

1 **TECHNICAL WORK GROUP AGREEMENT RELATED TO**
2 **NAVAJO GENERATING STATION (NGS)**

3 This **Agreement**, by and among those **Parties** signing below, is entered into as of
4 July 25, 2013.

5 **I. Recitals**

6 A. Whereas, **EPA’s Proposed BART Rule** states and the **Parties** agree as follows:

7 “NGS is unique because it was constructed [and the federal government
8 participates in **NGS**] to provide electricity to distribute water to tribes located in
9 Arizona and a diverse group of other water users. NGS is also located on the
10 Navajo Nation and the Kayenta Mine [**KMC**] that supplies its coal is located on
11 the reservation lands of both the Navajo Nation and the Hopi Tribe.”

78 Fed. Reg. 8,274, 8,281 (Feb. 5, 2013)

12 “[A **Reasonable Progress Alternative to BART** is appropriate due to] the
13 singular importance of NGS to many tribes located in Arizona and their water
14 settlement agreements with the federal government, the numerous uncertainties
15 facing the owners of NGS, the requirement for NEPA review of a lease extension,
16 and the early and voluntary installation of modern combustion controls over the
17 2009–2011 timeframe.”

78 Fed. Reg. at 8,289;

18 B. Whereas, **EPA’s Proposed BART Rule** explained the history of its Tribal
19 Authority Rule under the **Clean Air Act**:

20 “In 1998, EPA promulgated regulations at 40 CFR Part 49 (which have been
21 referred to as the Tribal Authority Rule or TAR) relating to implementation of
22 CAA programs in Indian country. See 40 CFR Part 49; see also 59 FR 43956
23 (Aug. 25, 1994) (proposed rule); 63 FR 7254 (Feb. 12, 1998) (final rule); Arizona
24 Public Service Company v. EPA, 211 F.3d 1280 (DC Cir. 2000), cert. den., 532
25 U.S. 970 (2001) (upholding the TAR). The TAR allows EPA to treat eligible
26 Indian tribes in the same manner as states ‘with respect to all provisions of the
27 [CAA] and implementing regulations, except for those provisions [listed] in §
28 49.4 and the [EPA] regulations that implement those provisions.’ 40 CFR 49.3.”

78 Fed. Reg. at 8276;

Whereas, **EPA** proposed to exercise “its authority and discretion under section
301(d)(4) of the Clean Air Act, 42 U.S.C. 7601(d)(4), and 40 CFR 49.11(a) to
propose an extended timeframe for an alternative measure” under the **Proposed
BART Rule** for NGS. 78 Fed. Reg. at 8289;

1 C. Whereas, **EPA** determined in promulgating the TAR that it could exercise
2 discretionary authority to promulgate **FIPs** based on section 301(a) of the **Clean**
3 **Air Act**, which authorizes **EPA** to prescribe such **regulations as are necessary** to
4 carry out the Act, and section 301(d)(4), which authorizes **EPA** to directly
5 administer **Clean Air Act** provisions for which **EPA** has determined it is
6 inappropriate or infeasible to treat tribes as identical to states so as to achieve the
7 appropriate purpose. 40 CFR 49.11. See also 63 FR 7265. Specifically, 40 CFR
8 49.11(a) provides that **EPA**:

9 “[s]hall promulgate without unreasonable delay such Federal
10 implementation plan provisions as are necessary or appropriate to
11 protect air quality, consistent with the provisions of sections
12 301(a) and 301(d)(4), if a tribe does not submit a tribal
13 implementation plan or does not receive EPA approval of a
14 submitted tribal implementation plan.”

15 78 Fed. Reg. at 8276;

16 D. Whereas, the United States has a unique and continuing trust relationship with
17 and responsibility to Indian tribes that is grounded in treaties, the United States
18 Constitution, and federal law;

19 E. Whereas, the **EPA** issued in 1984 the EPA Policy for the Administration of
20 Environmental Programs on Indian Reservations in recognition of “the
21 importance of Tribal Governments in regulatory activities that impact reservation
22 environments.” In its policy, **EPA** stated that its goal was to be consistent with the
23 “overall Federal position in support of Tribal ‘self-government’ and ‘government-
24 to-government’ relations between Federal and Tribal Governments” and noted
25 further that “[t]he keynote of this effort will be to give special consideration to
26 Tribal interests in making Agency policy, and to insure the close involvement of
27 Tribal Governments in making decisions and managing environmental programs
28 affecting reservation lands”;

F. Whereas the **Community’s** water settlement agreement describes the
Community’s entitlement to water rights and resources, which entitlement
includes a significant allocation of **CAP** water, and section 204(a)(2) of **AWSA**
states that “[t]he water rights and resources described in the Gila River agreement
shall be held in trust by the United States on behalf of the Community and the
allottees as described in this section”;

G. Whereas, the **Parties** agree that protecting visibility in Class I areas is important
and required by law, and the emissions reductions from **NGS** and related
measures provided herein are intended to enhance air quality surrounding **NGS**,
including at the Grand Canyon National Park;

H. Whereas, certain concerns have been raised about environmental issues in the
vicinity of **NGS** and the **KMC**;

- 1 I. Whereas, the **Parties** are interested in the outcome resulting from the **EPA’s**
2 current rulemaking proceeding regarding the **BART** for **NGS**;
- 3 J. Whereas, the **Parties** have participated in discussions relating to the **Proposed**
4 **BART Rule** in an effort to jointly develop a **Reasonable Progress Alternative to**
5 **BART** that the **Parties** could jointly present to **EPA** as a new alternative for **EPA**
6 to publish as a supplemental **Proposed BART Rule** for public comment as part of
7 the **BART** rulemaking process;
- 8 K. Whereas, on January 4, 2013, **Interior, EPA, and DOE** issued the **Joint**
9 **Statement** (attached as **Appendix D**) regarding **NGS**, which stated that “[t]he
10 **NGS** owners and stakeholders and the Federal Government are working to ensure
11 that the critical roles that **NGS** currently plays are maintained while [the agencies]
12 continue to take steps to lower emissions from the **NGS** and its impacts on the
13 people and the landscapes impacts by the plant’s operations”;
- 14 L. Whereas, the goals set forth in the **Joint Statement** are:
15
16 “The **DOI, DOE, and EPA** will work together to support Arizona and tribal
17 stakeholders’ interests in aligning energy infrastructure investments made by the
18 Federal and private owners of the **NGS** (such as upgrades that may be needed for
19 **NGS** to comply with Clean Air Act emission requirements) with long term goals
20 of producing clean, affordable and reliable power, affordable and sustainable
21 water supplies, and sustainable economic development, while minimizing
22 negative impacts on those who currently obtain significant benefits from **NGS**,
23 including tribal nations”;
- 24 M. Whereas, **Interior’s** participation in this **Agreement** is a significant step in
25 furtherance of the goals of the **Joint Statement**. By entering into this **Agreement**,
26 **Interior** reiterates and underscores its commitment to continue to work diligently
27 to achieve the goals of the **Joint Statement**;
- 28 N. Whereas, **Interior** will design the **NREL Phase 2 Study** for the purpose of
studying options for the future of **NGS** consistent with the goals of the **Joint**
Statement;
- O. Whereas, **Interior’s** participation in this **Agreement** will further the goals of both
(i) President Obama’s March 2011 “Blueprint for a Secure Energy Future,” which
states that “[b]y 2035, we will generate 80 percent of our electricity from a
diverse set of clean energy sources – including renewable energy sources like
wind, solar, biomass, and hydropower; nuclear power; efficient natural gas; and
clean coal,” and (ii) President Obama’s June 2013 “Climate Action Plan,” which
provides for deploying clean energy and federal government leadership;
- P. Whereas, in the **Joint Statement**, **Interior, EPA, and DOE** state that they will
work with **NGS** stakeholders to identify and implement shorter term investments
that align with long term **Low-emitting Energy** goals;

- 1 Q. Whereas, **Interior** has initiated the preparation of an **EIS** addressing the potential
2 impacts that may result from federal actions required to review, renew or revise
3 the **Lease**, grants of right-of-way and easements, contracts, and permits for **NGS**.
4 The **Lease** and grants of right-of-way and easements begin to expire in 2019, and
5 the terms of the **Lease Amendment** and grants of right-of-way and easement
6 currently are being considered by the relevant parties. Any timely decisions by
7 **EPA** regarding **BART** for **NGS** will be reflected in the assumptions used to
8 evaluate the impacts of the proposed action and alternatives to continued
9 operation of **NGS** after 2019. In addition, **Peabody** has submitted to the
10 **Interior's** Office of Surface Mining Reclamation and Enforcement a life-of-mine
11 permit revision application for the **KMC**, which supplies the coal used at **NGS**.
12 The impacts associated with that application also will be addressed in the **EIS**;
- 13 R. Whereas, the U.S. Congress enacted the Navajo-Hopi Rehabilitation Act of 1950
14 to “provide facilities, employment, and services essential in combating hunger,
15 disease, poverty, and demoralization among the members of the Navajo and Hopi
16 Tribes, to make available the resources of their reservations for use in promoting a
17 self-supporting economy and self-reliant communities, and to lay a stable
18 foundation on which these Indians can engage in diversified economic activities
19 and ultimately attain standards of living comparable with those enjoyed by other
20 citizens.” The 1950 Act authorized and directed the Secretary of the **Interior** to
21 develop “a program of basic improvements for the conservation and development
22 of the resources of the Navajo and Hopi Indians, the more productive employment
23 of their manpower, and the supplying of means to be used in their rehabilitation,
24 whether on or off the Navajo and Hopi Indian Reservations”;
- 25 S. Whereas, Congress, through the Colorado River Basin Project Act of 1968 and
26 subsequent approvals, authorized the United States to participate in a thermal
27 generating power plant to provide power for **CAP** pumping as an alternative to
28 building additional dams on the Colorado River and to augment the revenues
credited to the **Development Fund**. With Congressional approval, the United
States acquired a 24.3% entitlement to the capacity and energy from **NGS**, which
resulted in **NGS** supplying nearly all the power for pumping **CAP** water;
- T. Whereas, the Colorado River Basin Project Act of 1968, as amended and
supplemented, provided that surplus federal **NGS** power not needed for **CAP**
pumping would be sold to help repay the construction costs of **CAP**;
- U. Whereas, the **AWSA** provided that revenue from sale of surplus federal **NGS**
power would also be used to assist Arizona Indian tribes, including the
Community, in putting to use **CAP** water allocated to them. Some of these tribes
relinquished certain senior federal water rights claims pursuant to congressionally
authorized water settlements;
- V. Whereas, roughly 47% of Arizona’s **CAP** water is under contract, or available for
allocation, to Arizona Indian tribes pursuant to water settlements under which
settling tribes relinquish certain senior federal water rights claims in return for

1 CAP water and infrastructure for delivering CAP water to the tribe and its
2 reservation;

3 W. Whereas, **NGS** is located on **Navajo Nation** lands and the **KMC** that supplies its
4 coal is located on the reservation lands of both the **Navajo Nation** and the Hopi
Tribe;

5 X. Whereas, considering the importance of improving communications and
6 understanding, the **Navajo Nation**, a federally recognized Indian tribe, desires to
7 establish a foundation for discussions with environmental organizations about
8 **Regional Haze**, tribal energy development, and carbon management to better
9 facilitate understanding of the complex history of the **Navajo Nation** and other
tribes in Arizona in relation to **NGS**, **Advanced Coal** and **Renewable Energy**
development;

10 Y. Whereas, the **Navajo Nation** and the land areas surrounding **NGS** historically
11 have maintained attainment of all federal and state air quality standards since
12 **EPA** and the **Navajo Nation** began collecting air quality monitoring data;

13 Z. Whereas, the **Navajo Nation** and the **NGS Participants** have negotiated a **Lease**
14 **Amendment** such that the **Lease** would be extended through December 22, 2044,
and the **Lease Amendment** has been considered and approved by the **Navajo**
Nation Council;

15 AA. Whereas, the **Navajo Nation** intends to submit to **EPA** new information
16 regarding the proposed **Lease Amendment** in support of its position concerning
the **BART** five factor analysis; and

17 BB. Whereas, this **Agreement** shall be made public and readily accessible to all
18 persons.

19 **NOW, THEREFORE**, the **Parties** agree as follows:

20 **II. Definitions**

21 For purposes of this **Agreement**, capitalized terms in **Bold Type** have the meaning set
22 forth in **Appendix A** to this **Agreement**.

23 **III. Summary of Agreement Elements; Reasonable Progress Alternative to BART,**
24 **Obligations of Support, and Reservation of Rights**

25 A. This **Agreement** includes the following elements: (a) a proposed **Reasonable**
26 **Progress Alternative to BART**, to be submitted by the **Parties** to **EPA** for its
27 consideration to issue as the **Final BART Rule** (**Appendix B**); (b)
28 **Reclamation's** study of options for replacing the federal share of energy from
NGS with **Low-emitting Energy**, the results of which shall be considered in the
NGS-KMS EIS (**Section IV**); (c) **Interior's** commitment to reduce or offset **CO₂**
emissions by 3 percent per year associated with the electric energy consumed by

1 its **CAP** pumping load by 3 percent per year, which over time reduces **CO₂**
2 emissions by approximately 11.3 million **Metric Tons** (**Appendix C, Section II**),
3 and facilitate the development of **Clean Energy** by securing at least
4 approximately 26,975,000 **MWh** of **Clean Energy Development Credits**
5 (“**CDC**”) no later than December 31, 2035 (**Appendix C, Section III**); (d)
6 measures that **Interior** commits to undertake to mitigate potential impacts from
7 the **Final BART Rule** and other developments on **Affected Tribes**, including but
8 not limited to a commitment to expend not less than \$100 million from the
9 Reclamation Water Settlements Fund as set forth in **Section V.B.4** and the
10 commitment to identify, prioritize and further **Low-emitting Energy** projects to
11 benefit **Affected Tribes** (**Section V**) such as **Interior’s** support for the
12 **Community Solar Facility** and **Low-emitting Energy** projects within the
13 Navajo Nation and Hopi Tribe (**Section V.B.7**); (e) **Interior’s** commitment to
14 carry out the **NREL Phase 2 Study** for the purposes of studying options for the
15 future of **NGS** consistent with the goals of the **Joint Statement** (**Section V.C** and
16 **Appendices D** and **E**); (f) a **Local Benefit Fund** for community improvement
17 projects within 100 miles of **NGS** or **KMC** (**Section VI**); and (g) obligations of
18 the **Parties** (**Section III**) and miscellaneous legal provisions (**Section VIII**).

19 B. The **Parties** shall submit this **Agreement** to **EPA** and request that **EPA**: (1)
20 adopt the **Reasonable Progress Alternative to BART** set forth in **Appendix B** as
21 the **Final BART Rule**; (2) include this **Agreement** in the administrative docket
22 of the **BART** rulemaking proceeding for **NGS**; and (3) acknowledge this
23 **Agreement**, including the commitments of **Interior**, in the preamble to the
24 supplemental proposed **BART** rule and the **Final BART Rule** that adopts the
25 **Reasonable Progress Alternative to BART**.

