

## SYNOPSIS OF DOCUMENTS

### NAVAJO GENERATING STATION AND KAYENTA MINE<sup>1</sup>

#### BACKGROUND AND LEGISLATION

The Navajo Generating Station (NGS) and Kayenta Mine (KM) were developed in the early 1970s as the result of the convergence of two major planning efforts: 1) the development of the CAP to deliver water from the Colorado River to users in central and southern Arizona; and 2) efforts by a number of private and public utilities to develop new electric generation facilities to meet growing demands in the Southwest (Nathanson 1980; Verburg 2010; SRP 1968; West Associates 1968). In 1968, Congress passed the Colorado River Basin Project Act (82 Stat. 885; Basin Project Act) which authorized the CAP and associated facilities, including a study of electric generation and transmission alternatives to provide power to the CAP.<sup>2</sup> The Basin Project Act also provided that excess power from the generation facility would be sold to augment the Lower Colorado River Basin Development Fund (Development Fund). According to Nathanson 1980:

*On September 30, 1969, the Secretary [of Interior] filed with Congress a report required by the Colorado River Basin Project Act, advising Congress of his findings that participation in the Navajo Project [Navajo Generating Station and Transmission System] represented the most suitable alternative for supplying the power requirements of CAP.*

*The site of the Navajo Generating Station near Page, Arizona, was selected for the following reasons:*

- (1) It was approximately 80 miles from a reliable coal supply on the Black Mesa on the Navajo and Hopi Indian Reservations;*
- (2) Cooling water was available from nearby Lake Powell;*
- (3) It was near the town of Page, Arizona and its support facilities;  
and*
- (4) It was close to load centers in Arizona, Nevada, and southern California to minimize transmission costs.*

The 1969 Report to Congress described several alternative power sources for the CAP and found that the cost of United States participation in NGS was substantially less expensive than purchase of power from various alternatives.<sup>3</sup> As part of its conclusions, the 1969 Report stated:

*“The most feasible plan to supply the power requirements of the Central Arizona Project and to augment the Lower Colorado River Basin Development Fund is to acquire generation and transmission capacity by participation with non-Federal entities in the construction and operation of generation and transmission facilities.” (DOI 1969)*

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<sup>1</sup> Prepared by the Salt River Project in April 2016; updated in September 2017.

<sup>2</sup> Nathanson 1980 provides background and the legislative history leading to the Basin Project Act.

<sup>3</sup> The 1969 Report found that the cost of power from NGS would be about \$27 per kilowattyear compared to about twice that amount for firm power purchased from other sources.

SRP and the other non-federal NGS participants had been planning and developing various power projects since 1963 (WEST Associates 1968). On April 5, 1968, SRP announced plans to construct NGS (SRP 1968).

### **NGS AND KM DOCUMENTS**

Under the authority of the Basin Project Act, the Secretary of the Interior acquired a 24.3% interest in capacity and energy from NGS, and capacity in associated transmission facilities for the benefit of the CAP (DOI 1969). The NGS transmission facilities include the federal interest in the Western Transmission System, which runs from NGS west to the McCullough Substation near Las Vegas, and the federal interest in the Southern Transmission System, which runs from NGS south to the Westwing Substation near Phoenix.

SRP is the operating agent of NGS and holds a 21.7% ownership interest in NGS on its own behalf and the 24.3% interest for the use and benefit of the United States. NGS's other owners are Arizona Public Service Company (APS), the Department of Water and Power of the City of Los Angeles (LADWP), Nevada Power Company (NV Energy), and Tucson Electric Power Company (TEP). Collectively, these entities, including the United States, are sometimes referred to in the NGS documents as the "NGS Participants." The non-Federal owners are sometimes referred to as the "NGS Co-Tenants."

To secure the federal interest in NGS, and to develop and operate the facilities, a number of contracts and documents have been executed over the years. These are grouped by general categories below.

