

When recorded, return to:
Salt River Project
Attention: Legal Services
Mail Station PAB4TA
P.O. Box 52025
Phoenix, Arizona 85072-2025

RESTRICTIVE COVENANT

**(SOLID WASTE LANDFILL AND
POND SOLIDS RESTRICTION)**

BETWEEN

THE NAVAJO NATION

AND THE

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

ARIZONA PUBLIC SERVICE COMPANY

TUCSON ELECTRIC POWER COMPANY

NEVADA POWER COMPANY d/b/a NV Energy

DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES

THIS RESTRICTIVE COVENANT (SOLID WASTE LANDFILL AND POND SOLIDS RESTRICTION) (“Restriction”) is made and entered into by and between THE NAVAJO NATION (“Nation”) and SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, ARIZONA PUBLIC SERVICE COMPANY, TUCSON ELECTRIC POWER COMPANY, NEVADA POWER COMPANY d/b/a NV Energy AND THE DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES (hereinafter collectively, together with their successors and assigns, referred to as “Lessees”, and singly referred to as “Lessee”) and is approved by the Secretary of the Interior on this ___ day of _____, 2017. The Nation and Lessees are hereinafter collectively referred to as the “Parties” or individually as “Party.”

RECITALS

WHEREAS, the Nation and the Lessees are parties to that certain Extension Lease of contemporaneous date herewith (the “Lease”), for which a Memorandum of Lease is recorded with the United States Department of the Interior Land Titles & Records Office at document no. _____ . The Lease is for an electrical generation facility commonly known as Navajo Generating Station located in portions of the Navajo Nation and Coconino County, Arizona (the “Leased Premises”).

WHEREAS, pursuant to the Lease the Lessees will close in place material on, in and under the solid waste landfill and closed-in-place ponds located within a portion of the Leased Premises and referred to as the Solid Waste Landfill and Pond Solids Area.

WHEREAS, the Nation has evidenced by Resolution #CJN-33-17 dated June 29, 2017, approved this Restriction, which Restriction is an exhibit to or referenced in the foregoing Lease, upon the terms and conditions set forth in the Resolution and in consideration for the terms contained in the Lease as the Nation deems to be in the best interests of the Nation.

WHEREAS, the Lessees have applied or will apply for the grant of rights-of-way and easements for the Leased Premises, including the Solid Waste Landfill and Pond Solids Areas defined hereinbelow, from the Secretary by one or more §323 Grants. The Nation has consented to said §323 Grants pursuant to Resolution #CJN-33-17, subject to the approval of the terms and conditions of each §323 Grant by the Nation. Those rights-of-way and easements granted to the Lessees by the Secretary under each §323 Grant, including for the Solid Waste Landfill and Pond Solids Areas, are intended to be and shall be additional and supplementary to, separate and independent from, and not conditioned upon the leasehold rights leased to the Lessees under the Lease, including as to this Restriction.

WHEREAS, the United States Department of the Interior, Bureau of Indian Affairs is approving this Restriction pursuant to its authority granted in 25 U.S.C. §84.

NOW THEREFORE, the Nation and Lessees desire to enter into this Restriction.

1. DEFINITIONS.

- (A) “**Solid Waste Landfill and Pond Solids Area**” means those portions of the Leased Premises legally described on Exhibit A hereto.
- (B) “**Solid Waste Landfill and Pond Solids Restriction**” means the restrictions, servitudes and prohibitions created by this Restriction.
- (C) “**Effective Date**” means the date that the Secretary has approved this Restriction, which shall be inserted on page one of this Restriction.
- (D) “**Lease Term**” means the 35-year term of the Lease as to the Solid Waste Landfill and Pond Solids Areas, which shall expire on December 22, 2054.

- (E) “**Secretary**” means the Secretary of the Interior or his or her authorized representative or such person or agency as he or she may expressly designate to perform the functions specified in this Restriction to be performed by the Secretary or such Federal agency as may succeed to the duties of the Secretary under the Lease and this Restriction.
- (F) “**§323 Grants**” means, singularly or collectively, one or more grants of rights-of-way and easements under the Act of February 5, 1948 (62 Stat. 17, 18, 25 U.S.C. §§323-328), the Act of March 3, 1879 (20 Stat. 394, 5 U.S.C. §485), as amended, and the Acts of July 9, 1832, and July 27, 1868 (4 Stat. 564, 15 Stat. 228, 25 U.S.C. §2), and such current regulations promulgated thereunder as are applicable, including 25 C.F.R. §1.2 and Part 169, to Lessees.