26 C. The **Parties** agree that the actions required under **Appendix B** satisfy the
27 requirements associated with the **Regional Haze Rules** and **Reasonably**
28 **Attributable Visibility Impairment**. The **Parties** shall jointly request that **EPA**
(i) propose and, after public notice and comment, finalize the **Reasonable**
Progress Alternative to BART as an alternative to the **Proposed BART Rule**,
and (ii) make a determination that the **Reasonable Progress Alternative to**
BART satisfies the **Regional Haze Rules** and **Reasonably Attributable**
Visibility Impairment requirements of the **Clean Air Act**. If **EPA** issues a notice
of proposed rulemaking adopting in material respects the **Parties’ Reasonable**
Progress Alternative to BART, the **Parties** shall file comments supporting
EPA’s revised proposal and shall not file adverse comments on **EPA’s** revised
proposal. The **Parties** shall not encourage or provide support to any other person
or entity to file adverse comments on **EPA’s** revised proposal.

D. If the **EPA** adopts the **Reasonable Progress Alternative to BART** as the **Final**
BART Rule with no material change:

1. The **Parties** shall not, at any time, file, or encourage or provide support to
any other person or entity to file, a petition for review or reconsideration
or any other challenge of the **Final BART Rule** before **EPA** or in any

1 other forum. Further, the **Parties** shall not, at any time, object to, dispute
2 or challenge for any reason the validity of the **Final BART Rule** in any
3 judicial, administrative or legislative proceeding, or encourage or provide
support for others in doing so.

4 2. Should any person or entity file a petition for review or reconsideration of
5 the **Final BART Rule**, the **Non-Federal Parties** shall intervene in such
6 proceeding for review or reconsideration, or issue a written public
statement, in support of the **Final BART Rule**.

7 3. The **Non-federal Parties** shall not submit comments in support of, or
8 otherwise advocate for, emission controls, unit retirements or curtailments
9 in **NGS** operations that are different from or more stringent than those
10 specified in the **Reasonable Progress Alternative to BART**, either as
11 part of the **EIS** process or in subsequent proceedings before **EPA** to
12 implement requirements of the **Regional Haze Rules** or the **Reasonably
Attributable Visibility Impairment** rules. Nothing in this **Agreement**,
13 however, shall be construed to prevent these **Non-federal Parties** from
commenting on, advocating for or against, or advancing or opposing any
federal or state laws or regulations addressing climate change.

14 E. **SRP**, as **NGS Operating Agent**, shall file a Title V operating permit application
15 to incorporate the provisions of a **Final BART Rule** adopting the **Reasonable
Progress Alternative to BART**. The **Parties** shall not object to, dispute or
16 challenge for any reason the provisions of such application that seek to implement
the **Reasonable Progress Alternative to BART**, and shall submit comment
17 letters that support such provisions. Should any person or entity challenge such
provisions, the **Non-federal Parties** shall intervene in such proceeding, or issue a
18 written public statement, in support of such provisions.

19 F. **SRP**, as **NGS Operating Agent**, shall file a permit application to authorize the
20 construction and operation of additional emission controls required to meet the
emission limits associated with the **Reasonable Progress Alternative to BART**.
21 The **Parties** shall not object to, dispute or challenge for any reason the provisions
of such application that seek to implement the **Reasonable Progress Alternative
to BART**, and shall submit comment letters supporting such provisions. Should
22 any person or entity challenge such provisions, the **Non-federal Parties** shall
intervene in such proceeding, or issue a written public statement, in support of
23 such provisions.

24 G. The **Non-federal Parties** shall not object to, dispute or challenge on any basis
25 (including challenges under **NEPA**, **ESA** or **NHPA**) in any administrative or
legislative proceeding, in any court of competent jurisdiction or in any other
26 forum, actions by **Interior**, **EPA** or other federal agencies granting requests for
approvals necessary for the continued operation of **NGS** through the term of the
27 **Lease**, as amended by the **Lease Amendment** and consistent with the
Reasonable Progress Alternative to BART. The federal agency actions referred
28

1 to in the preceding sentence include, but are not limited to: (1) approvals of
2 requests for renewals or revisions to mining permits and mine plans that do not
3 increase the production beyond that associated with the operation of NGS of
4 future **Advanced Coal** projects on tribal lands; (2) approval of the **Lease**
5 **Amendment**; (3) approvals of rights-of-way for NGS and related facilities
6 existing as of the date of this **Agreement** (including water intake facilities,
7 railroad, and transmission lines); (4) other land conveyances; (5) extension of the
8 Water Service Contract for NGS (**Reclamation** Contract No. 14-060400-5033
9 and Renewal No. 1 thereto); and (6) associated federal agency actions taken
10 pursuant to NEPA, ESA and NHPA. The **Non-federal Parties** shall not object to,
11 dispute or challenge, or encourage or provide support to any other person or entity
12 to object to, dispute or challenge, the approvals described in this paragraph. The
13 **Non-federal Parties** agree to confer before submitting their respective comments
14 to **Interior, EPA** or other federal agencies regarding the approvals necessary for
15 the continued operation of NGS through the term of the **Lease**, as amended by the
16 **Lease Amendment**, as described in this **Section III.G**.

17 H. The **Parties** reserve all rights to advocate full implementation of this **Agreement**
18 including, as they deem appropriate, Alternatives A or B set forth in **Appendix B**
19 before all decision-making bodies.

20 I. The **Non-federal Parties** reserve their right to comment on and challenge any
21 issue in any pending or future administrative proceedings by **Interior, EPA** or
22 other federal agencies that are unrelated to and do not undermine their
23 commitments and obligations in this **Agreement**.

24 J. The **NGS Participants** shall comply with all applicable present and future laws,
25 regulations, and permitting requirements regardless of whether they are addressed
26 in this **Agreement**.

27 K. The **Parties** reserve the right to provide comments on the **Proposed BART Rule**.

28 L. The **Parties** agree that in entering into this **Agreement** and not litigating or
otherwise objecting in any forum to the legal issues specified in this **Agreement**,
they intend that this **Agreement** shall not have the effect of precedent and shall
never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue
or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches,
unclean hands or any other similar position or defense concerning any factual or
legal issue in any matter not related to NGS. The **Parties** expressly reserve their
rights to assert any legal or factual position or challenge the legal or factual
position taken by any other entity or person in any such matter.

IV. NGS and KMC NEPA Process

A. As part of the NGS-KMC EIS process, **Reclamation** shall study options for
replacing the federal share of energy from NGS with **Low-emitting Energy**. The
study of **Low-emitting Energy** options referred to in this **Section IV.A** may be

1 carried out by **Reclamation** or under the direction of **Reclamation**. Subject to
2 **Section IV.B**, the results of the study shall be incorporated into the **NGS-KMC**
3 **EIS**, either in the text of the **NGS-KMC EIS** itself, as one or more appendices to
4 the **NGS-KMC EIS**, or by reference, and shall be subject to public review and
5 comment consistent with other information used in the **NGS-KMC EIS** process.
6 Subject to **Section IV.B**, if any of the **Low-emitting Energy** options studied meet
7 the legal criteria for full analysis as an alternative in the **EIS**, **Reclamation** shall
8 analyze one or more such **Low-emitting Energy** alternative in the **EIS**.

- 9
- B. In carrying out the provisions of **Section IV.A**, **Interior** retains its full discretion
10 to make decisions regarding the content of the **EIS**, and **Interior** shall not take
11 any actions that **Interior**, in its sole discretion, determines could cause
12 unacceptable delays in the **EIS** preparation or in any way threaten the viability or
13 legality of the **EIS**.

14 V. Additional Commitments by Interior

15 A. Interior CO₂ Reduction Commitment and Interior Clean Energy 16 Development Commitment.

- 17
1. **Interior** makes these commitments in furtherance of the President’s 2013
18 “Climate Action Plan” and 2011 “Blueprint for a Secure Energy Future.”
- 19
2. **The Interior CO₂ Reduction Commitment** is as described in **Appendix**
20 **C**. **Interior** will reduce or offset **CO₂** emissions associated with the
21 electric energy consumed by its **CAP** pumping load by 3 percent per year,
22 which over time reduces **CO₂** emissions by approximately 11.3 million
23 **Metric Tons**. This commitment is intended to accomplish two aims:
24 reduce **CO₂** emissions and demonstrate the workability of a credit-based
25 system to achieve **CO₂** emission reductions. In addition, this commitment
26 provides a potential path to achieve carbon pollution reductions under
27 federal clean air laws, and **Interior** reserves the right to seek credit for
28 actions taken pursuant to this commitment under any federal carbon
reduction program or policy to address climate change.

The Interior Clean Energy Development Commitment is as described
in **Appendix C**. **Interior** will facilitate the development of approximately
26,975,000 MWh of **Clean Energy**, as defined by this **Agreement** and
Appendix C. This is intended to provide **Interior** a reasonable path to
achieve 80 percent **Clean Energy** for the U.S. share of **NGS** by 2035.
This **Commitment** will foster **Clean Energy** development, with particular
attention to doing so in a way that benefits **Affected Tribes**.

29 B. Measures to Mitigate Impacts to Affected Tribes

1. **Interior** shall identify, prioritize and further development of **Low-**
emitting Energy projects, including **Advanced Coal**, to benefit **Affected**
Tribes.

- 1 2. **Interior**, through **Reclamation** and the **Bureau of Indian Affairs**, shall
2 work with the **Navajo Nation and Hopi Tribe**, upon request, to identify,
3 **prioritize and further economic development** projects on the Navajo and
4 Hopi Reservations and Navajo and Hopi **tribal trust lands** to help
5 supplement and replace their reliance on **NGS** and coal.
- 6 3. **Reclamation** shall consider and seek to implement, as appropriate, any
7 options for mitigating increased rates for **CAP** water beyond what should
8 have been reasonably expected by each **Affected CAP Tribe** at the time
9 each such tribe entered into its respective **CAP** contract. In determining
10 the respective benefits, if any, to which an **Affected CAP Tribe** might be
11 entitled pursuant to actions contemplated under this **Agreement**, a primary
12 factor for **Interior** to consider shall be the amount of **CAP** water to which
13 any such **Affected CAP Tribe** is entitled pursuant to its **CAP** contract and
14 the **CAP** water costs for which such tribe is responsible.
- 15 4. As authorized by 43 USC § 407, entitled “Reclamation Water Settlements
16 Fund,” for each fiscal year 2020-2029, **Interior** shall expend not less than
17 \$10,000,000 from available amounts in the Reclamation Water
18 Settlements Fund for the purpose of providing financial assistance for
19 Fixed Operation, Maintenance, and Replacement costs under section 107
20 of the **AWSA**. If the Secretary of the **Interior** determines that
21 \$10,000,000 is unavailable for expenditure in any given fiscal year
22 because expending it at that time would be inconsistent with 43 U.S.C. §
23 407, including the priorities set forth in 43 U.S.C. § 407(c)(3)(A), the
24 amount not expended in that fiscal year shall be expended in the next
25 fiscal year in which such funds are available and such expenditures would
26 be consistent with 43 U.S.C. § 407.
- 27 5. Prior to January 1, 2020, and after the issuance of the final **NREL Phase 2**
28 **Study** report, **Interior** shall consult with **Affected CAP Tribes** regarding
whether the **Development Fund** is projected to meet the purposes for
which it was intended after taking into account developments since the
enactment of the **AWSA**.
6. **Interior**, through **Reclamation**, shall meet with **Affected CAP Tribes** at
least once a year to discuss **CAP** operations, including any changes in
operations or costs, impacts of such operations on **Affected CAP Tribes**,
and potential measures to mitigate such impacts.
7. **Low-emitting Energy Projects**
 - a. **Interior**, through **Reclamation**, shall work with **Affected Tribes**,
if requested, to identify, prioritize, and further **Low-emitting**
Energy projects, including **Advanced Coal**, that will benefit such
Affected Tribes.

1 b. **Community Low-emitting Energy Projects**

- 2 i. The **Community** currently is developing plans for a 33 MW
3 tracking solar generation facility on its Reservation
4 (“**Community Solar Facility**”);
- 5 ii. **Interior** supports the **Community’s** development of the
6 **Community Solar Facility** and shall work with the
7 **Community** to facilitate its construction, or construction of
8 other **Low-emitting Energy** projects;
- 9 iii. **Interior** shall seek to identify funds, up to \$250,000, to assist
10 the **Community** in funding studies and design associated
11 with the **Community Solar Facility** or other **Community**
12 **Low-emitting Energy** projects;
- 13 iv. As requested by the **Community**, **Interior** shall work with
14 the **Community** to reduce the scale of **PMIP** and to
15 reallocate associated federal funding to be used for the
16 **Community Solar Facility** or other **Community Low-**
17 **emitting Energy** projects;
- 18 v. **Interior** shall work with the **Community** to facilitate the
19 **Community’s** withdrawal of the \$53 million operation,
20 maintenance and replacement (OM&R) fund established by
21 the **AWSA** and the **Community’s** investment of these funds
22 in the **Community Solar Facility** or other **Community**
23 **Low-emitting Energy** projects;
- 24 vi. The **Community** shall set aside in a separate fund an
25 appropriate amount of the profits generated from the
26 **Community Solar Facility** or other **Community Low-**
27 **emitting Energy** projects to be used to offset the
28 **Community’s CAP** or other water costs;
- vii. **Interior** shall assist the **Community** in identifying federal
entities that could purchase power from the **Community**
Solar Facility or other **Community Low-emitting Energy**
projects and shall encourage such federal entities to purchase
such power, as appropriate.

8. **Interior**, through **Reclamation** and Bureau of Indian Affairs and other governmental agencies, shall work with third parties, if requested, to further community and large-scale renewable energy on tribal lands subject to the consent and approval by the tribal governments.

9. The **Parties** understand that new legislation may be needed to accomplish the benefits described in this **Section V.B.** If legislation is required,

1 **Interior** shall comply with all applicable executive branch approval
2 processes regarding support for such legislative activity. No liability under
3 **Section V.B** shall accrue to **Interior** if required legislation is not enacted
4 by Congress. **Interior** shall consult with the **Affected Tribes** if legislation
is not promptly enacted by Congress.

5 C. **NREL Phase 2 Study**

- 6 1. **Interior**, through **Reclamation**, shall commission the **NREL Phase 2**
7 **Study** with the following parameters:
- 8 a. **Interior** shall design the **NREL Phase 2 Study** for the purposes of
9 studying options for the future of **NGS** consistent with the goals of
10 the **Joint Statement**.
- 11 b. The current outline for the **NREL Phase 2 Study** is as set forth in
12 **Appendix E**. As of the date of this **Agreement**, **Interior** does not
13 anticipate significant deviations from the current outline set forth
14 in **Appendix E**.
- 15 c. The final scope of the **NREL Phase 2 Study** shall be determined
16 by **Interior**, exercising its sole discretion. **Interior** shall seek input
17 from **NGS** stakeholders, including the **Parties**, regarding the scope
of the **NREL Phase 2 Study** as **Interior**, in its sole discretion,
deems appropriate.
- 18 2. **Interior**, through **Reclamation**, shall identify funding for and ensure
completion of the **NREL Phase 2 Study**, including all of its components.