### **POWER PLANT AND RAILROAD**

**Indenture of Lease (Lease).** The Lease, effective December 23, 1969, is among the Navajo Tribe (now known as the Navajo Nation), APS, LADWP, NV Energy, SRP for itself and for the use and benefit of the United States, and TEP. The Navajo Nation signed the Lease in 1969 pursuant to a May 27, 1969 resolution of the Navajo Tribal Council authorizing the approval of the Lease. The Lease provides the Nation's consent for the use of land and related rights for the plant site, pumping plant site, rail loading site, ash disposal site, transmission, communications, and railroad and for the Secretary of Interior to issue rights-of-way (ROW) pursuant to 25 U.S.C. § 323 (§ 323 Grants) on the Navajo Reservation (see the next section regarding these § 323 Grants). The initial term of the Lease is 50 years with an option to extend for an additional 25 years.

The Lease also addresses air pollution, water, and other issues. For example, NGS fly ash precipitators must have a design efficiency of 99.5% and the Navajo Nation consents to NGS use of 34,100 acre-feet per year (AFY) of water from Arizona's Upper Basin allocation from the Colorado River of 50,000 AFY. The tax waiver in the Lease partially expired in April 2011. Under the Lease, the Navajo Nation agreed not to regulate the construction, maintenance or operation of NGS facilities. The Lease also includes provisions for decommissioning the NGS facilities by removing improvements and restoring the land after termination or expiration of the Lease.

**Grants of Federal Rights-of-Way and Easements (§ 323 Grants).** Two § 323 Grants were issued by the Secretary of the Interior to APS, LADWP, NV Energy, TEP, and SRP for itself and for the use and benefit of the United States for railroad and plant site ROWs:

- The plant site § 323 Grant signed by the Secretary of Interior on December 10, 1969, with an effective date of December 23, 1969 is for the plant site, rail loading site, ash disposal site, and related facilities. This Grant includes the overland conveyor from the Kayenta Mine to the

railroad loadout, which was assigned to PWCC in 1995. The plant site § 323 Grant expires on December 22, 2019.

- The railroad § 323 Grant was approved on January 19, 1971 and expires on January 18, 2021.

Both § 323 Grants were issued with the consent of the Navajo Nation provided by the Lease. Consent to the original § 323 Grant was also obtained from the Hopi Tribe given the uncertainty at the time about Hopi rights to some of the lands to be used for NGS facilities. Since then, it has been determined that all of the § 323 Grants are located on Navajo Tribal Trust lands

**Other § 323 Grants/Permits.** The Navajo Nation has issued permits as follows:

- A Special Use Permit to SRP for use of the Zilnez Mesa communications site (used for railroad operations), which permit expires on January 2, 2023;
- A Revocable Use Permit to SRP for use of the Preston Mesa communications site (used for NGS and the railroad operations), which permit expires May 16, 2022;
- A Revocable Joint Use Permit to APS for use of the Preston Mesa communications site (used for operation of the Southern Transmission System), which permit expired on December 29, 2014. APS is working with the Navajo Nation to renew the permit through December 22, 2019; and
- A Revocable Use Permit to APS for the Jack's Peak communications site (used for plant site and Southern Transmission System operations), which expires July 8, 2016. APS will renew the permit through December 22, 2019.

**Water Supply From Lake Powell (Water Service Contract).** The Contract for water service from Lake Powell (USBR Contract No. 14-06-300-5033) for NGS, dated January 17, 1969, is between the United States and SRP. It provides that SRP may divert up to 40,000 acre-feet per year (AFY) from Lake Powell and may consumptively use up to 34,100 AFY at NGS, with the remainder of 5,900 AFY for non-consumptive use. The Navajo Tribal Council enacted two resolutions approving the allocation of 34,100 AFY for consumptive use from Arizona's 50,000 AFY share of the Upper Colorado River Basin, Resolution CD 108-68, dated December 11, 1968, and Resolution CJW-69, dated June 3, 1969. SRP assigned interests in the contract to APS, LADWP, NV Energy, and TEP on December 22, 1969.