2. SOLID WASTE LANDFILL AND POND SOLIDS RESTRICTION.

- (A) Use of the Solid Waste Landfill and Pond Solids Areas shall not disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of any monitoring systems. In accordance with the Lease, Lessees shall have the right to place fencing, signage and other barriers and notices they deem necessary to comply with the restrictions and requirements in this Section 2(A). Signage and notices shall be posted in both English and Navajo.
- (B) No other disturbance shall be allowed unless it is first demonstrated to the satisfaction of the Lessees that disturbance of the final cover, liner, or other component of the containment system will not increase the potential threat to human health or the environment. The demonstration must be certified by a qualified professional engineer.
- (C) No portion of the surface of the Solid Waste Landfill and Pond Solids Areas other than designated and engineered storm water containment ponds approved by a registered professional engineer may be used for surface water or other liquid storage/retention, or any activity or structure that may affect the landfill or material/soil located under the surface, including without limitation, any building or other structure for which the landfill as closed is not designed to support or which may puncture or impair any environmental protection system such as a lining or barrier.

3. PERPETUAL TERM.

The term and effectiveness of the Solid Waste Landfill and Pond Solids Areas Restriction and the other provisions of this Restriction shall be perpetual. Without limitation, this Restriction shall remain in effect longer than the Lease Term and shall survive the termination or extinguishment of the Lease or any §323 Grant.

4. INDEMNITY OF LESSEES.

- (A) All or portions of the Solid Waste Landfill and Pond Solids Areas may be surrendered to the Nation prior to the end of the Lease Term.
- (B) The Nation agrees to indemnify, hold harmless and defend Lessees from and against any and all claims by third parties of damages, liabilities or expenses which any Lessee may incur, or to which any Lessee may be subjected, resulting from the actions of the Nation, any political subdivision, any tribal enterprise, tribal business, tribal corporate entity, or its tribal members or residents arising out of or related to the Solid Waste Landfill and Pond Solids Areas after Surrender in accordance with the Lease and any future improvements placed thereon commencing on the earlier of the Surrender of any portion of the Solid Waste Landfill and Pond Solids Areas or the date the Lease Term ends.
- (C) The Nation agrees to indemnify, hold harmless and defend Lessees from and against any and all claims by third parties for damages, liabilities or expenses which any Lessee may incur, or to which any Lessee may be subjected arising out of or related in any manner to use of the Solid Waste Landfill and Pond Solids Areas by the Navajo Nation or, after Surrender of the Solid Waste Landfill and Pond Solids Areas, third parties for any purpose prohibited by Section 2. Expenses shall include, without limitation, any additional remediation costs imposed upon any Lessee by any government entity or administrative or judicial action or decision.
- (D) This indemnity shall survive in perpetuity and be effective notwithstanding the termination or expiration of the Lease or any §323 Grant.
- (E) Nothing in this Restriction shall limit any indemnity rights among the Parties set forth in the Lease.

5. ENFORCEMENT.

- (A) Prior to Surrender of the Solid Waste Landfill and Pond Solids Areas, and subject to the provisions of Section 5(B) below, the Lessees may enforce this Restriction in any manner provided for herein or by law or in equity, including, but not limited to:
 - (i) To seek legal action to prevent any person's right to occupy or use the Solid Waste Landfill and Pond Solids Areas or any portion thereof in violation of this Restriction;
 - (ii) To take action (including pursuant to any legal means) to abate any violation of this Restriction;
 - (iii) requiring any person, at the person's expense, to remove any structure or improvement on the Solid Waste Landfill and Pond Solids Areas in violation of this Restriction and to restore that affected portion of the Solid Waste Landfill and Pond Solids Areas to its previous condition and, upon failure of that person to do so, the Lessees or their designee shall have the right to enter the property, remove the violation and restore the property to

substantially the same condition as previously existed and any such action shall not be deemed a trespass, so long as the Lessees secure written permission from the Division Director of the Nation's Division of Natural Resources (or any successor division) prior to taking that action, which approval shall not be unreasonably withheld, conditioned or delayed;