19 VI. **Local Benefit Fund**

- 20 A. In addition to funds made available to the **Navajo Nation** through the **Lease**
21 **Amendment**, **SRP**, as **NGS Operating Agent**, shall make a \$5 million
22 contribution to a **Local Benefit Fund** (“LBF”).
- 23 B. The contribution by **SRP**, as **NGS Operating Agent**, to the **LBF** shall be payable
24 as follows:
- 25 1. The **SRP**, as **NGS Operating Agent**, shall make a \$2.5 million
26 contribution to the **LBF** 60 days after issuance of the **ROD**, provided
27 **SRP**, as **NGS Operating Agent**, has not objected to the **ROD**.
- 28 2. If the **ROD** is challenged within two (2) years of issuance, **SRP**, as **NGS**
Operating Agent, shall make an additional \$2.5 million contribution to
the **LBF** 60 days after the **ROD** is upheld and there are no additional
appeals possible.

1 3. If the **ROD** is not challenged within two (2) years of issuance, **SRP**, as
2 **NGS Operating Agent**, shall make an additional \$2.5 million
3 contribution to the **LBF** two (2) years after issuance of the **ROD**.

4 C. The **LBF** shall be used for community improvement projects located within 100
5 miles of **NGS** or **KMC**. Such projects may include, but are not limited to, any of
6 the following:

- 7 1. A coal and wood stove changeout program;
- 8 2. A partnership with the **NTUA** to meet electric or water distribution and
9 other infrastructure needs near the plant and mine;
- 10 3. The investigation and, as appropriate, installation of residential or
11 community solar;
- 12 4. A partnership with **Peabody** to provide access road improvements to
13 community households in areas near the plant and mine; or
- 14 5. Visibility improvement projects, such as the revegetation of high dust
15 areas, soil stabilization of dirt roads, or others
- 16 6. Any other project approved by the **LBF Oversight Committee**.

17 D. The **LBF Oversight Committee** shall solicit input from affected local
18 communities in determining distribution of the **LBF**.

19 VII. Additional Obligations of the Parties

20 A. The **Parties** recognize that the **Navajo Nation** wishes to seek Treatment as a
21 State (“TAS”) under section 301(d) of the **Clean Air Act**, 42 U.S.C. § 7601(d),
22 and the Tribal Authority Rule, 40 C.F.R. Part 49. The **Navajo Nation** intends to
23 seek treatment as a state for **Clean Air Act** provisions applicable to **NGS**, except
24 for the Prevention of Significant Deterioration and Nonattainment New Source
25 Review permitting programs. **SRP** agrees to work with the **Navajo Nation** to
26 advocate to the **EPA** that the **VCA** provides sufficient jurisdictional authority for
27 the **Navajo Nation** to be awarded TAS status under the **Clean Air Act** with
28 respect to **NGS**. As provided in the **VCA**, the programs for which the **Navajo
Nation** seeks or accepts TAS status shall not contain requirements applicable to
NGS that are more stringent than the corresponding federal requirements unless
the **Navajo Nation** has obtained **SRP’s** written consent to such more stringent
requirements, and the **Navajo Nation** shall not promulgate a tribal
implementation plan that contains requirements applicable to **NGS** that are more
stringent than corresponding federal requirements without first obtaining **SRP’s**
express written consent to such requirements. The **Navajo Nation** agrees that the
Navajo Nation Environmental Protection Agency shall provide **SRP** an
opportunity to review and comment on the TAS application before its submittal to
EPA.

- 1 B. The **Navajo Nation** and **SRP** agree that nothing in this **Agreement** constitutes or
2 shall be construed to constitute a waiver or modification of any provisions of the
3 **VCA** or the **Lease**, as amended by the **Lease Amendment**, including, without
4 limitation, those provisions of the **Lease** relating to the **Navajo Nation's** covenant
5 not to directly or indirectly regulate or attempt to regulate the **NGS Participants**
6 under the **Lease**. The **Navajo Nation** and **SRP** further agree that nothing in this
7 **Agreement** provides a basis for assertion of jurisdiction over **NGS** or the **NGS**
8 **Participants** by the **Navajo Nation**.
- 9 C. Nothing in the terms of this **Agreement** shall preclude the **NGS Participants**
10 from seeking to obtain **GHG** emission reduction credits, or similar commodities
11 associated with activities committed to in this **Agreement**, under any federal or
12 state law or policy to the extent permitted under such applicable law or policy.
- 13 D. Through a process established by mutual agreement of the **Parties**, the **Parties**
14 shall meet in person or by teleconference at least semi-annually after execution of
15 this **Agreement** to discuss material issues associated with the implementation of
16 the **Agreement** and other issues identified by mutual agreement. **SRP**, as **NGS**
17 **Operating Agent**, shall be responsible for scheduling and organizing such
18 meetings.
- 19 E. **SRP**, on its own behalf, shall assist the **Community** in furtherance of the
20 contemplated **Community Solar Facility** described in **Section V.B.7.b.** by:
- 21 1. Providing scheduling and delivery services from the **Community Solar**
22 **Facility** to a point on **SRP's** system accessible to an offtaker or offtakers
23 of the project's output at rates consistent with **SRP's** Open Access
24 Transmission Tariff.
 - 25 2. Providing reserves at market based rates to cover deviations in output
26 from a day-ahead energy schedule. **SRP** would be excused from providing
27 this service between the hours of 3 pm and 6 pm in the months of July and
28 August.
 - 29 3. Providing a cost estimate for and be willing to provide advisory services in
interconnection design, requests for proposals management, and
technology selection to the **Community**.
- 30 F. The current **NGS Co-Tenants** shall cease their operation of conventional coal-
fired generation at **NGS** no later than December 22, 2044. At its election,
consistent with the **Lease Amendment**, the **Navajo Nation** may continue plant
operations at **NGS** after December 22, 2044 consistent with **EPA** approval.

1 **VIII. General Provisions**

2 A. Subject to Appropriations. No term or provision of this **Agreement** will constitute
3 or be construed as a commitment or a requirement that **Interior** obligate or pay
4 funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
5 applicable law or regulation. The expenditure or advance of any money or the
6 performance of any obligation of the United States under this **Agreement** shall be
7 contingent upon appropriation, apportionment, or allotment of funds for such
8 obligation. No liability shall accrue to the United States with respect to the
9 performance of such obligation in the event funds are not appropriated,
10 apportioned, or allotted for it.

11 B. Authority to Enter into Agreement. Each **Party** represents and warrants that it is
12 fully authorized and empowered to enter into this **Agreement** and that the
13 performance of its obligations under this **Agreement** will not violate any law or
14 regulation or any agreement between the **Party** and any other person, firm or
15 organization. Except as otherwise specifically provided herein, this **Agreement** is
16 entered into by **SRP**, on its own behalf, and as **NGS Operating Agent**, on behalf
17 of the **NGS Co-Tenants**.

18 C. Dispute Resolution

19 1. In General. The **Parties** shall seek to resolve all claims or controversies or
20 other matters in question between the **Parties** arising out of, or relating to,
21 this **Agreement** (“Dispute”) promptly, equitably, and in a good faith
22 manner. Prior to filing any claim or controversy under this **Agreement** in
23 a court of competent jurisdiction, the complaining **Party** shall:

24 a. Provide written notice to all other **Parties** specifying with
25 particularity the nature of the Dispute, the particular provisions of
26 this **Agreement** that are at issue, and the proposed relief sought;

27 b. Initiate a consultation process for any interested **Parties** to discuss
28 in good faith the Dispute and seek an amicable resolution thereof;
and

c. Continue such consultation for a period of at least thirty (30) days
from the date that the notice required by this **Section VIII.C.1** is
received by the **Parties**.

2. Governing Law.

a. Any claims under this **Agreement** by or against **Interior** or
determining an **Interior** obligation shall be determined by federal
law; provided, however, that Arizona law will supply the rule of
decision to the extent allowed by federal law.

1 b. With the exception of a claim involving **Interior**, as described in
2 **Section VIII.C.2.a**, any claims under this **Agreement** against the
3 **Navajo Nation** shall be determined by **Navajo Nation** law. Except
4 for a **Party** asserting a claim against the **Navajo Nation** under this
5 **Agreement** and only to the extent necessary to resolve that claim,
6 no **Party** consents to the civil, criminal, legislative, or regulatory
7 jurisdiction of any federal, state, tribal or local government entity
8 or authority or waives any defenses to claims of jurisdiction by
9 executing this **Agreement**.

10 c. With the exception of a claim involving **Interior**, as described in
11 **Section VIII.C.2.a**, any claims under this **Agreement** against the
12 **Community** shall be determined by **Community** law. Except for a
13 **Party** asserting a claim against the **Community** under this
14 **Agreement** and only to the extent necessary to resolve that claim,
15 no **Party** consents to the civil, criminal, legislative, or regulatory
16 jurisdiction of any federal, state, tribal or local government entity
17 or authority or waives any defenses to claims of jurisdiction by
18 executing this **Agreement**.

19 d. With the exception of a claim involving **Interior**, as described in
20 **Section VIII.C.2.a**, or a claim against the **Navajo Nation**, as
21 described in **Section VIII.C.2.b**, or a claim against the
22 **Community** as described in **Section VIII.C.2.c**, any claim under
23 this **Agreement** shall be governed by Arizona law and shall be
24 brought only in a state or federal court of competent jurisdiction.

25 3. Material Breach. Any Party that materially breaches this **Agreement** shall
26 be precluded from seeking to enforce the **Agreement** against any other
27 **Party**.

28 4. Remedies against Non-federal Parties. The **Non-federal Parties**
acknowledge and agree that injunction and specific performance are
available as the only remedies in the event the obligations of this
Agreement are breached. The **Non-federal Parties** acknowledge and
agree that monetary damages are not available as a remedy in the event the
obligations of this **Agreement** are breached. The **Non-federal Parties**
agree that damages would not be an adequate remedy for noncompliance
with the terms of this **Agreement** and that no adequate remedy at law
exists for noncompliance with the terms of this **Agreement**. Accordingly,
the **Non-federal Parties** expressly acknowledge that an award of
equitable relief would be an appropriate remedy for a breach of the
obligations under this **Agreement**, provided the reviewing court has
followed standard procedures in issuing injunctive relief. No **Non-federal**
Party may seek to enforce an obligation of any other **Non-federal Party**
under this **Agreement** if such **Non-federal Party** is not a beneficiary of
the obligation in question.

1 5. Remedies against Interior. Any remedies sought against **Interior** for any
2 breach of this **Agreement** shall be in accordance with applicable federal
3 law.

4 D. Representation by Counsel. All **Parties** were represented by counsel, or had the
5 opportunity to be represented by counsel, during the negotiation and drafting of
6 the **Agreement**. If there is a question of interpretation of the **Agreement** or
7 ambiguity in the **Agreement**, then the **Agreement** shall be construed as if the
8 **Parties** had drafted it jointly, as opposed to being construed against a **Party**
9 because it was responsible for drafting one or more provisions of the **Agreement**.

10 E. Entire Agreement. This **Agreement**, including all **Appendices**, constitutes the
11 entire agreement between the **Parties** with respect to the subject matter hereof and
12 supersedes all prior discussions and agreement between the **Parties** with respect
13 to the subject matter hereof. There are no prior or contemporaneous agreements or
14 representations affecting the same subject matter other than those expressed
15 herein.

16 F. No Third-Party Beneficiaries. Nothing in this **Agreement** shall provide any
17 benefit to any third person or entitle any third person to any claim, cause of
18 action, remedy or right of any kind, it being the intent of the **Parties** that this
19 **Agreement** shall not be construed as a third-party beneficiary contract.

20 G. No Obligations on other Agencies. Nothing in this **Agreement** shall be
21 interpreted as binding on any federal agency that is not a **Party** to this
22 **Agreement**.

23 H. Amendment. This **Agreement** may not be modified in any respect except by
24 written approval of the **Parties**.

25 I. Reformation. If any provision of this **Agreement** is declared or rendered invalid,
26 unlawful, or unenforceable by any applicable law, the **Parties** shall use
27 reasonable efforts to reform this **Agreement** to give effect to the original intention
28 of the **Parties**.

J. Counterparts. This **Agreement** may be executed in counterparts, each of which
shall be an original but all of which together shall constitute one and the same
instrument.

K. Captions and Titles. Captions and Titles used in the **Agreement** are for
convenience only and shall not govern interpretation of the **Agreement**.

L. Enforceability:

1. **Sections III.B and III.C** of this **Agreement** shall take effect immediately
upon the execution of this **Agreement** by all of the **Parties**.

2. Except as provided in **Section VIII.L.1**:

1 a. The provisions of this **Agreement** shall take effect only if and on
2 the date that **EPA** issues a **Final BART Rule** that adopts the
3 **Reasonable Progress Alternative to BART** or a proposal not
4 materially different from the **Reasonable Progress Alternative to**
5 **BART** (the “**Enforceability Date**”).

6 b. No **Party**, by reason of its execution of this **Agreement**, shall be
7 required to perform any of the obligations or be entitled to receive
8 any of the benefits under this **Agreement** until the **Enforceability Date**.

9 3. If **EPA** issues a **Final BART Rule** that rejects the **Reasonable Progress**
10 **Alternative to BART**, or if **EPA** fails to take any action on the
11 **Reasonable Progress Alternative to BART** by July 31, 2014, this
12 **Agreement** shall be of no force or effect. If **EPA** adopts a **Final BART**
13 **Rule** that modifies the **Reasonable Progress Alternative to BART**, the
14 **Parties** shall meet and confer to determine whether **EPA**’s modification is
15 material.

16 M. Statutory Compliance. Nothing in this **Agreement** shall obligate the United States
17 to take any action, including environmental actions, without first complying with
18 all applicable law, including but not limited to **Reclamation** law and any laws
19 (including regulations and the common law) relating to human health, safety, or
20 the environment. Certain actions in this **Agreement** may be subject to applicable
21 statutory compliance obligations, which may include, but are not limited to,
22 **NEPA**, **ESA**, and **NHPA**. To the extent that the actions set forth in this
23 **Agreement** are subject to these statutory obligations, such actions may not be
24 implemented before statutory obligations are completed. Nothing in this
25 **Agreement** shall be construed to require **Interior** to take any action inconsistent
26 with applicable federal law and **Interior** reserves the right to modify or not take
27 the actions in this **Agreement** if **Interior** determines, in its sole discretion, that
28 the actions are inconsistent with **Interior**’s statutory obligations. If **Interior**
modifies or does not take any action contemplated in this **Agreement**, then
Interior shall confer with the **Parties** regarding options for moving forward.

N. Retention of Regulatory Authority. Nothing in this **Agreement** shall be construed
to limit or deny the power of a federal official to promulgate or amend regulations
or to enforce applicable statutory or regulatory requirements.

O. No Right to Enforce at EPA. Except for emission limitations and standards
incorporated in the **Final BART Rule**, the **Non-federal Parties** agree that they
shall not seek to enforce this **Agreement** through an enforcement petition or other
proceeding before the **EPA**.

