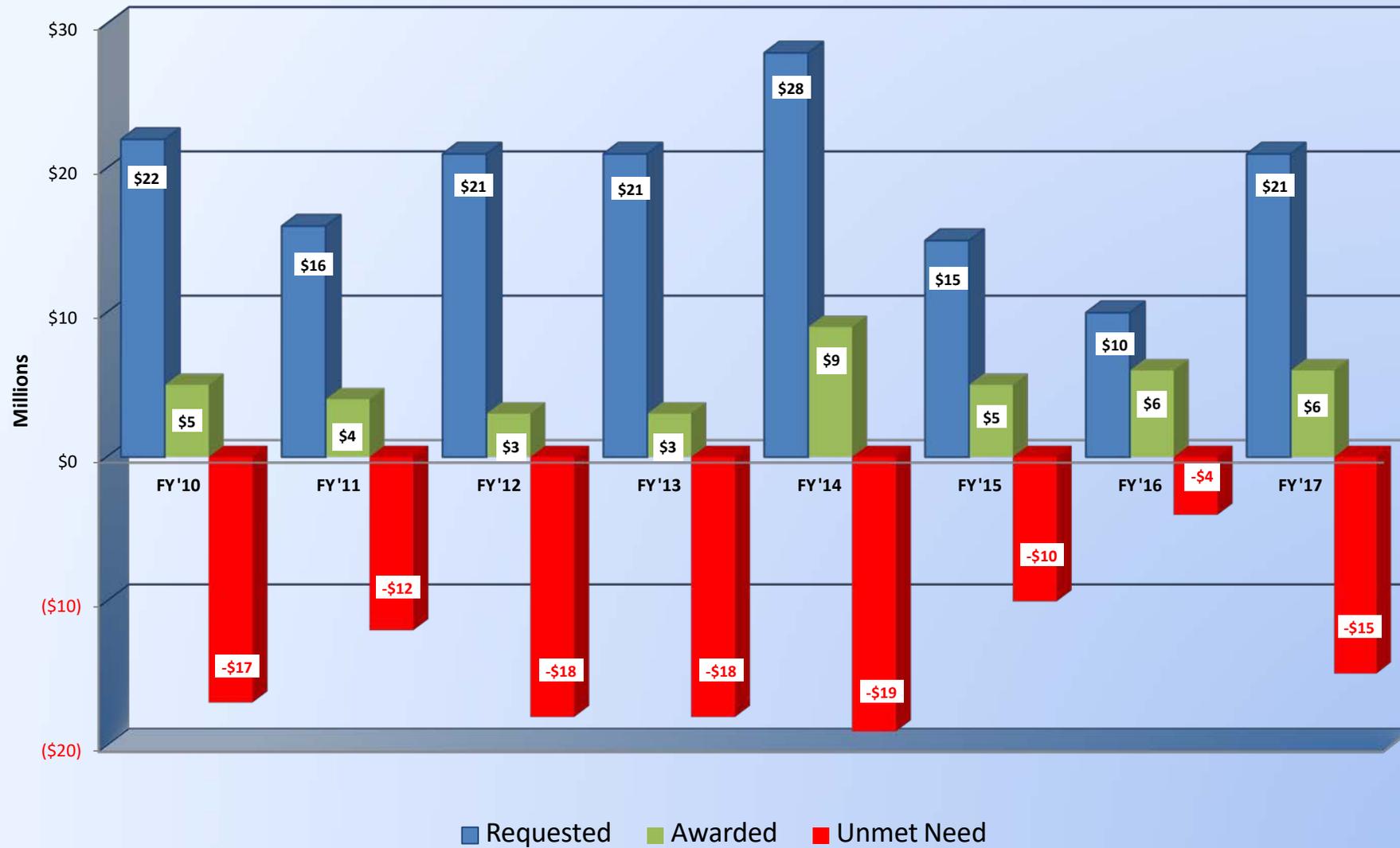
## ✦ Division of Capital Investment: Indian Loan Guaranty, Insurance, and Interest Subsidy Program

- Breaks through the conventional barriers to financing for tribes and individual Indians.
- The loan program helps facilitate loan financing for borrowers that would not be able to do so otherwise.
- DCI helps secure reasonable interest rates and reduces risks for all parties involved.