- (iv) prohibiting through any lawful means any person who fails to comply with the terms and provisions of this Restriction from continuing or performing any further activities in violation of Section 2 of this Restriction;
 - (v) filing a suit at law or in equity to enjoin a violation of this Restriction, to compel compliance with this Restriction, to recover money damages or to obtain such other relief as to which the Lessees may be entitled.
- (B) All rights and remedies of Lessees under this Restriction or at law or in equity are cumulative, and the exercise of one right or remedy by Lessees shall not waive Lessees' or another Lessee's right to exercise another right or remedy. For purposes of this Restriction, Lessees shall act as a group through a representative or committee of representatives (the "Representative"). Decisions and actions of the Representative shall be binding on the Lessees. Notwithstanding the provisions of Sections 5(A) or this 5(B), the Lessees shall provide the Nation with at least ninety (90) days' advance notice of the commencement of an action pursuant to Section 5(A) (except in the case of an action pursuant to Section 5(D), in which case no advance notice need be given) and shall provide the Nation with an opportunity to cure the default or breach, whether by the Nation or any other person or entity.
- (C) Following Surrender of the Solid Waste Landfill and Pond Solids Areas to the Nation in accordance with the Lease, the Nation shall use diligent efforts at the Nation's expense to assure compliance by it and any users or occupants of the Leased Premises (whether invited or uninvited, temporary or permanent) with the provisions of these Restrictions, including to exercise any of the remedies noted in this Section 5 against any users or occupants. After Surrender of the Solid Waste Landfill and Pond Solids Areas, except as noted in Section 5(D) below, before the Lessees (acting through the Representative) may exercise any rights or remedies note in Section 5(A) above, they must first provide the Nation with a written notice of the breach by the Nation or any other person or entity with these Restrictions, which notice shall specify with particularity the nature of the alleged breach or failure. The Nation shall have ninety (90) days to cure the breach or failure or to commence cure. If it commences the cure within that ninety (90) day period, it shall have as long as is reasonably necessary to diligently complete that cure. If the Nation does not cure the breach or failure in compliance with those obligations, Lessees may pursue all rights and remedies independently from the Nation in accordance with the Section 18 of the Lease (Other Breaches and Defaults), which is herein incorporated into this Restriction via Section 11 (Incorporated Provisions), and any efforts of the Nation shall not limit or preclude the rights of any Lessee hereunder or restrict its right of indemnification by the Nation or others.

- (D) The foregoing restrictions shall not limit the right of Lessees to seek or undertake immediate legal action to resolve any condition or situation that poses an imminent threat to health, safety or the environment.
- (E) After expiration of the Lease Term, the obligation to enforce the provisions of this Restriction shall transfer to the Nation except to the extent that applicable United States federal law requires continued enforcement by the Lessees.

6. APPLICABLE LAW.

- (A) Notwithstanding any provision of the Navajo Nation Code, any other Navajo Nation law, or relevant federal, state or tribal case law precedent, any activities of the Lessees under this Restriction shall be governed exclusively by federal law or, if federal law does not apply, the laws of the State of Arizona.
- (B) Any and all matters or claims in dispute between the Parties to this Restriction, whether arising from or relating to this Restriction, or arising from alleged extra-contractual facts prior to, during, or after the Effective Date, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or violation of the contract, shall be governed by, construed, determined and enforced exclusively in accordance with federal law or, if federal law does not apply, the laws of the State of Arizona, regardless of the legal theory upon which the matter is asserted and notwithstanding any provision of the Navajo Nation Code, any other Navajo Nation law, or relevant federal, state or tribal case law precedent. Where federal law incorporates or applies the substantive law of the state in which the dispute or activities at issue occurred or in which the federal court is located, this Lease should be construed and enforced to require incorporation of the laws of the State of Arizona.
- (C) This Section 6 shall survive any termination of the Lease or the expiration of the Lease Term in perpetuity.