SRP holds two water rights certificates issued by the Arizona Department of Water Resources for water use at NGS. Certificate No. 4050.0001 has a priority date of December 18, 1964 for 23,065 AFY, which expires on December 18, 2044. Certificate No. 4050.0003 has a priority date of April 9, 1969 for 5,644 AFY, which expires on April 9, 2049.

The 1969 Water Service Contract had an initial 40-year term with rights of renewal. It was renewed on July 6, 2012 for 20 years with a change in the water service rate beginning January 1, 2014.

In conjunction with approval of a modification to the NGS water intake from Lake Powell in 2006, NPS issued a ROW permit (NPS No. GLCA-06-002) across approximately 200 feet of the southern edge of the Glen Canyon National Recreation Area.

**Participation Agreement.** The Participation Agreement (USBR Contract No. 14-06-300-2131), dated September 30, 1969, is among APS, LADWP, NV Energy, SRP, TEP and the United States acting through the Secretary of Interior. This agreement sets forth the ownership interests in NGS, including the transmission system. It covers the relationship between SRP and the United States and requires the

consent of the United States to all Project Agreements (as defined in the Participation Agreement) that SRP may enter into where the United States is not a party. It also sets forth the basic terms and conditions and the obligations of the parties for construction, operation, and maintenance of the NGS Project; and may be superseded, in whole or in part, by subsequent project agreements.

The term of the Participation Agreement is for the period needed for completion of all the Project Agreements or, lacking completion, for a 50-year term.

**Co-Tenancy Agreement.** The Co-Tenancy Agreement (USBR Contract No. 14-06-300-2271), dated March 23, 1976, is among APS, LADWP, NV Energy, SRP, and TEP and the United States acting through the Secretary of Interior. It establishes the terms and conditions of the parties' rights, interests, and obligations, regarding the Navajo Project, which includes NGS and related facilities. The Co-Tenancy Agreement covers a wide range of subjects including: percentage ownership and title to the various project components, entitlements to energy and capacity, use of the transmission system, administration, capital improvements, environmental protection, and other matters. It also covers the relationship between SRP and the United States and requires the prior written consent of the United States to all NGS Project actions or decisions that apply to or affect the rights, titles and interests held by SRP for the benefit of the United States.

The term of the Co-Tenancy Agreement extends until the end of the Lease.

**Plant Operations.** The Operating Agreement (USBR Contract No. 14-06-300-2539), dated July 23, 1979, is among APS, LADWP, NV Energy, SRP, TEP and the United States acting through the Secretary of Interior. It establishes the terms and conditions for operation and maintenance of NGS and appoints SRP as Operating Agent of NGS. The term of the Operating Agreement extends until the end of the Co-Tenancy Agreement.

**Ash Management.** There have been a series of agreements between SRP as Operating Agent of NGS and Headwaters Resources, Inc. and its predecessors regarding the management, transportation, and disposal of ash and other by-products. Headwaters transports some of the fly ash in trucks to Apex, Nevada for use in concrete manufacturing and returns with limestone for the NGS scrubbers.

The most recent ash management agreement, as amended, became effective on October 14, 2002. The agreement provides for automatic renewal every five years upon agreement on the compensation schedule.

**Power Line ROW.** NGS is connected to the Glen Canyon-Shiprock 230 kV transmission line in order to receive auxiliary power for start-up or other purposes. Approximately 230 feet of the line initially lacked a ROW across Navajo Nation lands. On July 19, 2013, SRP entered into a 230 kV Tie Line Settlement and Release Agreement with the Navajo Nation Department of Justice resolving the past and continued use of the 230 kV Tie Line and the 230 kV Tie Line corridor through December 22, 2019.

**Railroad Crossing License Agreement.** Reclamation and SRP on behalf of itself, APS, LADWP, NV Energy, and TEP entered into a License Agreement (USBR Contract No. 14-006-400-5882) for construction, operation, and maintenance of the railroad on Reclamation's easement for the Glen Canyon-Shiprock 230 kV transmission line. The License Agreement expires on September 12, 2022, 50 years after it was agreed to on September 13, 1972.