P. Reservation of Claims. The **Parties** agree that the United States’ performance
under this **Agreement** may mitigate or remedy any previous breach of trust
claims for which causes of action might have accrued. Nothing in this **Agreement**
shall be construed as an implied or express admission by the United States

1 concerning the viability or merits of such previous claims for which causes of
2 action might have accrued. The **Non-federal Parties** reserve the right to assert
3 any legal claims against the United States, including breach of trust claims, based
4 on violations of this **Agreement** and any other basis available to any such **Non-**
5 **federal Party**. The United States reserves all defenses to such claims, including
6 jurisdictional defenses and any other available defenses.

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Q. Costs and Fees. Each **Party** shall bear its own costs and legal fees associated with
activities under this **Agreement**.

[Remainder of page left blank]

1 IN WITNESS WHEREOF, each of the **Parties** hereto has caused this **Agreement** to be executed
2 as of the date set forth above by its duly authorized representative.

3
4 **CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

5
6 Legal Review and Approval:

7 By: 

8 Jay M. Johnson
General Counsel

9 By: 

10 David V. Modeer
General Manager

11 **ENVIRONMENTAL DEFENSE FUND**

12
13 By: _____

14 Vickie Patton
General Counsel

15
16 **GILA RIVER INDIAN COMMUNITY**

17 Legal Review and Approval:

18
19 By: _____

20 Linus Everling
General Counsel

21
22 By: _____

23 Gregory Mendoza
Governor

24
25 **NAVAJO NATION**

26
27 By: _____

28 Ben Shelly
President

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General Counsel

By: _____
David V. Modeer
General Manager

ENVIRONMENTAL DEFENSE FUND

By: Vickie Patton
Vickie Patton
General Counsel

GILA RIVER INDIAN COMMUNITY

Legal Review and Approval:

By: _____
Linus Everling
General Counsel

By: _____
Gregory Mendoza
Governor

NAVAJO NATION

By: _____
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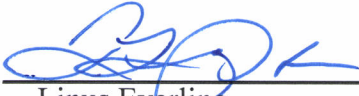
7 By: _____
8 Jay M. Johnson
9 General Counsel

By: _____
David V. Modeer
General Manager


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14 Vickie Patton
15 General Counsel

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17 Legal Review and Approval:

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20 Linus Everling
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23 **GILA RIVER INDIAN COMMUNITY**

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25 By:  _____
26 Gregory Mendoza
27 Governor

28
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By: _____
Ben Shelly
President

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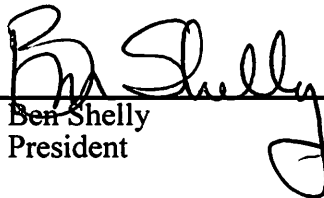
16
17 **GILA RIVER INDIAN COMMUNITY**

18 Legal Review and Approval:

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20 Linus Everling
21 General Counsel

By: _____
Gregory Mendoza
Governor

22
23 **NAVAJO NATION**

24
25 By:  _____
26 Ben Shelly
27 President
28

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

Legal Review and Approval:

By: Karilee S. Ramaley
Karilee S. Ramaley
Senior Attorney

By: Michael Hummel
Michael Hummel
Associate General Manager
Chief Power System Executive

**UNITED STATES DEPARTMENT OF
THE INTERIOR**

By: _____
Anne J. Castle
Assistant Secretary
for Water and Science

By: _____
Kevin K. Washburn
Assistant Secretary - Indian Affairs

By: _____
Rachel Jacobson
Principal Deputy Assistant Secretary
for Fish and Wildlife and Parks

WESTERN RESOURCE ADVOCATES

By: _____
John Nielsen
Energy Program Director

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**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

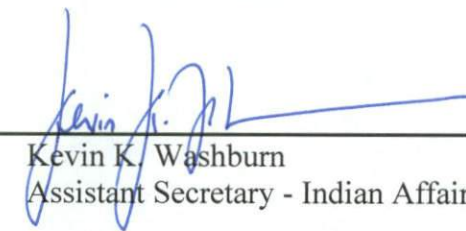
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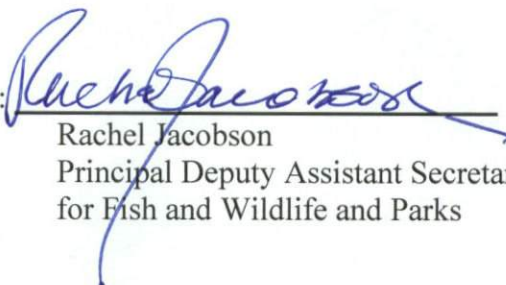
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Karilee S. Ramaley
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Energy Program Director

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John Nielsen
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LIST OF APPENDICES

Appendix A Definitions

Appendix B **Reasonable Progress Alternative to BART**

Appendix C **Interior CO₂ Reduction Commitment and Clean
Energy Development Commitment**

Appendix D **Joint Statement**

Appendix E Draft Scope of NREL Phase 2 Study

APPENDIX A
DEFINITIONS

1. **30-Day Rolling Average** means the average **NOx** emission rate for a **Unit**, expressed in **lb/MMBtu**, and calculated in accordance with the following procedure: first, sum the total pounds of **NOx** emitted from the **Unit** during the current **Unit Operating Day** and the previous twenty-nine (29) **Unit Operating Days**; second, sum the total heat input to the **Unit** in **MMBtu** during the current **Unit Operating Day** and the previous twenty-nine (29) **Unit Operating Days**; and third, divide the total number of pounds of **NOx** emitted during the thirty (30) **Unit Operating Days** by the total heat input during the thirty (30) **Unit Operating Days**. A new **30-Day Rolling Average** shall be calculated for each new **Unit Operating Day**. Each **30-Day Rolling Average** shall include all emissions that occur during all periods within any **Unit Operating Day**, including emissions from startup, shutdown, and malfunction.
2. **Advanced Coal** means an electricity generation unit combusting coal using advanced technologies, such as carbon capture and storage (CCS), with a conversion efficiency such that its **CO₂** emissions are less than or equal to 1,000 lb **CO₂/MWh**. If a future **CO₂** emissions limit is established through a final rule issued by **EPA**, the 1,000 lb **CO₂/MWh** shall be replaced with such a limit.
3. **Affected CAP Tribe** means any federally recognized Indian tribe located in the State of Arizona that has an allocation of **CAP** water.
4. **Affected Tribe** means the Hopi Tribe, the **Navajo Nation** and any **Affected CAP Tribe**.
5. **Agreement** means this Technical Work Group Agreement Related to Navajo Generating Station, including all **Appendices**.
6. **Appendix** means an attachment, appendix or exhibit to this **Agreement**, each of which is hereby incorporated into the **Agreement**.
7. **AWSA** means Arizona Water Settlements Act of 2004, Pub. L. No. 108-451, 118 Stat. 3478.
8. **BART** or “Best Available Retrofit Technology” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established on a case-by-case basis taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.
9. **Base Period Emissions** means 2,457,927 metric tons **CO₂**, which is the average annual **CO₂** emissions associated with electricity production dedicated to serving the **CAP**

pumping load, including line losses, during the 2001-2008 period. It is assumed that emission of non-CO₂ GHGs do not contribute significantly to CO₂e emissions for electricity production dedicated to serving the CAP pumping load, and therefore, only CO₂ emissions are considered in the establishment of **Base Period Emissions**.

10. **CAP** or “Central Arizona Project” means the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. §1521 et seq.), as amended. The **CAP** consists of a 336-mile water distribution system built to deliver more than 1.5 million acre-feet of Colorado River water annually from Lake Havasu in western Arizona to agricultural users, Indian tribes, and millions of municipal water users in Maricopa, Pinal, and Pima counties, Arizona. The **CAP** includes at least 14 pumping plants to lift water approximately 3,000 feet.
11. **CAP Dedicated Generation** means **Dedicated Generation** unless that generation in total produces more energy in a year than the **CAP** pumping load, in which case the **CAP Dedicated Generation** is the dedicated generation proportionately reduced by multiplying the energy produced from each generator times the ratio of the **CAP** load to the total megawatt-hours produced from **Dedicated Generation**.
12. **Capacity Factor** means the ratio (expressed as a percentage) of the net electricity generated in a given calendar year to the energy that could have been hypothetically generated at continuous full-power operation during the same period, i.e., running full time at rated power.
13. **CAWCD** means the Central Arizona Water Conservation District, the political subdivision of the State of Arizona organized in accordance with A.R.S. §48-3701 et seq. that has contracted with the United States to be the operating agent of the **CAP**.
14. **Clean Air Act** means Public Law 84-159, ch. 360, 69 Stat. 322 (July 14, 1955) and the amendments made by subsequent enactments (42 U.S.C. 7401–7626).
15. **Clean Energy** means electric energy produced by a generator with a CO₂ emission rate less than or equal to 500 lb/MWh.
16. **Clean Energy Coefficient** (“CEC”) means the coefficient applied to **Qualifying Projects** for purposes of meeting the **Interior Clean Energy Development Commitment**. The CEC shall be in accordance with the following table:

CO ₂ Emission Rate	CEC ¹
0 lb/MWh (Renewable Energy)	2.0
500 lb/MWh (Clean Energy)	1.0
1,000 lb/MWh ² (Other Low-Emitting Energy ³)	0.5
<p>1. CECs for a CO₂ emission rate between these values shall be prorated.</p> <p>2. If a future CO₂ emissions limit is established for Advanced Coal through a final rule issued by EPA, the 1,000 lb CO₂/MWh shall be replaced with such a limit.</p> <p>3. “Other Low-Emitting Energy” refers to Low-Emitting Energy that is not either Clean Energy or Renewable Energy.</p>	

17. **Clean Energy Development Credits (“CDC”)** means **MWh**, as calculated and accrued in accordance with **Appendix C**, associated with **Clean Energy** initiatives, that may be applied toward the **Interior Clean Energy Development Commitment**.
18. **CO₂ or Carbon Dioxide** means a naturally occurring gas, and also a by-product of burning fossil fuels and biomass as well as land-use changes and other industrial processes. It is the principal human caused greenhouse gas that affects the Earth’s radiative balance. It is the reference gas against which other greenhouse gases are measured and therefore has a **GWP** of 1. While it is acknowledged that **CO₂** is not technically the same as carbon, these terms may be used interchangeably in this **Agreement**, with both terms meant to convey **CO₂** or **Carbon Dioxide** as the operative metric. It is also acknowledged that some **CRC** accrual mechanisms (as described in Section II.D.1 of **Appendix C**) may include accounting for non-**CO₂** **GHGs**, and that the use of the term “**CO₂**”, “**Carbon Dioxide**” and “carbon” will include, where applicable, the non-**CO₂** **GHG**’s contribution to total **CO₂e**.
19. **CO₂e** means a metric measure used to compare the emissions from various **GHGs** on the basis of their **GWP**, by converting amounts of other gasses to the equivalent amount of **CO₂** with the same **GWP**. The **CO₂e** for a gas is derived by multiplying the **Metric Tons** of the gas by the associated **GWP**.
20. **CO₂ Reduction Credit (CRC)** means an instrument that may be applied toward the **Interior CO₂ Reduction Commitment**, in a format to be determined by **Interior** (physical or electronic), that represents one **Metric Ton** of **CO₂**, and is used to track and account for **CO₂** emission reductions.
21. **Community** means the Gila River Indian Community, a federally recognized Indian tribe.
22. **Community Solar Facility** means the solar facility that the **Community** currently contemplates developing on its reservation as described in **Section V.B.7.a**.

23. **Curtailement** means a reduction in operations such that a **Unit**'s average annual **Capacity Factor** is less than a baseline.
24. **Dedicated Generation** means electricity generation that is assigned to serving the **CAP** pumping load, and that is either owned by **Interior**, or is committed to **Interior** or **CAWCD** pursuant to a power purchase agreement that specifies the particular generation source from which the energy comes.
25. **Development Fund** means the Lower Colorado River Basin Development Fund, established by section 403 of the Colorado River Basin Project Act (43 U.S.C. § 1543), as amended.
26. **DOE** means the U.S. Department of Energy.
27. **Efficiency Improvement** means actions that reduce a **Unit**'s heat rate: that is, the amount of coal (Btu) to generate one **kWh** of energy. A lower heat rate means less coal to generate the same amount of energy.
28. **Efficient Natural Gas** means an electricity generation unit combusting natural gas with a conversion efficiency such that its **CO₂** emissions are less than or equal to 1,000 **lb CO₂/MWh**.
29. **EIS** or **NGS-KMC EIS** means the "Navajo Generating Station-Kayenta Mine Complex Environmental Impact Statement" being prepared by **Reclamation**, acting as lead federal agency, pursuant to **NEPA**.
30. **Emissions & Generation Resource Integrated Database (eGRID)** means "a comprehensive source of data on the environmental characteristics of almost all electric power generated in the United States. These environmental characteristics include air emissions for nitrogen oxides, sulfur dioxide, carbon dioxide, methane, and nitrous oxide; emissions rates; net generation; resource mix; and many other attributes."
31. **Enforceability Date** means the date described in **Section VIII.L.2** hereto.
32. **EPA** means the U. S. Environmental Protection Agency.
33. **ESA** means the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*
34. **Final BART Rule** means the final source-specific **FIP** addressing regional haze requirements for **NGS**.
35. **FIP** means Federal Implementation Plan.
36. **Generic Power** means the system power attributes defined according to the **NERC Subregion** where the **Qualifying Project** is located, based on the most recent published data reported in **EPA**'s **eGRID** data system at the time the **Qualifying Project** is implemented. **CO₂** emissions for **Generic Power** shall be calculated as follows:

$$\frac{\sum_i \text{CO}_2 \text{ emissions (tons CO}_2\text{)}}{\sum_i \text{net generation (MWh)}} = \text{system emission rate (tons CO}_2\text{/MWh)}$$

where *i* designates electric generators within the subject **NERC Subregion**

37. **GHG** means greenhouse gas, which is a gas other than water vapor with a global warming potential, as identified in the most current Assessment Report from the Intergovernmental Panel on Climate Change.
38. **GWh** means gigawatt-hour.
39. **GWP** or Global Warming Potential means a measure of the total energy that a gas absorbs over a particular period of time (usually 100 years) compared to carbon dioxide pursuant to reports published by the Intergovernmental Panel on Climate Change
40. **Interior** means the U. S. Department of the Interior, including its bureaus and agencies.
41. **Interior Clean Energy Development Commitment** means the commitment by **Interior** to facilitate clean energy development as set forth in **Section III** and **Appendix C**.
42. **Interior CO₂ Reduction Commitment** means the commitment of **Interior** to reduce or offset **CO₂** emissions as set forth in **Section II** and **Appendix C**. Any **CRCs** accrued that reflect non-**CO₂** **GHG** reductions will count toward meeting this commitment based on a conversion to **CO₂e**.
43. **Joint Statement** means the Joint Federal Agency Statement Regarding Navajo Generating Station issued by **Interior**, **EPA** and **DOE**, dated January 4, 2013, a copy of which is attached as **Appendix D**.
44. **KMC** means the Kayenta Mine Complex.
45. **kWh** means kilowatt-hour.
46. **lb** means pounds.
47. **LBF** or Local Benefit Fund means the fund established pursuant to **Section VI** to be used to fund local community improvement projects.
48. **LBF Oversight Committee** means a committee managed by **SRP** (directly or through a trust) and consisting of one representative from any **Party** that wants to participate in such committee.
49. **Lease** means the Indenture of Lease – Navajo Units 1, 2 and 3 between the Navajo Tribe of Indians and Arizona Public Service Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company, effective as of December 23, 1969.