7. NAVAJO NATION AUTHORIZATIONS.

- (A) As authorized by Resolution CJN-33-17 of the Navajo Nation Council dated June 29, 2017, the Navajo Nation has approved this Restriction and is authorized to enter into this Restriction, in its entirety.
- (B) As authorized by Resolution CJN-33-17 of the Navajo Nation Council dated June 29, 2017, and notwithstanding any provision of the Navajo Nation Code, any other Navajo Nation law, or relevant federal, state or tribal case law precedent:
 - (i) The Nation affirmatively waives the application of the laws of the Navajo Nation, and agrees to the application of federal law and, where federal law does not apply, the laws of the State of Arizona, as provided in Section 6.
 - (ii) The Nation affirmatively waives the jurisdiction of the Navajo Nation courts and agrees that: (1) the remedies set forth in Section 18 of Lease

(and incorporated by reference herein in Section 9) are the exclusive remedies to address Disputes among the Parties and claimed breaches of this Restriction; and (2) the federal courts, and, where federal law does not apply, the Arizona state courts, and no other courts, shall have exclusive jurisdiction to consider and decide disputes or claimed breaches of this Restriction, as provided in Section 18 of the Lease.

- (iii) The Nation affirmatively waives and consents to the waiver of sovereign immunity from suit by the Lessees, as provided in Section 8.
- (iv) The Nation affirmatively covenants that it will not, directly or indirectly, Regulate or attempt to Regulate the Lessees, as provided in Section 26 of the Lease (Nation's Agreement not to Regulate Lessees), as incorporated by reference into this Restriction.

(C) This Section 7 shall survive in perpetuity and be effective notwithstanding the termination or expiration of the Lease or any §323 Grant.

8. LIMITED WAIVER OF SOVEREIGN IMMUNITY.

If any Party brings an action as permitted in this Restriction and names the Nation as a party in that action: (1) the Nation may be joined in the action; and (2) the Nation waives any claim to sovereign immunity from that action. As used in this Section, the term "action" includes the assertion of any claim, counterclaim or cross-claim in any court permitted by this Restriction. This Section shall survive in perpetuity and be effective notwithstanding the termination of the Lease or any §323 Grant; provided, however, this waiver by the Nation does not extend to (1) any party other than the Lessees or (2) third parties bringing claims against the Nation.

9. SUCCESSORS AND ASSIGNS.

This Solid Waste Landfill and Pond Solids Restriction is a covenant running with the land and as an equitable servitude for the several benefit of each Lessee and their successors and assigns. Each person or party that presently has or in the future acquires any right, title or interest, whether legal, equitable or beneficial, in the Solid Waste Landfill and Pond Solids Areas, or any part thereof, agrees to abide by all of the provisions of this Restriction. This Restriction shall not merge into the Lease, any §323 Grant or other instrument or estate in the Solid Waste Landfill and Pond Solids Areas. The terms and conditions contained herein, including, without limitation, the Nation's waiver of sovereign immunity in Section 8, shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, sublessees (at any level), employees and agents of any Party.

10. RECORDATION.

This Restriction shall be recorded in the applicable public records set forth in Schedule 1 to this Restriction.

11. INCORPORATED PROVISIONS.

The provisions of Sections 18 (Other Breaches and Defaults), except as noted in Section 5(E) above, 26 (Nation's Agreement Not To Regulate Lessees), 40 (Estoppel Certificates), and 45 (Waiver of Jury Trial) of the Lease are incorporated into this Restriction by this reference as if stated herein in full, and references in that incorporated language to the "Lease" shall mean this Restriction, and references to a Lessee or a Party to the Lease shall mean the Lessees or Parties to this Restriction, with other conforming changes as are appropriate, mutatis mutandis.

12. EXECUTION IN COUNTERPARTS.

This Restriction may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all of the Parties to the aggregate counterparts had signed the same instrument. Any signature page of this Restriction may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon, and may be attached to other counterparts of this Restriction identical in form hereto but having attached to it one or more additional signature pages.

13. ESTOPPEL CERTIFICATES.

During the original Lease Term on request of a Party hereto each of the Parties shall deliver appropriate estoppel certificates to one or more other Parties within forty-five (45) days of a written request.

14. RECITALS.

The Recitals are incorporated into this Restriction.