## **POWER SALES**

Over the years, contracts for the sale of NGS power have evolved, which are summarized below. This section was adapted from The Colorado River Documents, 2008 (Verburg 2010).

**Interim Sales Contracts.** As background, a series of contracts dated September 30, 1969 were executed between the United States and APS, LADWP, NV Energy, SRP, TEP, and Southern California Edison Company for “Interim Sales of United States Entitlement in the Navajo Project.” These contracts, also termed “layoff contracts,” disposed of the United States entitlement of power and energy in the NGS Project through September 30, 1989, subject to termination by the United States upon 5 years’ written notice effective on or after January 1, 1980, if the power and energy sold thereunder is required by the United States for the other purposes of the Basin Project Act. These contracts have since been replaced, as discussed below.

**Power Coordination Contract.** The Power Coordination Contract (USBR Contract No. 14-06-300-2132), also dated September 30, 1969, is among the United States, APS, LADWP, NV Energy, SRP, and TEP. It expires on December 31, 2026. This contract sets the method of determining rates for sales, purchases, and exchanges of energy between the parties. The United States waived its usual “wheeling stipulation.”

**Intermittent Transmission of Start-Up and Emergency Auxiliary Power and Energy.** The contract for Intermittent Transmission of Start-Up and Emergency Auxiliary Power and Energy for NGS (USBR Contract No. 14-06-400-5878), dated August 17, 1972, is among the United States, SRP as Operating Agent on behalf of itself and the other Navajo Project Participants. The Contract provides a means of transmission for start-up and emergency auxiliary power and energy to NGS and allows the United States to transmit excess capacity in the transmission system. The Contract is coterminous with the Indenture of Lease and any extension.

**Phase Shifting Transformer at Liberty Substation.** The Contract (USBR Contract No. 14-06-300-2438), dated February 4, 1974, is among the United States, APS, LADWP, NV Energy, SRP and TEP. The Project Managers for the Southern Transmission System and the Western Transmission System determined that a phase shifting transformer would be installed as a method of controlling the division of power flow between the Mead-Liberty Line and the Navajo Project Transmission System. The Contract provides for the installation, operation, maintenance and replacement of a phase shifting transformer at Liberty Substation. The contract further provides that the United States will be both the Project Manager and Operating Agent with Western Area Power Administration (WAPA) and Reclamation jointly administering the contract. The Contract is coterminous with the Indenture of Lease.

**Interim Arrangement for Interconnected Operations.** The agreement for Interim Arrangement for Interconnected Operations (USBR Contract No. 14-06-300-2139), dated September 30, 1969, is among the United States, APS, LADWP, NV Energy, SRP, TEP, and Southern California Edison Company. This Agreement covers forecast capacity resources margins, spinning reserve capacity, emergency service, interruptible load as a substitute for spinning reserve capacity, and system operations. This contract was intended to be superseded by “more definitive and complete agreements.” However, SRP was unable to identify those agreements.

**Navajo Surplus and Navajo Power Marketing Plan.** The Basin Project Act authorized the Secretary of the Interior to sell the power and energy not needed for the operation of the CAP. Revenue from these sales is deposited to the Development Fund. Reclamation’s marketing functions were transferred to the WAPA in 1977 with the creation of the United States Department of Energy.

Section 10 of the 1984 Hoover Power Plant Act (98 Stat. 1333), provided additional guidance with respect to such sales, as discussed below, defining “Navajo surplus” as follows and expressly placing the marketing of Navajo surplus under the control of the Secretary of Energy:

*Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated with the United States’ interest in the Navajo generating station which is in excess of the pumping requirements of the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974 as amended (hereinafter in this Act referred to as “Navajo surplus”) shall be marketed and exchanged by the Secretary of Energy pursuant to this section.*

The statutory references to “desalting and protective pumping facilities” are to the Yuma Desalting Plant and the 242 Wellfield along the Colorado River near the border with Mexico.