50. **Lease Amendment** means Amendment No. 1 to the **Lease**.
51. **LNB/SOFA** means Low NO_x Burners/Separated Overfire Air, the **NO_x** emissions control system installed on one **Unit** per year at **NGS** between 2009 and 2011.
52. **Low-emitting Energy** means energy generated from **Renewable Resources**, as well as nuclear, **Efficient Natural Gas**, and **Advanced Coal** facilities.
53. **Metric Ton** means 1,000 kilograms, approximately 2,205 **lb**.
54. **MMBtu** means million British thermal units.
55. **MW** means megawatt.
56. **MWh** means megawatt-hour.
57. **Navajo Nation** means the Navajo Nation, a federally recognized Indian tribe.
58. **NEPA** means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.
59. **NERC** means North American Electric Reliability Corporation.
60. **NERC Subregion** means a subregion defined and used by the **NERC**.
61. **NGS** or Navajo Generating Station means the steam electric generating station located on the Navajo Reservation near Page, Arizona, on lands leased under the **Lease**, consisting of Units 1, 2 and 3, each 750 MW (nameplate rating), the switchyard facilities, and all facilities and structures used or related thereto.
62. **NGS Baseline** means normal operations of **NGS** based on historical performance. For purposes associated with this **Agreement** only and exclusively related to the **Interior Clean Energy Development Commitment** and associated computations, **Interior**, in consultation with the **Parties**, may review the **NGS Baseline** values every three years after the effective date of this **Agreement** and at **Interior's** discretion may revise the **NGS Baseline** values if there have been material changes affecting **NGS** operations. The initial **NGS Baseline** values, applicable to all three **NGS Units** for purposes associated with this **Agreement** only and exclusively related to the **Interior Clean Energy Development Commitment** and associated computations, are as follows:
 - a. An annual **Capacity Factor** of 88%;
 - b. Annual net generation of 17,344,800 **MWh**/year; and
 - c. A **CO₂** emission rate of 2,079 **lb CO₂ /MWh**, or 1.04 tons **CO₂/MWh**
63. **NGS Co-Tenants** means the non-federal owners of **NGS**.
64. **NGS-KMC** means the Navajo Generating Station and Kayenta Mine Complex collectively.

65. **NGS Operating Agent** means **SRP** as the operating agent of **NGS**, and its successors.
66. **NGS Participants** means the **NGS Co-Tenants** together with the United States, acting through **Reclamation**.
67. **NHPA** means the National Historic Preservation Act, 16 U.S.C. § 470 et seq.
68. **Non-federal Parties** means a collective reference to the entities that have signed this **Agreement** except for **Interior**. **Non-federal Party** may be used when referring to any of the **Non-federal Parties** individually.
69. **NOx** means nitrogen oxides expressed as nitrogen dioxide.
70. **NREL** means **DOE's** National Renewable Energy Laboratory.
71. **NREL Phase 2 Study** means the **NREL** Phase 2 **NGS** report, which is further described in **Section V.C**. A draft of contemplated scope elements associated with this study is included in **Appendix E**.
72. **NTUA** means the Navajo Tribal Utility Authority, an enterprise of the Navajo Nation.
73. **Offset** means a reduction in **CO₂** emissions, other than reductions associated with **Qualifying Projects**, which are accurately measured, verifiable, enforceable, voluntary, additional and permanent. Any offset certified by the Climate Action Reserve shall be usable as an **Offset** for purposes of the **Interior CO₂ Reduction Commitment**. **Offsets** may include **GHG** emission reductions that are attributed to a **REC** and that otherwise meet the criteria of this definition.
74. **Parties** mean a collective reference to the entities that have signed this **Agreement**. **Party** may be used when referring to any of the **Parties** individually.
75. **Peabody** means Peabody Western Coal Company, a subsidiary of Peabody Energy, which operates the **KMC**.
76. **PMIP** means the Pima-Maricopa Irrigation Project, a water delivery system built, or anticipated to be built on the **Community's** reservation as authorized by section 301(a) of the Colorado River Basin Project Act (43 U.S.C. § 1521 et seq.), as amended, and Title II of the **AWSA**.
77. **Proposed BART Rule** means the proposed source-specific **FIP** addressing **Regional Haze** requirements for **NGS** published in the Federal Register on February 5, 2013, at 78 Fed. Reg. 8,274.
78. **Qualifying Project** means those projects meeting the requirements set forth in section IV of **Appendix C**.
79. **Reasonable Progress Alternative to BART** means the **Parties'** proposal set forth in **Appendix B**.

80. **Reasonably Attributable Visibility Impairment** means visibility impairment that is caused by the emission of air pollutants from one source or a small number of sources, 40 C.F.R. §§ 51.302-51.306.
81. **Reclamation** means the U.S. Bureau of Reclamation.
82. **Regional Haze** means visibility impairment that is caused by the emissions of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources.
83. **Regional Haze Rules** means rules published by **EPA** in 1999 to address **Regional Haze**, 40 CFR Part 51, Subpart P.
84. **Renewable Energy** means energy generated from **Renewable Resources**
85. **Renewable Energy Credit** or **REC** means a tradable instrument representing generation from an eligible renewable energy resource issued by the Western Renewable Energy Generation Information System, the Electric Reliability Council of Texas, the Midwest Renewable Energy Tracking System, PJM Interconnection's Environmental Information Services, NEPOOL's Generation Information System, or the North American Renewables Registry.
86. **Renewable Resources** means wind, solar, sustainable bioenergy, geothermal, ocean energy, and hydroelectric facilities.
87. **Reserve Energy** means, in general terms, the electrical energy required for **CAP** pumping requirements, and is currently approximately 2/3 of **Interior's** 24.3% share in **NGS**.
88. **ROD** means the Record of Decision to be issued by **Interior** following completion of the **NGS-KMC EIS** after compliance with **NEPA, ESA** and **NHPA**.
89. **SCR** or **Selective Catalytic Reduction** means a pollution control device for reducing **NOx** emissions through the use of selective catalytic reduction technology.
90. **Section** means a section or subsection of this **Agreement**.
91. **SRP** means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the state of Arizona.
92. **Surplus Energy** means, in general terms, the electrical energy from **NGS** sold at market rates with revenues deposited in the **Development Fund** to offset **CAWCD's CAP** repayment obligation and to fund Indian water rights settlements pursuant to the **AWSA**, and is currently approximately 1/3 of the **Interior's** 24.3% share in **NGS**.
93. **Ton** means a short-ton which equals to 2,000 **lb**.

94. **Unit** means any one or more of **NGS** Units 1, 2 and 3.
95. **Unit Operating Day** means, for any **Unit**, any calendar day on which that **Unit** fires fossil fuel.
96. **Voluntary Compliance Agreement** means the Voluntary Compliance Agreement entered into between **SRP**, as Operating Agent of **NGS**, Arizona Public Service Company, as operating agent of Four Corners Power Plant, and the Navajo Nation.
97. **WECC** means the **Western Electricity Coordinating Council**.

APPENDIX B

I. Reasonable Progress Alternative to BART

- A. The **NGS** total **NOx** emission cap for purposes of this **Agreement** will be based on 2009-2044 emissions calculated by the **EPA** in the **Final BART Rule** (“2009-2044 **NOx** cap”).
1. The 2009-2044 **NOx** cap shall be determined based on an emission rate of 34,152 tons per year beginning in 2009 and ending five (5) calendar years following issuance of the **Final BART Rule** and 5,345 tons per year for each year thereafter.
 2. 34,152 tons per year corresponds to the **NOx** emissions calculated by **EPA** in the **Proposed BART Rule** that would have occurred each year prior to installation of **SCR** if **LNB/SOFA** had not been installed.
 3. 5,345 tons per year corresponds to the **NOx** emissions calculated by **EPA** in the **Proposed BART Rule** based on an annual **NOx** emission rate of 0.055 **lb/MMBtu** once **SCR** is installed and operational on all three **Units**. The **NGS Participants** agree that the 2009-2044 **NOx** cap may be calculated based on an annual **NOx** emission rate of 0.055 **lb/MMBtu** for **SCR**, despite the position of the **NGS Co-Tenants** that this emission rate is unachievable for a retrofit application when startup, shutdown and load following emissions are included.
 4. Example: If **EPA** were to issue a **Final BART Rule** that adopted the **Proposed BART Rule** prior to December 31, 2013, the 2009-2044 **NOx** cap would be calculated as follows: 34,152 tons/year x 10 years (i.e., 2009-2018) + 5,345 tons/year x 26 years (i.e., 2019-2044) = 480,490 tons.
- B. To ensure that the proposed alternative meets the “better than BART” criteria, the **NGS Participants** agree to maintain emissions below the 2009-2044 **NOx** cap by complying with one of the following alternatives. If any of the conditions set forth in Alternative A occur, the **NGS Participants** will comply with Alternative A; if not, the **NGS Participants** will comply with Alternative B:
1. *Alternative A.*
 - a. If both the Los Angeles Department of Water and Power (LADWP) and NV Energy (NVE) exit **NGS** by December 31, 2019 without selling their ownership interests, the **NGS Participants** commit to ceasing coal generation on one **Unit** at **NGS** on or before January 1, 2020.

- b. If both LADWP and NVE exit **NGS** by December 31, 2019 by selling their ownership interests to one or more of the existing **NGS Co-Tenants** (including a current or future parent or holding company of such **NGS Co-Tenants**), the following provisions apply:
- i. If the **Navajo Nation** exercises the option set forth in Section XI.A of the **Lease Amendment** (“Navajo Nation Purchase Option”), or the option set forth in Section XI.C of the **Lease Amendment** (“Navajo Nation Right of First Refusal Option”), if effective:
- (a) The **NGS Participants** commit to reducing generation from **NGS** by the amount of the LADWP and NVE ownership interests, less the ownership interest purchased by the **Navajo Nation**. The reduction in generation would begin on January 1, 2020. The **NGS Participants** reserve the right to determine whether the reduction in generation would be achieved by permanently shutting down a **Unit** or by curtailing generation by the required amount. For example, if LADWP and NVE exit **NGS** by December 31, 2019 and the **Navajo Nation** decides to purchase 100 MW, the remaining **NGS Participants** would reduce total generation at **NGS** by an amount calculated as follows:
- (i) LADWP Share: 21.2% of 2250 MW = 477 MW
- (ii) NVE Share: 11.3% of 2250 MW = 254 MW
- (iii) **Navajo Nation** Share: 100 MW
- (iv) **NGS Participant Curtailment:**
- $$477 \text{ MW} + 254 \text{ MW} - 100 \text{ MW} = 631 \text{ MW}$$
- (b) If the **NGS Participants** are able to increase the capacity of two **NGS Units** by the sum of the amount purchased by the **Navajo Nation** and 19 MW (the shortfall between the LADWP and NVE ownership interest and the capacity of one **Unit** at **NGS**) without the need to obtain a Prevention of Significant Deterioration (PSD) or Nonattainment New Source Review (NNSR) permit for such increase in capacity (e.g., by netting out of this requirement so that there is no significant net increase in emissions), the **NGS**

Participants commit to ceasing coal generation on one **Unit** at **NGS** on or before January 1, 2020. The **Parties** agree to support the increase in capacity of the remaining two **Units** (without the need to obtain a PSD or NNSR permit for such increase in capacity in accordance with applicable law and regulations). The **Parties** recognize that the increased capacity at the remaining two **Units** may reduce the financial impact on the **Navajo Nation** associated with the shutdown of a **Unit**, allow **NGS** to meet the **Navajo Nation's** ownership option requirements, and reduce the impact on **NGS** output associated with the closure of a **Unit**.

- (c) Notwithstanding any other provision of this **Agreement**, capacity additions at **NGS** shall be limited to 189 MW (based on net output) unless the **CO₂** emission rate at **NGS** is less than or equal to that of **Advanced Coal**.
- ii. If the **Navajo Nation** does not exercise the Navajo Nation Purchase Option or the Navajo Nation Right of First Refusal Option by December 31, 2019, the **NGS Participants** commit to ceasing coal generation on one **Unit** at **NGS** on or before January 1, 2020.
- c. If LADWP exits **NGS** by December 31, 2019 by selling its ownership interest to one or more of the existing **NGS Participants** (including a current or future parent or holding company of such **NGS Participants**), and NVE exits **NGS** by December 31, 2019 without selling its ownership interest, the provisions set forth in Paragraphs I.B.1.b.i. and I.B.1.b.ii. apply.
- d. If LADWP exits **NGS** by December 31, 2019 without selling its ownership interest, and NVE exits **NGS** by December 31, 2019 by selling its ownership interest to one or more of the existing **NGS Participants** (including a current or future holding company of such **NGS Participants**), the provisions set forth in Paragraphs I.B.1.b.i. and I.B.1.b.ii. apply.
- e. If either LADWP or NVE exit **NGS** by December 31, 2019 by selling their ownership interests to a third party, Alternative B applies.
- f. **EPA** shall impose a **30-Day Rolling Average** limit of 0.07 **lb/MMBtu** on two **Units** at **NGS**, beginning no later than

December 31, 2030. This limit, achievable by installing **SCR** or an equivalent technology, shall be applied on a **Unit-by-Unit** basis.

2. **Alternative B.** If the conditions for Alternative A are not met, the **NGS Participants** commit to achieving **NOx** emission reductions that are equivalent to the shutdown of one **Unit** from January 1, 2020 through December 31, 2029. No later than December 31, 2019, and annually thereafter through December 31, 2028, the **NGS Participants** shall submit an Implementation Plan containing year-by-year emissions covering the period from 2020 to 2029 that will assure that the operation of **NGS** will result in emissions of **NOx** that do not exceed the 2009-2029 **NOx** cap, as described in Paragraph I.B.2.a below. The Implementation Plan may contain several potential operating scenarios and must set forth the past annual actual **NGS** emissions and the projected **NGS** emissions for each potential operating scenario. Each potential operating scenario must demonstrate compliance with the 2009-2029 **NOx** cap. The Implementation Plan shall identify emissions reduction measures that may include, but are not limited to, the installation of advanced emission controls, a reduction in generation output, or other operating strategies determined by the **NGS Participants**. The **NGS Participants** may revise the potential operating scenarios set forth in the Implementation Plan, provided the revised plan ensures that **NOx** emissions remain below the 2020-2029 **NOx** cap. The requirement to establish the Implementation Plan by December 31, 2019, and annually thereafter through December 31, 2028, and the requirement to operate in accordance with one of the operating scenarios outlined in the plan, shall be incorporated into the **NGS** Title V Operating Permit as federally enforceable permit conditions. In addition, the **NGS** Title V Operating Permit shall incorporate practically enforceable limits of 0.24 **lb/MMBtu** on a **30-Day Rolling Average** basis for each **Unit** equipped with **LNB/SOFA**, or 0.07 **lb/MMBtu** on a **30-Day Rolling Average** basis for each **Unit** equipped with **SCR**, as federally enforceable permit conditions to achieve the emission reductions required under the Implementation Plan.