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



# Tribal Energy Development Capacity (TEDC) Grants – Unmet Need





# TRIBAL ENERGY DEVELOPMENT CAPACITY



# 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



# Tribal Energy Development Capacity (TEDC) Projects

**Colville, Spokane–**  
Tribal Utility Authority Formation

**Spirit Lake & Northern Cheyenne–**  
Tribal Utility Authority Formation

**Bad River Band of Chippewa -**  
Establish regulatory infrastructure that will support its development and management of a major biomass facility

**Passamaquoddy Tribe–**  
Tribal Utility Authority Formation

**Blue Lake Rancheria–**  
Tribal Utility Authority Formation

**Seneca Nation–** Tribal  
Utility Authority Formation

**Fond du Lac & Bay Mills–**  
Tribal Utility Authority  
Formation

**Mashpee Wampanoag–**  
Tribal Utility Authority  
Formation

**Big Valley Rancheria–**  
Tribal Utility Authority  
Formation

**Ute Mountain Ute–**  
Development of  
Fracking Regulations

**Winnebago Tribe of Nebraska –**  
Tribal Utility Authority Formation

**Hualapai–**  
Utility Rate Design

**Nambe Pueblo, Hopi  
& Taos Pueblo–**  
Tribal Utility  
Authority Formation

**Pechanga, 29 Palms,  
Rincon, Agua Caliente, &  
Cabazon–** Tribal Utility  
Authority Formation

**Citizen Potawatomi, Wichita and  
Affiliated Tribes, Muscogee Creek,  
& Coushatta –** Tribal Utility  
Authority Formation

**Mesa Grande–** Enhance capacity  
to manage Tribal solar enterprise

**Zia Pueblo, Jemez Pueblo–**  
Tribal Utility Authority  
Formation

**Chemehuevi Indian Tribe–**  
Formation of a Tribal Power  
Exchange

**Pascua Yaqui–**  
Tribal Utility Authority  
Formation

**Alaska**  
Not Pictured: Port Graham Village,  
NANA Regional Corp/

2015 - 2019 Project Locations





# BUSINESS ENTITY FORMATION ACTIVITIES (TEDC)

## **Examples:**

- ❖ 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



# REGULATORY ACTIVITIES (TEDC)

## Examples:

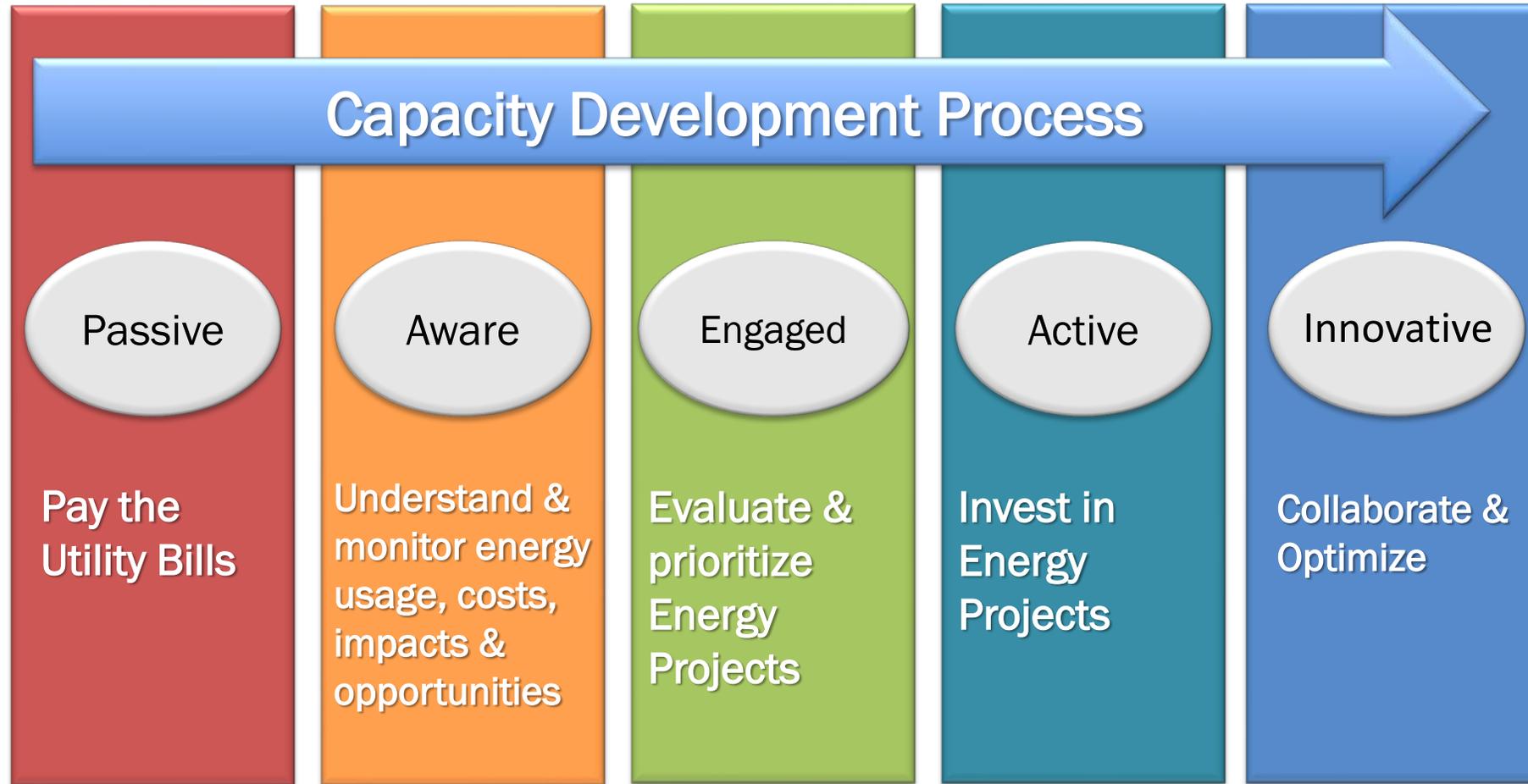
- ❖ Developing or enhancing tribal policies, codes, regulations, or ordinances related to regulating and developing energy resource(s)
  - Land lease regulations for energy development purposes
  - Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act