Section 107(c) of the Hoover Power Plant Act requires the Secretary of the Interior to adopt a plan, after consultation with representatives of the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (CAWCD), “for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project.” Section 107 directs the Secretary of Energy to market Navajo surplus in accordance with the plan.

The Hoover Power Plant Act further provides that the revenues from the sale of Navajo surplus will be deposited to the Development Fund to be used to provide financial assistance in the repayment of construction costs for authorized features of the CAP. An additional rate component was also authorized to be collected for the purpose of repaying bonds issued by CAWCD to advance funds, among other things, for the construction of New Waddell Dam.

The Secretary, acting through the Commissioner of Reclamation, adopted an Interim Navajo Power Marketing Plan on March 17, 1986, which was superseded by the Navajo Power Marketing Plan adopted on December 1, 1987. The 1987 plan was published in the Federal Register at 52 Fed. Reg. 48328 (December 21, 1987). Under this plan, contractors entering into long-term sales contracts for Navajo surplus were to be given a first opportunity when those contracts expired to enter into new long-term contracts for Navajo surplus.

Reclamation, CAWCD, and WAPA entered into an agreement titled Administration of the Contracts for Long-Term Sale and Exchange of Navajo Surplus Power (USBR Contract 0-CS-30-P1076) on May 15, 1990, to define the responsibilities of each agency with respect to the contracts for the sale or exchange of Navajo surplus. Navajo surplus was marketed to SRP under the 1987 plan through a series of three contracts, known as the Four-Party Agreements, as follows:

- Long-Term Sale of Navajo Surplus Power Central Arizona Project/Navajo Generating Station (USBR Contract No. 0-CS-300-P1080) among Reclamation, WAPA, CAWCD, and SRP, executed on May 15, 1990, marketed 200 MW of Navajo surplus capacity and associated transmission to SRP, with annual deliveries of energy equal to 152,000 megawatt-hours (MWh).
- Long-Term Sale of Navajo Surplus Power Central Arizona Project/Navajo Generating Station (USBR Contract No. 1-CS-30-P1102) among Reclamation, WAPA, CAWCD, and SRP, executed

on August 27, 1991, marketed 150 MW of Navajo surplus capacity and associated transmission to SRP, with annual deliveries of energy equal to 114,000 MWh.

- Long-Term Sale of Remaining Navajo Surplus Power and Coordinated Operation of Power Systems Central Arizona Project (USBR Contract No. 4-CS-300-P1125) among Reclamation, WAPA, CAWCD, and SRP, executed March 15, 1994, marketed the remaining Federal interest in NGS generation and the Federal interest in the Navajo Project western and southern transmission systems to SRP. This contract also provides for the operational integration of Navajo power with CAP's other power resources and provides for the coordinated operation of the SRP electric system with the CAP electric system, including transmission rights acquired by Reclamation to serve CAP needs.

The Four-Party Agreements each terminated on September 30, 2011. WAPA entered into a letter agreement with SRP on September 28, 2007 (07-DSR-11901), to market to SRP up to 220,800 MWh per year of the Navajo surplus power available during certain peak hours from June through August for the period from October 1, 2011, to September 30, 2031. Reclamation, WAPA, CAWCD, and SRP, in the letter agreement, recognized this as an appropriate sale of Navajo surplus under the Hoover Power Plant Act of 1984. In this letter agreement, CAWCD concurred that this sale optimized the financial assistance available "for the purposes set forth in 43 United States Code 1543(f), as amended by the Arizona Water Settlements Act of 2004, Public Law 108-451." Additional Navajo surplus that became available when the Four Party Agreements terminated on September 30, 2011, is marketed under the Amended Navajo Power Marketing Plan.