- a. The **NGS Participants** shall demonstrate this commitment by complying with an emission limit from January 1, 2009 through December 31, 2029 (“2009-2029 **NOx** cap”), in addition to the 2009-2044 **NOx** cap. The 2009-2029 **NOx** cap shall be calculated as follows:

- i. 2009-2011 emissions (30,501 + 24,427 + 19,837 tons) = 74,765 tons
- ii. 2012-2019 emissions from 3 **Units** with **LNB/SOFA** (23,325 tons/year x 8 years) = 186,600 tons

- iii. 2020-2029 emissions from 2 **Units** with **LNB/SOFA** and 1 **Unit** shutdown (23,325 tons/year x 2/3 x 10 years)
= 155,500 tons
- iv. 2009-2029 **NOx** cap (74,765 + 186,600 + 155,500 tons)
= 416,865 tons

- b. No later than December 31, 2029, and annually thereafter, the **NGS Participants** shall submit an Implementation Plan containing year-by-year emissions covering the period from 2030 to 2044 that will assure that the operation of **NGS** will result in emissions of **NOx** that do not exceed the 2009-2044 **NOx** cap, as described in Paragraph I.A above. The Implementation Plan may contain several potential operating scenarios and must set forth the past annual actual **NGS** emissions and the projected **NGS** emissions for each potential operating scenario. Each potential operating scenario must demonstrate compliance with the 2009-2044 **NOx** cap. The Implementation Plan shall identify emissions reduction measures that may include, but are not limited to, the installation of advanced emissions controls, a reduction in generation output, or other operating strategies determined by the **NGS Participants**. The **NGS Participants** may revise the potential operating scenarios set forth in the Implementation Plan, provided the revised plan ensures that **NOx** emissions remain below the 2009-2044 **NOx** cap. The requirement to establish the Implementation Plan by December 31, 2029, and annually thereafter, and the requirement to operate in accordance with one of the operating scenarios outlined in the plan, shall be incorporated into the **NGS** Title V Operating Permit as federally enforceable permit conditions. In addition, the **NGS** Title V Operating Permit shall incorporate practically enforceable limits of 0.24 **lb/MMBtu**, on a **30-Day Rolling Average** basis, for each **Unit** equipped with **LNB/SOFA**, or 0.07 **lb/MMBtu**, on a **30-Day Rolling Average** basis, for each **Unit** equipped with **SCR**, as federally enforceable permit conditions to achieve the emission reductions required under the Implementation Plan. The **Parties** agree that the Implementation Plan ensures that the **Reasonable Progress Alternative to BART** achieves greater reasonable progress than the **Proposed BART Rule** by providing a plan for managing **NOx** emissions to less than the 2009-2044 **NOx** cap.

- C. Nothing in this **Agreement** shall require or preclude the retirement of more than one **Unit** prior to the end of the **Lease** as amended by the **Lease Amendment**.

II. BART Reporting Requirements

For each calendar year starting with the first full calendar year after **EPA** issues a **Final BART Rule** adopting the **Reasonable Progress Alternative to BART** and ending on the earlier of (a) December 22, 2044 or (b) the date on which the **NGS Participants** have ceased conventional coal-fired generation on all three **Units, SRP**, as **NGS Operating Agent**, shall make available to the public, either through a link on its website or directly on its website, a report summarizing annual emissions of sulfur dioxide (SO₂), and CO₂, and annual and cumulative emissions of **NO_x**, from **NGS**. The report, and the Implementation Plan referenced in Paragraphs I.B.2 and I.B.2.b., shall be made available within 30 days of the submittal deadline associated with the annual emissions inventory required by the **NGS** Title V Operating Permit.

APPENDIX C

INTERIOR CO₂ REDUCTION COMMITMENT AND INTERIOR CLEAN ENERGY DEVELOPMENT COMMITMENT

- I. **Interior** makes the following two commitments to further a low carbon and clean energy future:
 - A. reducing or offsetting **CO₂** emissions associated with electricity serving the **CAP** pumping load (“**Interior’s CO₂ Reduction Commitment**”); and
 - B. facilitating **Clean Energy** development (“**Interior’s Clean Energy Development Commitment**”).

- II. **Interior’s CO₂ Reduction Commitment**
 - A. **Interior** will not exceed its **Base Period Emissions** associated with the **CAP** pumping load in calendar years 2013 and 2014, and will reduce total **CO₂** emissions from its **Base Period Emissions** by 3% per year from 2015 through the end of 2031, which results in an approximate cumulative reduction of 11.3 million **Metric Tons CO₂** from **Base Period Emission** levels. **Interior** will satisfy any shortfall in the **Interior CO₂ Reduction Commitment** of 11.3 million **Metric Tons CO₂** from the **Base Period Emission** levels no later than December 31, 2035.
 - B. Before January 1, 2032, **Interior** will determine whether, and if so under what conditions, the **Interior CO₂ Reduction Commitment** period should be extended, considering best available scientific information regarding climate change at that time.
 - C. **Interior** will meet the emission reduction goals established in **Section II.A** of this **Appendix** by accruing **CRCs** annually as described in **Section II.D**, and retiring the necessary **CRCs** at the end of each compliance period, as described in **Section II.E**.
 - D. Accrual of **CRCs**
 1. **Interior** will accrue one **CRC** each calendar year for:
 - a. each **Metric Ton** less than one thousand **Metric Tons CO₂** that is emitted from the **CAP Dedicated Generation** for every **GWh** produced by that generation in that year; for example:

- i. a solar generator serving the **CAP** pumping load that generates one **GWh** with zero **CO₂** emissions would accrue **1,000 CRCs**;
 - ii. a combined-cycle natural gas generator serving the **CAP** pumping load that generates one **GWh** and emits **400 Metric Tons CO₂** would accrue **600 CRCs**;
 - iii. an **Advanced Coal** plant serving the **CAP** pumping load that generates one **GWh** and emits **450 Metric Tons CO₂** would accrue **550 CRCs**;
 - iv. an efficiency improvement at a coal plant serving the **CAP** pumping load that reduces the emission rate from **1,000 to 900 Metric Tons CO₂** per **GWh** would accrue **100 CRCs** per **GWh**.
 - b. each **Metric Ton** of emission reductions from **Qualifying Projects**. The amount of the **CRCs** for **Qualifying Projects** shall be the annual difference between the **CO₂** emissions from the **Qualifying Project** and the **CO₂** emissions resulting from an equal amount of **Generic Power**;
 - c. each **Offset**; and
 - d. each unused, documented reduction (e.g., allowances or credits) obtained by **Interior** from another program that achieves real, measurable, permanent, and verifiable reductions of **CO₂** emissions over time.
2. **CRCs** shall accrue after December 31, 2012.
 3. For any electric generating facility that is awarded **RECs** associated with its electricity production, emission reductions associated with that facility will only be recognized in the accrual of **CRCs** if the **REC** associated with that production is or will be retired by **Interior**.
 4. **CRCs** do not expire and may be used at any time unless and until they are retired to demonstrate compliance with the **Interior CO₂ Reduction Commitment**.
 5. **Interior** may claim **CRCs** from **Qualifying Projects** as part of the **Interior CO₂ Reduction Commitment** if **Interior** has the exclusive right to claim **CO₂** reductions resulting from the **Qualifying Project**.

E. Retirement of **CRCs** to achieve **CO₂** emission reduction goals.

1. **Interior** will demonstrate the achievement of the **CO₂** emission reduction goals of this **Section** by the retirement of **CRCs**. **Interior** shall first retire **CRCs** on or before July 1, 2018 for the 2013 through 2017 period, and shall subsequently retire **CRCs** on or before July 1st every 5 years thereafter for each preceding 5-year period ending with 2031. If necessary to eliminate any shortfall in achieving its **CO₂ Reduction Commitment**, **Interior** shall retire additional **CRCs** on or before December 31, 2035.
2. **Interior** will retire on the compliance dates set forth herein one **CRC** for each **MWh** of the **CAP** pumping load during that compliance period, less its **Base Period Emissions** reduced by the percentages required throughout that compliance period, as set forth in **Section IIA** of this **Appendix**. Specifically, at the end of each compliance period, **Interior** will retire the cumulative **CRCs** required for each year of that period. In each year, the **CRC** retirement obligation equals the amount expressed by the following equation:

$$CRC_{retired} = L_y - E_b(1 - R_y)$$

Where,

y = year (2013, 2014, ..., 2031)

L_y = **CAP** pumping load (**MWh**) in year y multiplied by 1.0 **Metric Ton CO₂** per **MWh** [**Metric Tons**]

E_b = **Base Period Emissions** [**Metric Tons**]

R_y = the reduction required in y (e.g. 0.00 in 2013 and 2014, 0.03 in 2015, 0.06 in 2016, 0.09 in 2017, ..., 0.51 in 2031)

3. **Interior** may satisfy a **CRC** retirement shortfall for a compliance period by retiring in the next compliance period an additional amount that is not less than the shortfall, plus all the **CRCs** that are to be retired for that next period.

F. **Continuing Efforts.**

1. As part of the **Additional Obligations of the Parties** described in **Section VII** of the **Agreement**, EDF, WRA, **Interior**, and any other **Party** that elects to participate shall meet on or before October 15, 2013, and at least semi-annually through calendar year 2015 to share information and individual comments on any aspect of the implementation and administration of **Interior's CO₂ Reduction Commitment**. After 2015, these parties shall continue to meet as necessary to effectively administer the **Interior CO₂ Reduction Commitment**.
2. **Interior** will consider mechanisms to compensate for shifting emissions responsibility associated with reduced **Reserve Energy** sales that increase **Surplus Energy** sales.

III. **Interior’s Clean Energy Development Commitment.**

- A. **Interior** will facilitate the development of **Clean Energy** by accruing approximately 26,975,000 MWh of **CDCs** by December 31, 2035 as described below.
- B. The **Interior Clean Energy Development Commitment** facilitates an increasing percent of **Clean Energy** from 2015 through the end of 2035. This commitment is based on the U.S. share of the **NGS Baseline** on the date of execution of this **Agreement**, which is 4,214,786 MWh per year.
- C. To achieve the **Interior Clean Energy Development Commitment**, **Interior** shall accrue **CDCs** pursuant to the following schedule:

Date	Cumulative Interior Clean Energy Development Commitment
December 31, 2020	1,264,436 MWh
December 31, 2025	4,636,265 MWh
December 31, 2030	12,644,359 MWh
December 31, 2035	26,974,633 MWh

- D. The above schedule reflects a 2% per year increase in clean energy during the period 2016 through 2025, followed by a 6% per year increase in clean energy during the period 2026 through 2035. This schedule is intended to provide **Interior** a reasonable path to achieve 80 percent clean energy for the U.S. share of **NGS** by 2035, in furtherance of President Obama’s March 31, 2011 “Blueprint for a Secure Energy Future.”
- E. **Interior** may satisfy a **CDC** shortfall in achieving a goal as set forth above in the next period by accruing an additional amount that is not less than the shortfall, plus all the **CDCs** that are to be achieved for that next period.
- F. **CDCs** accrue after December 31, 2010.
- G. **Interior** will meet the clean energy development goals in Section III.A of this **Appendix** by accumulating **CDCs**, as described in Section III.H.
- H. **CDCs.**
 - 1. **Interior** may accrue **CDCs** from any of the following, in any combination:

- a. **Curtailments, Efficiency Improvements**, and retirements at NGS;
 - b. **Qualifying Projects**; and
 - c. **Offsets**, allowances, credits, or other similar instruments that **Interior** has secured, such that for each such instrument that represents a **Metric Ton of CO₂**, **Interior** shall accrue 1.3 MWh of **CDCs**.
 - d. **RECs** (as expressed in MWh) that **Interior** has secured, unless those **RECs** are associated with a **Qualifying Project** from which **Interior** accrues **CDCs**.
2. To the extent necessary, **Interior** shall develop additional credit accrual protocols and mechanisms for **CDCs**.
 3. **CDC** calculation methodology for **Curtailments, Efficiency Improvements**, and retirements.
 - a. Except as identified in section III.H.3 of this **Appendix**, **Interior** shall accrue **CDCs** from actual **Curtailments** and **Efficiency Improvements** at NGS equal to its contractually allocated ownership share of NGS (24.3% at this time).
 - i. **Interior** shall accrue **CDCs** regardless of which **NGS Unit** is the subject of the **Curtailment** or **Efficiency Improvement** and regardless of the **NGS Participant** with which such **Curtailments** or **Efficiency Improvements** are associated.
 - ii. **CDCs** attributable to an **Efficiency Improvement** shall initially be calculated based on engineering estimates provided by the vendor of the installed **Efficiency Improvement**. After the **Efficiency Improvement** has been in operation for three full calendar years, **Interior** may at its discretion commission an engineering performance study to determine the efficiency improvement actually achieved over the three-year period, and may adjust historic and future **CDCs** based on the study's findings.

4. Except as identified in section III.H.3 of this **Appendix**, for any and all retirements at **NGS, Interior** shall accrue **CDCs** equal to a prorated amount of 11.5% based on a full unit retirement of its contractually allocated ownership share of **NGS** (24.3% at this time). **Interior** shall accrue **CDCs** regardless of which **NGS Unit** is the subject of the retirement and regardless of the **NGS Participant** with which such retirement is associated.
 5. **Interior** shall accrue a **CDC** for each reduced **MWh** from all **Curtailments**, retirements, and **Efficiency Improvements** initiated or caused to be initiated by **Interior** for such **Curtailments**, retirements, and **Efficiency Improvements** associated with the U.S.'s share of **NGS**.
- I. **Continuing Efforts.** As part of the **Additional Obligations of the Parties** described in **Section VII** of the **Agreement**, **Interior** and any **Party** that elects to participate shall meet to share information and individual comments on any aspect of the implementation and administration of **Interior's Clean Energy Development Commitment**.

IV. **Qualifying Projects**

- A. For purposes of this **Agreement**, a **Qualifying Project** must meet the following two criteria:
1. the project, or portions thereof, must be:
 - a. undertaken, funded, authorized or sponsored, in whole or in part, by any federal agency party to the **Joint Statement** and bureaus thereof regardless of geographic location; or
 - b. undertaken, funded, authorized or sponsored, in whole or in part, by any other federal agency for projects benefiting **Affected Tribes**; or
 - c. undertaken, funded, authorized or sponsored, in whole or in part, by **Affected Tribes** or **CAWCD**; or
 - d. associated with **NGS, CAP** features, or **KMC** regardless of the funding, initiating, or sponsoring entity.
 2. With respect to **Qualifying Project** that could impact National Parks, qualifying projects shall include safeguards for avoiding such impacts, including protection of scenic views, water, wildlife, air quality,

dark night skies, soundscapes, and geologic resources in keeping with Interior principles for advancing renewable energy development in a way that protects our nation's natural and cultural heritage.