*<http://www.bia.gov/WhoWeAre/BIA/OTS/HEARTH/index.htm>*

- ❖ Adopting secured transaction codes and subsequent joint power agreement with the tribe's respective state.



# ENERGY DEVELOPMENT CAPACITY



Source: Midwest Tribal Energy Resources Association (MTERA)





# Business Entity Options 101

## Tribal:

- ❖ Tribal instrumentality
- ❖ Tribal political subdivision
- ❖ Tribally-chartered corporation or LLC

## State:

- ❖ State law corporation
- ❖ State-chartered limited liability company

## Federal:

- ❖ Section 17 corporation





# Business Entity Options: Common Uses

## Tribal:

- ❖ Tribal instrumentality
- ❖ Tribal political subdivision
- ❖ Tribally-chartered corporation or LLC

Utility Authority or  
Utility District

Tribally Owned Generation Project (i.e. community  
scale solar development), Or Tribally Chartered Non-  
Profit Utility

## State:

- ❖ State law corporation
- ❖ State-chartered limited liability company

Any Scale Generation Project requiring  
outside investment, utilization of  
ITC/PTC, or other partners

## Federal:

- ❖ Section 17 corporation

Can act as a holding company for any  
scale project.



# Business Entity Options: Major Considerations 101

**Financing the Project:** Often, this will drive the business structure of the project

- Grants
- Commercial Bank Loans and Loan Guarantees
- Tax Equity (leveraging the ITC/PTC) - Mr. Clancy will discuss more on this
- NMTC - Mr. Bland will discuss more on this.

**Ownership Model:**

- 100% Tribally owned
- Non-Tribal Equity Investors
- Tax-Equity Partners
- Lease (where the Tribe is effectively only a Landlord)

**Other considerations:**

- Existing Tribal Legal Infrastructure (LLC, Corporations Codes, UCC, etc.)
- Current Tribal Org. Chart (Where does this new entity fit?)
- Taxation



# Business Entity Options: Pros and Cons

## Tribal:

- ✦ Tribal instrumentality
- ✦ Tribal political subdivision

## Pros:

- Relatively easy and quick to form (can be delegated specific powers/authorities)
- Retains Sovereign Immunity and tax status of the Tribe

## Cons:

- May or may not be separate legal entity from the Tribe
- May lack separation of assets
- May lack separation of decision making from tribal politics
- No outside partner/investor participation (no outside equity owners)



# Business Entity Options: Pros and Cons

## Tribal:

- ✦ Tribally-chartered Corporation or LLC

## Pros:

- Sovereign Immunity is preserved
- Separation of Business and Politics is possible
- Outside partners/investor participation is possible

## Cons:

- Must have legal infrastructure in place (Corporations Codes and/or LLC Codes)
- Tax status is in question and depends on circumstance
- May not be well understood by outside parties (i.e. potential investors/partners, commercial banks, etc.)



# Business Entity Options: Pros and Cons

## State:

- ✦ State law corporation
- ✦ State-chartered limited liability company

## Pros:

- Outside partners/investor participation is possible
- Very well understood by outside parties
- Separate legal entity from Tribe (Proper separation of Business and Politics)

## Cons:

- Tax status and sovereign immunity is in question and depends on circumstance



# Business Entity Option: Pros and Cons

## Federal:

- ✚ Section 17 corporation

## Pros:

- Sovereign immunity and tax status is preserved
- Ability to act as a Holding Entity
- Separate legal entity from Tribe (Proper separation of Business and Politics)