Schedule 1

RECORDING OFFICES

A duplicate original of this instrument shall be recorded or filed in the following records and each Party shall execute and deliver, in recordable form, such further documents, supplements, certifications and resolutions to cause the same to be recorded or renewed:

US Department of the Interior, Land Titles and Records Office	Albuquerque, New Mexico
Navajo Nation Land Department Administration, GIS Section	Window Rock, Navajo Nation (Arizona)
Navajo Nation Environmental Protection Agency	Window Rock, Navajo Nation (Arizona)
Coconino County Recorder, Arizona	Flagstaff, Arizona
LeChee Chapter	LeChee, Arizona

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Restriction to be executed as of the date first above written.

LESSEES:

ARIZONA PUBLIC SERVICE COMPANY

ATTEST:

Secretary

By: _____
David A. Hansen
Its: Vice President, Fossil Generation

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by David A. Hansen, the Vice President, Fossil Generation of Arizona Public Service Company, an Arizona corporation, on behalf of the company.

Notary Public

My commission expires:

IN WITNESS WHEREOF, the Parties have caused this Restriction to be executed as of the date first above written.

**DEPARTMENT OF WATER AND POWER OF
THE CITY OF LOS ANGELES BY BOARD OF
WATER AND POWER COMMISSIONERS**

By _____

Title _____

Date _____

And: BARBARA E. MOSCHOS

Board Secretary _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of California)

County of _____)

On _____ before me, _____ personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

IN WITNESS WHEREOF, the Parties have caused this Restriction to be executed as of the date first above written.

NEVADA POWER COMPANY d/b/a NV Energy

ATTEST:

Secretary or Assistant Secretary

By: _____
Paul Caudill
Its: President and Chief Executive Officer

Date: _____

STATE OF NEVADA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by Paul Caudill, the President and Chief Executive Officer of Nevada Power Company d/b/a NV Energy, a Nevada corporation, on behalf of the company.

Notary Public

My commission expires:

IN WITNESS WHEREOF, the Parties have caused this Restriction to be executed as of the date first above written.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

ATTEST AND COUNTERSIGNED:

Secretary
Finance

By: _____
Michael Hummel
Its: Deputy General Manager Resources &
Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by Michael Hummel, the Deputy General Manager Resources & Finance of the Salt River Project Agricultural Improvement and Power District, on behalf of the district.

Notary Public

My commission expires:

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT FOR THE USE AND BENEFIT OF THE UNITED STATES

ATTEST AND COUNTERSIGNED:

Secretary

By: _____
Michael Hummel
Its: Deputy General Manager Resources & Finance
Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by Michael Hummel, the Deputy General Manager Resources & Finance of the Salt River Project Agricultural Improvement and Power District, on behalf of the district.

Notary Public

My commission expires:

IN WITNESS WHEREOF, the Parties have caused this Restriction to be executed as of the date first above written.

TUCSON ELECTRIC POWER COMPANY

ATTEST:

Secretary

By: _____
Mark Mansfield
Its: Vice President Energy Resources

Date: _____

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by Mark Mansfield, the Vice President Energy Resources of Tucson Electric Power Company, an Arizona corporation, on behalf of the company.

Notary Public

My commission expires:

RESTRICTIVE COVENANT BETWEEN THE NAVAJO NATION AND THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, ARIZONA PUBLIC SERVICE COMPANY, TUCSON ELECTRIC POWER COMPANY, NEVADA POWER COMPANY, AND DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES

**UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs**

THE WITHIN RESTRICTIVE COVENANT between THE NAVAJO NATION and THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, ARIZONA PUBLIC SERVICE COMPANY, TUCSON ELECTRIC POWER COMPANY, NEVADA POWER COMPANY, and DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES, for lands of the Nation located within the formal Navajo Indian Reservation is hereby approved pursuant to authority delegated from the Secretary of the interior to the _____ Secretary of Indian Affairs by _____.

Director
Bureau of Indian Affairs
Department of the Interior

Date of Approval

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, the authorized representative of the Secretary of the Interior, United States Department of the Interior, for and on behalf thereof.

Notary Public

My Commission Expires:

Exhibit A

**Legal Description of the Solid Waste and Pond Solids Areas
(Coconino County, Arizona)**