- B. **CRCs and CDCs** may be accrued for a **Qualifying Project** and do not require any specific actions at **NGS**.
- C. For **Qualifying Projects** that produce electric energy, the amount of the **CDCs** accrued shall be equal to the **MWh** generated by the **Qualifying Project** multiplied by a **CEC**.
- D. For **Qualifying Projects** that produce electric energy, all **CO₂** calculations shall be “burner tip” based and shall not incorporate “life-cycle” **CO₂** emissions or losses, including but not limited to those associated with mining, drilling, manufacturing, processing, transportation, storage, handling, reservoir vegetation and other off-gassing, among other things.
- E. **CAWCD** will not be financially responsible for implementing any **Qualifying Project** not undertaken by **CAWCD**, unless it otherwise agrees in writing.
- F. The following multipliers shall be applied to **CDCs** that **Interior** accrues toward the **Interior Clean Energy Development Commitment** (These multipliers are not applicable to **CRCs** and the **Interior CO₂ Reduction Commitment**):
 - 1. 2.0 for **Qualifying Projects** benefitting an **Affected Tribe**;
 - 2. 1.5 for **Qualifying Projects** benefitting any other federally recognized Indian Tribe; and
 - 3. 1.0 for all other **Qualifying Projects** except as otherwise defined in this **Appendix**.
- G. **Qualifying Projects** shall include but not be limited to the following:
 - 1. Non-hydropower **Low-emitting Energy** projects (e.g., the **Community Solar Facility**, a community or large scale solar facility on **Navajo Nation** or Hopi Tribal lands, or a wind facility funded by a federal agency party to the **Joint Statement**);
 - 2. Hydropower generation efficiency improvement or up-rate projects (e.g., increasing generation capacity through rotor and stator improvements on one or more units at a dam, installing load following software at a dam, installing wide-head turbines at a dam);

3. New hydropower projects including low-head hydropower projects (e.g., installing low-head hydropower in a **Reclamation** reserved work or transferred work canal);
4. New pumped-storage projects. The amount of the **CDCs** accrued shall take into account the full range of benefits provided by the **Qualifying Project**, including integrating renewable electrical energy into the power system.
5. **Low-emitting Energy** purchase agreements or **Low-emitting Energy** spot market purchases for use by **CAP** (e.g., Boulder Canyon Project Act (Hoover Dam) power that **CAWCD** may buy from Western Area Power Administration for **CAP**);
6. Remarketing of existing hydropower resources to benefit an **Affected Tribe** (e.g., Boulder Canyon Project remarketing in 2017, Colorado River Supply Project remarketing in 2024, or Parker-Davis Project remarketing in 2028).
7. **Low-emitting Energy** projects initiated by any entity requiring agreements (interconnection or otherwise) for the shared use of transmission features that are wholly or partially owned/controlled by federal entities (e.g., Perrin Ranch Wind Farm in northern Arizona that utilizes **NGS** Transmission Lines to deliver power to market.). The amount of the **CDCs** accrued under this **Section** shall be based on the federal government's share of ownership in the transmission assets at the **Qualified Project's** point of interconnection, and the number of transmission territories between the **Qualified Project** and its intended point of sale (as indicated by number of transmission tariffs under which charges are assessed).
8. Grants of rights-of-way or land use agreements issued that support third-party **Renewable Energy** generation projects on federal lands: that is, where the generation project is not being undertaken, funded, or sponsored by the federal government (see IV.A.1.a. of this **Appendix**) (e.g., a grant of right-of-way permit issued to a company for a wind generation facility on **Reclamation** reserved or withdrawn lands).
 - a. Up to 10% of the **Interior Clean Energy Development Commitment** shall be deemed satisfied if by December 31, 2020 the Federal government has issued permits or granted easements for 350 **MW** of new **Renewable Energy** on federal land, and the permitted projects are in commercial operation. Projects that have been permitted but have not begun commercial operation by December 31, 2020 shall count on a provisional basis through December 31, 2035.

- b. Notwithstanding the period of time for qualification for **CDCs** and set forth in section III.F. of this **Appendix, Qualifying Projects** under this subsection shall be restricted to those projects for which no land use application has been filed as of the date of this **Agreement** and for which the application has been granted by December 31, 2020;
 - c. Notwithstanding the type and breadth of **Qualifying Projects** otherwise established in this **Appendix**, the type of projects for grants of rights-of-way or similar land use agreements, unless they benefit an **Affected Tribe**, shall be restricted to **Renewable Energy** projects (**Low-emitting Projects** shall be considered if they benefit an **Affected Tribe**.);
 - d. This subsection does not apply to projects on **Reclamation** infrastructure, whether reserved or transferred: that is, other subsections under IV.G shall be applied for such projects; for example, subsection IV.G.3, shall apply for a third-party low-head hydropower project in a **Reclamation** canal.
9. Energy efficiency projects to reduce the electrical demand of the **CAP**. Energy efficiency projects shall accrue 2 **CDCs** per **MWh** saved.
- a. The amount of the **CDCs** accrued under this section shall be calculated based on reduced electrical demand from existing conditions at the time of the signing this **Agreement**.
 - b. To quantify the **CDCs** accrued under this **Section, Interior** will consult with an independent evaluator with expertise in energy efficiency measurement and verification protocols.
10. Efficient building projects, including new construction, rehabilitations, retrofits, and replacements (e.g., Leadership in Energy and Environmental Design certification for new or existing federal buildings). Energy efficiency projects shall accrue 2 **CDCs** per **MWh** saved. To quantify the **CDCs** accrued under this **Section, Interior** will consult with an independent evaluator with expertise in energy efficiency measurement and verification protocols.
11. Other projects that sequester or avoid the creation of **CO₂** and satisfy the criteria to qualify as an **Offset**, including but not limited to those related to agricultural, coal mine, landfill, oil field, gas field, or organic waste methane capture; forestry; fuel switching.

12. To quantify the **CRCs** accrued under this **Section**, **Interior** may consult with an independent evaluator with expertise in carbon accounting for such projects as needed.

V. General Provisions

- A. **CRCs** and **CDCs** may be accrued for the same action without diminishment of each other.
- B. **Reclamation** shall coordinate with the other federal agencies party to the **Joint Statement** and bureaus thereof to coordinate the administration and disposition of non-**Reclamation Qualifying Project CRCs** and **CDCs**.
- C. **Interior**, acting through **Reclamation**, shall have the sole authority to approve the creation and accrual of **CRCs** and **CDCs** for the purposes of this **Agreement**.
- D. Nothing in this **Appendix** shall be construed as limiting the authority of any program outside this **Appendix** to determine crediting eligibility under the rules of that program.
- E. Nothing herein affects **Interior's** obligations to comply with any current or future federal policy, regulation, law, or judicial ruling.
- F. If a future federal policy, regulation, law, or judicial ruling affecting the **Interior CO₂ Reduction Commitment** or the **Interior Clean Energy Development Commitment** becomes applicable, the **Parties** will meet and confer regarding how to proceed.
- G. **Interior** shall not be liable for any failure to satisfy the **Interior CO₂ Reduction Commitment** or the **Interior Clean Energy Development Commitment** described in this **Appendix**.
- H. **Interior** shall issue annual reports on its progress towards the **Interior CO₂ Reduction Commitment** and the **Interior Clean Energy Development Commitment**. Each annual report shall detail the source and disposition of **CRCs** and **CDCs**, the difference between the total amount of **CRCs** and **CDCs** applied and the applicable goal for the reporting year, the number of **CRCs** and **CDCs** accrued but not yet used for compliance, explanations for any shortfalls, and plans by which subsequent goals will be achieved. To the extent possible, plans for achieving subsequent goals will specify projects for which **CRCs** and **CDCs** are anticipated.

APPENDIX D



JOINT FEDERAL AGENCY STATEMENT REGARDING NAVAJO GENERATING STATION

The Navajo Generating Station (NGS) is a coal-fired power plant located on the Navajo Indian Reservation near some of our country's most treasured natural resources. It is significant to the United States because of its unique location and the critical roles that it plays in providing power and water and supporting economic development for the State of Arizona, Navajo Nation, Hopi Tribe, Gila River Indian Community, and numerous other tribal and non-tribal water users who depend on the Central Arizona Project (CAP), and millions of other people in the region. The NGS owners and stakeholders and the Federal Government are working to ensure that the critical roles that NGS currently plays are maintained into the future while we continue to take steps to lower emissions from the NGS and protect the people and landscapes impacted by the plant's operations.

The 2,250 MW NGS is the largest coal-fired power plant in the West. It is located on the Navajo Reservation near Page, Arizona, and has been in operation since 1974. The U.S. Bureau of Reclamation is its largest single owner, owning 24.3 percent of the plant. Five utilities own the remaining 75.7 percent: Salt River Project, Arizona Public Service, Tucson Electric Power, NV Energy, and Los Angeles Department of Water and Power. Over the last few decades, NGS has invested in several pollution control technologies to reduce its emissions, but it remains one of the largest sources of nitrogen dioxide (NO_x) air pollution in the Country. Emissions from NGS affect visibility at 11 National Parks and Wilderness Areas, and contribute to ozone and fine particle pollution in the region.

A number of Federal agencies oversee Federal interests and responsibilities related to NGS. In addition to the Bureau of Reclamation's role as a part-owner of NGS, five additional agencies of the Department of the Interior (DOI) (National Park Service; Bureau of Indian Affairs; Office of Surface Mining Reclamation and Enforcement; Bureau of Land Management; and Fish and Wildlife Service) have direct roles relating to NGS or the coal mine located within the boundaries of the Navajo Nation and the Hopi Tribe reservations. The Environmental Protection Agency (EPA) has a Clean Air Act regulatory role relating to air quality and visibility in the region, which includes promulgating Best Available Retrofit Technology (BART) requirements for NGS. The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy, Office of Indian Energy Policy and Programs, and National Laboratories have technical expertise related to clean energy development and production in Indian country. This Joint Statement does not alter these authorities and responsibilities.

This Joint Statement lays out the goals of the three Agencies' with respect to NGS and energy production in the region currently served by NGS. It also details specific actions we intend to take to further those goals.

Goals: The DOI, DOE, and EPA will work together to support Arizona and tribal stakeholders' interests in aligning energy infrastructure investments made by the Federal and private owners of the NGS (such as upgrades that may be needed for NGS to comply with Clean Air Act emission requirements) with long term goals of producing clean, affordable and reliable power, affordable and sustainable water supplies, and sustainable economic development, while minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations. These goals will inform Federal decisions moving forward. In addition, working together, the Agencies intend to pursue the following actions:

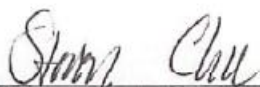
- 1. Create a long-term DOI-EPA-DOE Navajo Generating Station Working Group**
The three Agencies have created an NGS Working Group comprised of Deputy Secretaries from DOI and DOE and the Deputy Administrator from EPA as well as key staff from each relevant office or bureau in each Agency. The DOI is lead for the working group, which will involve additional Federal agencies as appropriate. The purpose of this NGS Working Group is to collect sound, scientifically based information on issues relating to NGS for the Federal Government, and to help ensure that the three Agencies work with stakeholders to complete the NGS Roadmap (see item 2 below).
- 2. Work with stakeholders to develop a Navajo Generating Station roadmap**
The NGS Working Group intends to work with stakeholders, including NGS plant owners, Navajo Nation, Hopi Tribe, CAP, Gila River Indian Community and other Arizona Indian tribes who receive water from CAP, non-Indian CAP water users, and environmental and community groups, to develop a roadmap for accomplishing the goals described above. The roadmap should include action recommendations and initial steps to begin implementing key recommendations. It should be consistent with Federal trust responsibilities to federally recognized Indian tribes in the region.
- 3. Complete the Phase 2 report on Navajo Generating Station clean energy options**
Under the direction and coordination of the NGS Working Group, DOI, EPA, and DOE intend to jointly support, through funding or other means, and working together with other NGS owners, tribes and stakeholders, the DOE National Renewable Energy Laboratory's (NREL) "Phase 2" Navajo Generating Station report will analyze a full range of clean energy options for NGS over the next several decades. This Phase 2 NGS report is scheduled to be initiated in 2013 and will build on preliminary findings from the last chapter of the 2011-2012 NREL "Phase 1" report titled "Navajo Generating Station and Air Visibility Regulations: Alternatives and Impacts." The results of this report will inform further development of the NGS roadmap (see item 2 above).
- 4. Support shorter term investments that align with long term clean energy goals**
The three Agencies will work together with stakeholders to identify and implement actions that support implementation of the BART requirements at NGS in a way that reduces emissions while supporting the goals described above in both the near term and the long term. A primary consideration will be fulfillment of Federal trust responsibilities to Indian tribes affected by NGS. Agency actions may include reviewing current and expected future agency resources (grants, loans, and other applicable resources) for potential use towards pollution control, renewable energy

development, water delivery, or other regional needs, and seeking funding to cover expenses for plant pollution control or other necessary upgrades for the Federal portion of NGS.



Ken Salazar
Secretary
Department of the Interior

Date JAN 04 2013



Steven Chu
Secretary
Department of Energy

Date JAN 4 2013



Lisa P. Jackson
Administrator
Environmental Protection Agency

Date JAN 4 2013

APPENDIX E

NREL Phase 2 Study Draft Scope Elements

Joint Statement Goals*

Interior, EPA, and the DOE will work together to support Arizona and tribal stakeholders' ("Stakeholders") interests in aligning energy infrastructure investments made by the federal and private owners of the **NGS** (such as upgrades that may be needed for **NGS** to comply with **Clean Air Act** emission requirements) with long term goals of producing (A) clean, affordable and reliable power, (B) affordable and sustainable water supplies, and (C) sustainable economic development, while (D) minimizing negative impacts on those who currently obtain significant benefits from **NGS**, including tribal nations. These goals will inform federal decisions moving forward.

Joint Statement Goal Actions*

1. Create a long-term **Interior-EPA-DOE NGS** Working Group
2. Work with Stakeholders to develop a **NGS** roadmap
3. Complete the **NREL Phase 2 Study**
4. Support short term investments that align with long term **Low-emitting Energy** goals

** Slightly paraphrased, see Joint Federal Agency Statement on NGS for exact wording*

Implementation Time Horizon*

Implementation Time Horizon

Near-Term	Short-Term	Mid-Term	Long-Term
2013	~2019	~2027	~2044

** “Implementation Time Horizon”, which are approximate timeframes, should be differentiated from “Milestones” as the former is intended to communicate the approximate timeframe an initiative or project is implemented on the ground, while the latter is intended to communicate the steps necessary to produce the identified deliverable(s).

2a.1 – Central Arizona Project Tribal Water Users Impacts and Options

Activity Definition

Identify options that could (1) mitigate adverse impacts from increased **CAP** water rates resulting from **NGS** plant operations post-2019 agreements, environmental compliance and controls, including **BART**, and other financial conditions; and (2) mitigate adverse impacts to the **Development Fund** and associated funding necessary to provide Arizona tribes the various benefits authorized under **AWSA**.