## Cons:

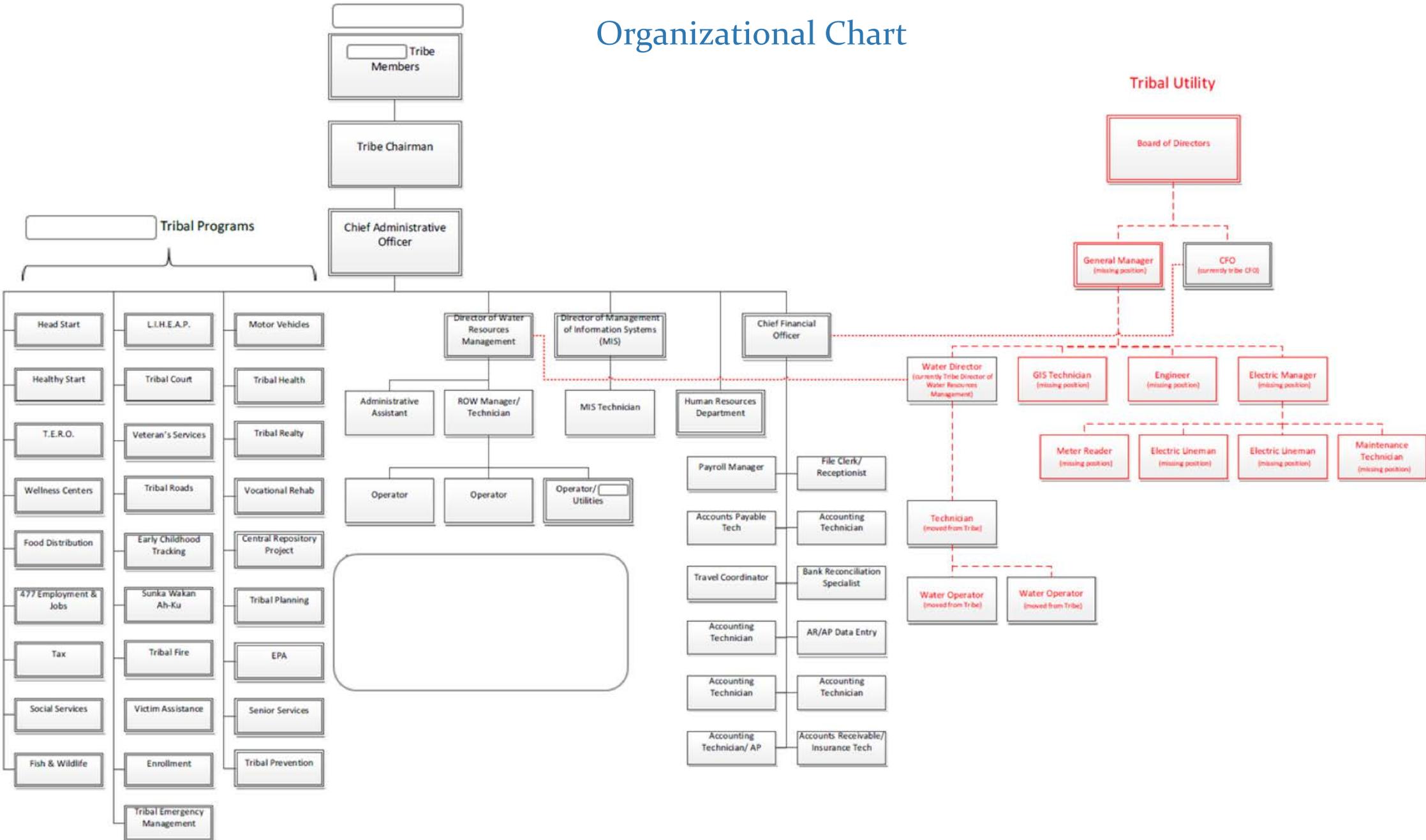
- Takes a long time to Charter (Must go through BIA Regions and get Secretarial Approval 3-6 months)
- No outside partner/investor participation, must be 100% tribally owned
- May not be well understood by outside parties (i.e. potential investors/partners, commercial banks, etc.)
- Takes an act of Congress to dissolve



## How does the Entity fit into Current Operations/Governance Structures?

- ✦ It is extremely important to ensure the Entity fits within current operations.
  - Organizational Structure is a key component.

# Organizational Chart



# TRIBAL UTILITY AUTHORITY FEASIBILITY WORK

The Tribal Energy Development Capacity (TEDC) Grant Program has funded nearly 30 TUA projects in FY 2015 - FY 2018. The below information is a case study from a FY 2015 TEDC Project.

## Analyze Energy Infrastructure

### Existing Infrastructure



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

### Current Consumption Electric

Largest consumer of electricity is estimated to be the residents of the Pueblo - 64% of load.

Tribal office building also a large load, followed by water users.

TG spend is estimated at \$58k/year.



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

### Cost-of-service



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

Generation vs. Distribution Payments

## Review Legal & Regulatory Issues

### Right-of-ways



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

### State and Tribal Laws



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

## Assess Business Entity Options

### Organizational options



### 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

## Financial Analysis

### Pro Forma Flow Diagram





# DIVISION OF ENERGY AND MINERAL DEVELOPMENT

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