**Amended Navajo Power Marketing Plan.** The Amended Navajo Power Marketing Plan was adopted by the Secretary of the Interior, acting through the Commissioner of Reclamation, on September 18, 2007, and was published in the Federal Register at 72 Fed. Reg. 54286 (September 24, 2007). The amended plan was developed by Reclamation in consultation with representatives of the Secretary of Energy (specifically, with WAPA), the Governor of Arizona (specifically, with the Arizona Department of Water Resources), and CAWCD to maximize revenues from the sale of Navajo surplus. Amending the plan to maximize revenues for deposit into the Development Fund was a precondition of the Stipulation for Judgment in the CAP repayment litigation. The entry of final judgment in accordance with the Stipulation for Judgment in the CAP repayment litigation was an enforceability requirement of Section 207(c)(1)(K) of the Arizona Water Settlements Act of 2004, Pub. L. No. 108-451, 118 Stat. 3478 (2004), which expanded the authorized uses of revenues deposited into the Development Fund.

### **SOUTHERN TRANSMISSION SYSTEM**

**§ 323 Grants.** A § 323 Grant of Easement for Right of Way was issued by the Secretary of the Interior on February 1, 1971 to APS, LADWP, NV Energy, TEP, and SRP for itself and for the use and benefit of the United States for two transmission lines that extend south of NGS across the Navajo Reservation. The term of the § 323 Grant is for 50 years ending on January 15, 2021.

**Southern Transmission System Operating Agreement.** The Navajo Project Southern Transmission System Operating Agreement (USBR Contract No. 14-06-300-2538) was executed among the United States, APS, LADWP, NV Energy, SRP, and TEP on July 23, 1979, establishing the terms and conditions for the operation and maintenance of the Southern Transmission System and appointing APS as Operating Agent. The term of the Operating Agreement extends through the term of the Co-Tenancy Agreement. As the agent of Reclamation, WAPA approves ongoing operation and maintenance, and capital improvements related to the Southern Transmission System subject to United States acting through Reclamation consent.

## WESTERN TRANSMISSION SYSTEM

§ 323 Grants. A § 323 Grant of Easement for Right of Way was issued by the Secretary of the Interior on September, 8, 1988 to LADWP for the transmission line that extends west of NGS across the Navajo Reservation. The term of the § 323 Grant was for 20 years extending from 1972 through December 31, 1992. In 2013, LADWP entered into a Western Transmission System Settlement and Release Agreement with the Navajo Nation Department of Justice resolving the past and continued use of this section of the transmission line ROW through December 22, 2019.

**Western Transmission System Operating Agreement.** The Navajo Project Western Transmission System Operating Agreement (USBR Contract No. 7-07-30-P0015) was executed among the United States, APS, LADWP, NV Energy, SRP, and TEP on July 23, 1979, establishing the terms and conditions for the operation and maintenance of the Western Transmission System. NV Energy was appointed Operating Agent and is responsible for the line patrols and emergency repairs to the Navajo-McCullough 500-kV transmission line and for the maintenance of the Western Transmission microwave system. The term of the Western Transmission System Operating Agreement extends through the term of the Co-Tenancy Agreement. As the agent of Reclamation, WAPA approves ongoing operation and maintenance, and capital improvements related to the Western Transmission System subject to Reclamation consent.

## COAL SUPPLY

**Coal Leases.** PWCC holds leases with the Navajo Nation and Hopi Tribe to mine up to 670 million tons of coal from the Kayenta Mine permit area. There are three leases:

- Lease No. 14-20-0603-8580, originally executed on February 1, 1964, with the Navajo Nation for 24,858 acres where surface and mineral interests are held exclusively by the Navajo Nation.
- Lease No. 14-20-0603-9910, dated June 6, 1966, with the Navajo Nation on the joint mineral ownership lease area for 40,000 acres, of which the Navajo Nation holds the surface interests for 33,863 acres.
- Lease No. 14-20-0450-5743, dated June 6, 1966, with the Hopi Tribe on the joint mineral ownership lease area for 40,000 acres, of which the Hopi Tribe hold the surface interests for 6,137 acres.

Each of the leases, and subsequent amendments, have been approved by the Secretary of the Interior pursuant to the Indian Mineral Leasing Act, 25 U.S.C. § 396a.