- Hypothetical Example: Subject to appropriate Congressional authorizations, construct a renewable power generating or hybrid renewable/conventional power generating facility on Indian lands closer to load centers that could produce a revenue stream that would be dedicated to reducing the costs related to tribal water supplies or supply a revenue stream to the **Development Fund** to offset reduced revenues from the reduced sale of excess **NGS** power supplies.

Assumptions/Constraints/Notations

- Options do not necessarily need to off-set **NGS** power production.
 - The above hypothetical example could either provide a source of power for the **CAP** pumping needs to offset **NGS** power or all the power could be sold to provide a revenue stream and **NGS** would continue to supply all power needs of the **CAP** project.
- Options may be revenue generating.
 - If, in the above hypothetical example, power is marketed solely to provide a revenue stream, that revenue stream could be used to either buy down the cost of water for Tribes or provide a revenue stream to the **Development Fund**.
- Options should have an energy nexus (other non-energy revenue generating initiatives may be explored under a complementary initiative) and may be inclusive of power generation or some degree of energy intensity reduction initiatives.
- **Final BART Rule** may be a constraint to the consideration of some potential options; however, some options may be independent of **BART** and evaluated on a “no-regrets basis,” i.e., they would be potentially viable under any foreseeable **BART** outcome.
- Information generated during this scope element may be of use in preparation of the **NGS-KMC EIS**.
- Potential Non-Federal Participants
 - **Affected CAP Tribes**
 - **CAWCD**
 - Arizona Department of Water Resources (ADWR)
 - Governor of Arizona
- Federal agencies’ participation may be limited to those that have applicable authority, programs or interests.

- Programmatic funds may be allocated to conduct planning evaluations of potential options: for example, potential use of “programmatic” resources or existing authorized projects/studies to evaluate power-/water-related options that would produce economic benefits as an off-set to the **NGS** benefits currently supporting the tribes.
- Some elements of the **Development Fund** may be able to provide funding to implement this scope element or a subsequent project.
 - Because this could be considered an implementation action necessary under **AWSA**, it may be possible to utilize funding that currently exists in the **Development Fund** to conduct this study and, pending its relationship to the fund, implement the project.
- WaterSMART (Sustain and Manage America’s Resources for Tomorrow)/Secure Water Act - Public Law 111-11, Rural Water Supply Act - Public Law 109-451, or Native American Affairs (NAA) Technical Assistance Program (TAP) may be able to provide funding to implement this scope element or a subsequent project.

Implementation Time Horizon

- Short-Term to Mid-Term

Deliverable(s)

- Appraisal Level Report of Findings

Milestones

- Identify subgroup members who will participate in this scope element – August 2013
- Prepare draft scope, schedule and budget – September/October 2013
- Share draft scope/schedule with non-federal participants requesting participation in the process –October 2013
- Share draft scope/schedule with **CAWCD, Affected CAP Tribes** and ADWR water users not requesting participation in the process – October 2013
- Develop complete scope, schedule and budget –November 2013
- Identify funding source and complete cost-share agreement(s) –October 2013
- Draft Report of Finding – July 2014

Final Report of Findings – September 2014

Joint Statement Goal/Goal Action Nexus

1. Joint Statement Goal

(A) clean, affordable and reliable power

(B) affordable and sustainable water supplies

(C) sustainable economic development

(D) minimizing negative impacts on those who currently obtain significant benefits from **NGS**, including tribal nations

2. Work with Stakeholders to develop a **NGS** roadmap

3. Complete the **NREL Phase 2 Study**

4. Support short term investments that align with long term **Low-emitting Energy** goals

2a.2 – Central Arizona Project Non-Indian Agriculture Water Users Impacts and Options

Activity Definition

Identify options that could (1) mitigate adverse impacts from increased **CAP** water rates resulting from **NGS** plant operations post-2019 agreements, environmental compliance and controls, including **BART**, and other financial conditions. The CAP agricultural users voluntarily relinquished their long term contracts for CAP water as authorized under the **AWSA** in return for interim use of **CAP** excess water at energy-only prices. Explore options that, in addition to reducing **CAP** water costs for Tribes, also reduce energy rates for Non-Indian Agricultural (NIA) to allow them to continue to utilize **CAP** excess water supplies, to the extent such water is available, through 2030 or beyond.

Assumptions/Constraints/Notations

- Options do not necessarily need to offset **NGS** power production.
- Options should have an energy nexus and may include power generation or some degree of energy intensity reduction initiatives.
- Information generated during this scope element may be of use in preparation of the **NGS-KMC EIS**.
- **Final BART Rule** may be a constraint to the consideration of some potential options; however, some options may be independent of **BART** and evaluated on a “no-regrets basis,” i.e., they would be potentially viable under any foreseeable **BART** outcome.
- Potential Non-Federal Participants
 - NIA Water Users
 - **CAWCD**
 - Arizona Department of Water Resources (ADWR)
 - Governor of Arizona
- Federal agencies’ participation may be limited to those that have applicable authority, programs or interests.
- Programmatic funds may be allocated to conduct planning evaluations of potential options: for example, potential use of “programmatic” resources or existing authorized projects/studies to evaluate power-/water-related options that would produce economic benefits as an offset to the **NGS** benefits currently supporting NIA Water Users.
- WaterSMART (Sustain and Manage America’s Resources for Tomorrow)/Secure Water Act - Public Law 111-11, or Rural Water Supply Act - Public Law 109-451 may be able to provide funding to implement this scope element or a subsequent project.

Implementation Time Horizon

- Short-Term to Mid-Term

Deliverable(s)

- Appraisal Level Report of Findings

Milestones

- Identify subgroup members who will participate in this scope element – August 2013
- Prepare draft scope, schedule and budget – September/October 2013
- Share draft scope/schedule with non-federal participants requesting participation in the process – October 2013
- Share draft scope/schedule with **CAWCD**, NIA and ADWR water users not requesting participation in the process – October 2013
- Develop complete scope, schedule and budget – November 2013
- Identify funding source and complete cost-share agreement(s) – October 2013
- Draft Report of Finding – July 2014

Final Report of Findings –September 2014

Joint Statement Goal/Goal Action Nexus

1. **Joint Statement Goal**
 - (A) clean, affordable and reliable power
 - (B) affordable and sustainable water supplies
 - (C) minimizing negative impacts on those who currently obtain significant benefits from **NGS**, including tribal nations
2. Work with Stakeholders to develop a **NGS** roadmap
3. Complete the **NREL Phase 2 Study**
4. Support short term investments that align with long term **Low-emitting Energy** goals

2b.1 – Navajo Nation Options

Activity Definition

- Identify and evaluate options, including benefits and costs, which could optimize revenue for **Navajo Nation** Indian Trust Assets (ITA) economics that may be adversely impacted when **NGS** reduces or ceases plant operations, including but not limited to, power options to **NGS** (as currently operated) and options that can de-couple **NGS** from ITAs.
- Identify mitigation for potential economic impacts to the tribes should **NGS** alternatives reduce those benefits now or in the future.
 - Hypothetical Example: Subject to appropriate Congressional authorizations, construct a renewable power generating or hybrid renewable/conventional (including clean coal technology) power generating facility on **Navajo Nation** lands that could produce a revenue stream.

Assumptions/Constraints/Notations

- Analysis must identify recommendations based upon net benefits.
- Options would be limited to “projects” implemented on **Navajo Nation** lands or on off-reservation projects in which the tribes have an interest, such as the Big Boquillas Wind Project.
- Options should have an energy nexus (other non-energy revenue generating initiatives may be explored under a complementary initiative) and may be inclusive of power generation or some degree of energy intensity reduction initiatives.
- **Final BART Rule** may be a constraint to the consideration of some potential options; however, some options may be independent of **BART** and evaluated on a “no-regrets basis,” i.e., they would be potentially viable under any foreseeable **BART** outcome.
- If approved by the **Navajo Nation**, tribal revenues from the plant lease and coal supply royalties could potentially be included in cost-sharing of capital and other costs of options.
- Potential Non-Federal Participants
 - **Navajo Nation**
- Information generated during this scope element may be of use in preparation of the **NGS-KMC EIS**.
- Programmatic funds may be allocated to conduct planning evaluations of potential options: for example, potentially use “programmatic” resources or existing authorized projects/studies to evaluate power-related options that would produce economic benefits as an off-set to the **NGS** benefits currently supporting the tribes that would cease.
- WaterSMART (Sustain and Manage America’s Resources for Tomorrow)/Secure Water Act - Public Law 111-11, Rural Water Supply Act - Public Law 109-451, or Native American Affairs (NAA) Technical Assistance Program (TAP) may be able to provide funding to implement this scope element or a subsequent project.

- **NREL** may provide technical assistance to provide specific analysis of a discreet scope task or element as requested.

Implementation Time Horizon

- Short-Term to Mid-Term

Deliverable(s)

- Appraisal Level Report of Findings

Milestones

- Identify subgroup members who will participate in this scope element – August 2013
- Prepare draft scope, schedule and budget – September/October 2013
- Share draft, scope, schedule and budget with Navajo Nation –October 2013
- Develop complete scope, schedule and budget and associated agreements –November 2013
- Identify funding and technical resources needed to complete the scope –October 2013
- Draft Report of Finding –July 2014

Final Report of Findings –September 2014

Joint Statement Goal/Goal Action Nexus

1. **Joint Statement Goal**
 - (A) clean, affordable and reliable power
 - (B) affordable and sustainable water supplies
 - (C) sustainable economic development
 - (D) minimizing negative impacts on those who currently obtain significant benefits from **NGS**, including tribal nations
2. Work with Stakeholders to develop a **NGS** roadmap
3. Complete the **NREL Phase 2 Study**
4. Support short term investments that align with long term **Low-emitting Energy**

2b.2 –Hopi Tribe Options

Activity Definition

- Identify and evaluate options, including benefits and costs, which could optimize revenue for Hopi Tribal Indian Trust Assets (ITA) economics that may be adversely impacted when **NGS** reduces or ceases plant operations, including but not limited to, power options to **NGS** (as currently operated) and options that can de-couple **NGS** from ITAs.
- Identify mitigation for potential economic impacts to the tribes should **NGS** alternatives reduce those benefits now or in the future.
 - Hypothetical Example: Subject to appropriate Congressional authorizations, construct a renewable power generating or hybrid renewable/conventional (including clean coal technology) power generating facility on Tribal lands that could produce a revenue stream.

Assumptions/Constraints/Notations

- Analysis must identify recommendations based upon net benefits.
- Options would be limited to “projects” implemented on Hopi Tribe lands, or on off-reservation projects in which the tribes have an interest, such as the Big Boquillas Wind Project.
- Options should have an energy nexus (other non-energy revenue generating initiatives may be explored under a complementary initiative) and may be inclusive of power generation or some degree of energy intensity reduction initiatives.
- **Final BART Rule** may be a constraint to the consideration of some potential options; however, some options may be independent of **BART** and evaluated on a “no-regrets basis”, i.e., they would be potentially viable under any foreseeable **BART** outcome.
- If approved by the Hopi Tribe, tribal revenues from coal supply royalties could potentially be included in cost-sharing of capital and other costs of options.
- Potential Non-Federal Participants
 - Hopi Tribe
- Information generated during this scope element may be of use in preparation of the **NGS-KMC EIS**.
- Programmatic funds may be allocated to conduct planning evaluations of potential options: for example, potentially use “programmatic” resources or existing authorized projects/studies to evaluate power-related options that would produce economic benefits as an off-set to the **NGS** benefits currently supporting the tribes that would cease.
- WaterSMART (Sustain and Manage America’s Resources for Tomorrow)/Secure Water Act - Public Law 111-11, Rural Water Supply Act - Public Law 109-451, or Native American Affairs (NAA) Technical Assistance Program (TAP) may be able to provide funding to implement this scope element or a subsequent project.
- **NREL** may provide technical assistance to provide specific analysis of a discreet scope task or element as requested.

Implementation Time Horizon

- Short-Term to Mid-Term

Deliverable(s)

- Appraisal Level Report of Findings

Milestones

- Identify subgroup members who will participate in this scope element – August 2013
- Prepare draft scope, schedule and budget –September/October 2013
- Share draft, scope, schedule and budget with Hopi Tribe –October 2013
- Develop complete scope, schedule and budget and associated agreements –November 2013
- Identify funding and technical resources needed to complete the scope –October 2013
- Draft Report of Finding –July 2014

Final Report of Findings –September 2014

Joint Statement Goal/Goal Action Nexus

1. **Joint Statement Goal**
 - (A) clean, affordable and reliable power
 - (B) affordable and sustainable water supplies
 - (C) sustainable economic development
 - (D) minimizing negative impacts on those who currently obtain significant benefits from **NGS**, including tribal nations
2. Work with Stakeholders to develop a **NGS** roadmap
3. Complete the **NREL Phase 2 Study**
4. Support short term investments that align with long term **Low-emitting Energy**

2c – Roadmap for Post-Lease Energy Options to Replace NGS (Federal Share)

Activity Definition

- Develop conceptual options at an appraisal level to address the multiple “federal interests” that are currently supported by **NGS** after the plant’s closure. The plan must include potential transitions to those options that mitigate negative impacts to the “federal interests.”
 - Hypothetical Example: Develop a traditional/renewable energy option or suite of options to replace **NGS** at the end of the **Lease** as amended by the **Lease Amendment**.

Assumptions/Constraints/Notations

- This scope element will integrate the results defined in other **NREL Phase 2 Study** scope elements to the fullest extent practicable.
- NREL Phase 1 supplement “Navajo Generating Station and Clean-Energy Alternatives: Options for Renewables” would be cited as a reference and perhaps springboard.
- Benefits to non-Federal **NGS** utility owners/participants will be addressed by each utility in the context of its own integrated resource planning activities, and will not be considered under **NREL Phase 2 Study**.
- Final scope for this element would take into account scoping details and identified alternatives defined in the **NGS-KMC EIS**.
- Potential Non-Federal Participants
 - **Affected Tribes**
 - Non-Governmental Organizations (NGO)
 - NIA Water Users
 - **CAWCD**
 - ADWR
 - **SRP**
- Programmatic funds may be allocated to conduct planning evaluations of potential options: for example, potential use of “programmatic” resources or existing authorized projects/studies to evaluate power-/water-related options.
- **Development Fund** may be able to provide funding to implement this scope element or a subsequent project.
 - Because this could be considered an implementation action necessary under **AWSA**, it may be possible to utilize funding that currently exists in the **Development Fund** to conduct this study and pending its relationship to the fund, project implementation.
- Other stakeholders/partners could provide funding.

Implementation Time Horizon

- Mid-Term to Long-Term

Deliverable(s)

- Peer Reviewed Report

Milestones

- Identify subgroup members who will participate in this scope element –August 2013
- Notify Tribes requesting formal consultation - September 2013
- Conduct scoping meetings with specified stakeholders –October 2013
- Develop scope, schedule and budget –November 2013
- Conduct planning process/report development – Early 2014
- Complete final plan/report – Late 2014/Early 2015.

Joint Statement Goal/Goal Action Nexus

1. **Joint Statement** Goal
 - (A) clean, affordable and reliable power
 - (B) affordable and sustainable water supplies
2. Work with Stakeholders to develop a **NGS** roadmap
3. Complete the **NREL Phase 2 Study**