

TRIBAL TRUST OBLIGATIONS OF THE UNITED STATES REGARDING THE POTENTIAL CLOSURE OF NAVAJO GENERATING STATION

March 31, 2017

In connection with the April 5th and April 6th meetings addressing Tribal Trust issues, the Gila River Indian Community (Community) has prepared the following responses to the questions circulated by Ben Keel on March 14, 2017.

1. What are the Trust Responsibilities between your organization and the Federal Government/Tribal Nations?

In 2004, Congress passed the Arizona Water Settlement Act (AWSA), which approved the settlement of the Community's water rights claims against the United States. Section 204(a)(2) of the AWSA states: "the water rights and resources described in the Gila River Agreement shall be held in trust by the United States on behalf of the Community" Thus, the Community's water rights constitute a trust resource.

Reclamation, as an agency of the Federal government, has an express trust responsibility to protect the water rights that the AWSA provides to the Community. As trustee, Reclamation cannot limit, suppress or otherwise undermine the Community's right to receive and use its Central Arizona Project (CAP) water allocation guaranteed by the AWSA. Reclamation must ensure that the Community's water rights, and the other guarantees and benefits provided in the AWSA, are preserved and can be implemented, and therefore must make its decisions and act in the context of this trust responsibility, being sure that, as trustee of the Community's water rights, such rights are protected.

In addition, the United States has NGS-related trust obligations regarding the Lower Colorado River Basin Development Fund (LCRBDF), which is funded by revenue from the sale of excess NGS power. Under the AWSA §107, the LCRBDF "pay[s] annually the fixed operation, maintenance, and replacement charges associated with the delivery of Central Arizona Project water held under long-term contracts for use by Arizona Indian tribes," in order to subsidize the cost of CAP water. The United States has a trust obligation to manage the LCRBDF in a manner that maximizes returns and ensures that disbursements are appropriate.

2. What is the current impact of NGS on your organization and how would closure affect your organizations ability to continue at this current level?

The Central Arizona Project pumps Colorado River water to Central and Southern Arizona. NGS serves as the primary source of power for pumping CAP water and provides a source of revenue to repay the federal debt incurred for CAP construction. Section 203 of the AWSA allocates 311,800 acre feet of CAP water to the Community, making the Community the largest CAP contractor.

Closure of NGS would impact the cost, and potentially, ability of the Community to utilize its full water allocation in two key ways. First, any change in the cost or availability of power resulting from the need to rely on replacement power would directly affect the cost of the

Community's CAP water allocation. Second, and of potentially greater significance, closure of NGS will eliminate revenue from the sale of excess NGS power that funds the LCRBDF. Closure of NGS would substantially erode the revenues that the Community and other CAP settling tribes counted on to enable the LCRBDF to subsidize CAP water delivery on a long term basis. Without this revenue, the costs currently being funded by the LCRBDF could be passed on to the Community, rendering it cost prohibitive for the Community to obtain and utilize its apportionment of affordable CAP water that is guaranteed by Federal law.

The loss of affordable CAP water would have a profound negative economic impact on the Community's agricultural economy. The Community's farms, corporate farms and individual Indian farmers cultivate fruits, vegetables, small grains, cotton and alfalfa. In reliance on the availability of affordable and dependable CAP water, the Community is projecting to bring up to 100,000 acres of the Community's land back into agricultural production. The increased cost for water delivery could overwhelm the already-thin gross operating margins Community growers face, and render up to 50,000 acres of planned farmland uneconomical. Also in reliance on the continued availability of affordable CAP water, the federal government and the Community have invested hundreds of millions of dollars in developing an expansive 1,000+ mile irrigation canal system to deliver water throughout the Community to increase the number of acres that can be irrigated and to increase farming opportunities. The CAP water also meets the needs of the Community's municipal and industrial water users and supports the establishment of riparian and recreational areas.

Thus, unaffordable CAP water could deprive the Community of the water it needs to sustain its farming and municipal activities, which are essential to the economy, culture and overall well-being of the Community.

3. What are identifiable Economic Opportunities that can sustain and/or replace the benefits derived from NGS for your organization?

The Community does not yet have enough information to respond to this question.

4. What Common Ground/Resources already exist that could play a role moving forward?

Due to the current uncertainties concerning other actions and decisions by the United States regarding its trust responsibilities generally, and to other tribes affected by an NGS closure, it is unclear what, if any, common grounds/resources exist that could play a role in moving forward.