The most recent amendments of the coal leases address royalty payments for the period between December 15, 2007 and December 14, 2017, which is when the next royalty reopener of the leases is scheduled to occur. To the extent needed, new or amended coal royalty agreement(s) will be entered into before the existing ones expire. The most recent agreements regarding the coal leases are listed below:

- 2011 Agreement regarding the Navajo coal leases, dated July 29, 2011, between PWCC and the Navajo Nation. It addresses royalty rates, royalty/tax caps, additional payments, and scholarships and covers the period December 15, 2007 through December 14, 2017. The 2011 Agreement was approved by the Secretary of the Interior on December 9, 2011.
- Two Party Agreement, 2009 Navajo Coal Lease Amendments, dated March 11, 2010, between SRP on behalf of the NGS Participants and PWCC. It addresses payments to the Navajo Nation



under the 2007 coal lease amendments and expires on December 14, 2017 unless modified by written agreement.

- Two Party Agreement, 2008 Hopi Coal Lease Amendments, dated February 12, 2009, between SRP on behalf of the NGS Participants and PWCC. It addresses payments to the Hopi Tribe under the 2007 coal lease amendments and expires on December 31, 2017 unless modified by written agreement.
- 2008 Amendments to the Hopi Coal Mining Lease, signed by the Hopi Tribe and PWCC in February 2009. It addresses royalty rates and the relationship to the 2008 Hopi-SRP Generation Performance Agreement (see next item) and expires on December 31, 2017 unless modified by written agreement. This agreement was approved by the Secretary of the Interior on January 31, 2013 but is effective retroactive to 2008.
- 2008 Hopi-SRP Generation Performance Agreement, which became effective at the same time as the 2008 Hopi Coal Lease Amendment. It addresses payments to the Hopi Tribe and expires on December 31, 2017 or later if the royalty rate remains the same.

**Coal Supply Agreements.** APS, LADWP, NV Energy, TEP, and SRP on behalf of itself and for the use and benefit of the United States and Peabody Coal Company, predecessor to PWCC, entered into a Memorandum for Recordation of Navajo Station Coal Supply Agreement and Imposition of Equitable Servitude and Covenant Running with the Land, dated December 1, 1970, and the Navajo Station Coal Supply Agreement, dated September 30, 1969. Those agreements were to provide a coal supply to NGS for a term of 35 years subject to extension for up to an additional 15 years conditioned upon PWCC having adequate reserves of suitable coal. Initially, approximately 234 million tons of strip reserves and 34 million tons of deep reserves were dedicated by PWCC to NGS. The Coal Supply Agreement was amended and effectively restated on February 18, 1977 to provide increased prices to PWCC and a greater assurance of a coal supply to NGS.

Since 1977, PWCC and SRP as NGS Operating Agent and with the agreement of all of the other NGS Participants have executed a number of amendments to the coal supply agreement and related agreements. In 2008, SRP as NGS Operating Agent gave notice that they were extending the term of the coal supply agreement through December 22, 2019. The most recent agreement on price and other considerations is dated September 24, 2010.

**Multiparty Agreement.** This agreement dated December 1, 1970, is among the Navajo Project Co-Tenants; Peabody Coal Company; Green River Coal Company; C. Chesney McCracken and Frank J. Keller, as trustees; St. Louis Union Trust Company; and Morgan Guaranty Company. This Agreement embodies certain understandings of the parties in the event of a default by Peabody under the Navajo Project Coal Supply Agreement. The Multiparty Agreement terminated when certain coal production payments were completed.

**Mine ROWs.** The Navajo Nation has granted PWCC a special use permit and two easements for ROWs associated with KM facilities located off the coal lease areas. These ROWs are for environmental monitoring sites, water and power lines, conveyors, and access roads. PWCC will be applying to the Navajo Nation for renewed ROWs as necessary to cover continued use of these facilities through the end of mine operation and reclamation.

## References

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