



Colorado River Basin Water Supply & Demand Study

1 message

Fri, Apr 19, 2013 at 5:33 PM

To: "ColoradoRiverBasinStudy@usbr.gov"

April 19, 2013

Vincent H. Yazzie

Pam Adams
Bureau of Reclamation
Attention: Ms. Pam Adams, LC-4017
P.O. Box 61470
Boulder City, NV 89006-1470

Dear Ms. Adams,

Unfortunately, the Navajo Nation has people that are sympathetic to racist. In ngs_reduced.pdf, page 32. This document was released public on April 17, 2013 during Navajo Generating Station (NGS) lease renewals at Window Rock, Arizona.

NGS Lease Amendment, 2013. Shelly team must be NAZI'S to make a deal with SRP.

XII. COMPLIANCE WITH AND ADDITIONAL AMENDMENTS TO THE LEASE; FUTURE COOPERATION TO RESOLVE ISSUES

D. . . . The Parties recognize that there are certain positions at the Navajo Generating Station for which superior abilities are requirement for job selections. . . .

The past three lines are racist.

Salt River Project (SRP) is one of the parties including Los Department of Water and Power (LADWP), Arizona Public Service (APS), Tucson Electric Power (TEP), Nevada Energy (NE), and Bureau of Reclamation (BR). I am sorry but the Colorado River Basin Water Supply & Demand Study has been based on racism. Jason John cannot tell what a racist is. Stanly Pollack has been issuing racist commands to Jason John.

I am afraid the comments of the Navajo Nation and their projections of water supply and demand have to be stricken. NGS has a water contract with BR and the Navajo Nation based upon Navajo Preference, but former Secretary of the Interior Stewart Udall changed the water contract to Indian preference and lied to the Navajo Nation. This is NGS Water Contract(2).pdf

Sincerely,

Vincent Yazzie

4 attachments



ngs_reduced.pdf
14199K



srp_motion_for_an_injunction.pdf
119K



teilborg_injunction_order.pdf
38K



NGS Water Contract(2).pdf
1056K

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

GLEN CANYON UNIT
COLORADO RIVER STORAGE PROJECT
CONTRACT FOR WATER SERVICE FROM LAKE POWELL

THIS CONTRACT, made this 17th day of January, 1969, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws and particularly pursuant to the Act of Congress approved April 11, 1956 (70 Stat. 105), between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting through the Secretary of the Interior, hereinafter referred to as the Secretary and represented by the Regional Director, Region 4, hereinafter referred to as the Contracting Officer and the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district organized under the laws of the State of Arizona, hereinafter referred to as the Contractor.

WITNESSETH:

WHEREAS, the following statements are made in explanation:

(a) The United States has constructed Glen Canyon Dam and Reservoir forming Lake Powell as a part of the Colorado River Storage Project, hereinafter referred to as Storage Project, and water service from Lake Powell can be furnished from Arizona's apportionment of Upper Basin water under the Upper Colorado River Basin Compact for industrial purposes pursuant to Federal Reclamation Law.

RATES, TAXES AND PROJECT
ECONOMICS

(b) The Contractor needs water service from Lake Powell for the operation of a coal fired steam electric generating plant which is planned to consist of three 750mw or three nominally 800mw rated generating units herein referred to as First Unit, Second Unit and Third Unit, and related facilities planned for construction in Arizona, said plant hereinafter referred to as Navajo Power Project.

(c) The Act of Congress approved September 30, 1968, P.L. 90-537 (82 Stat. 885) known as Colorado River Basin Project Act authorizes the United States to participate in a thermal-electric development to supply the need for power for the Central Arizona Project and the Contractor is agreeable to such participation.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the parties hereto agree as follows:

TERM OF CONTRACT

1. This contract shall be effective on the date first above written and shall remain in effect until December 31, 2016, or until forty (40) years from the date water is first taken hereunder, whichever occurs first.

RENEWAL OF CONTRACT

2. The Contractor shall have the right to renew this contract for one period of not to exceed twenty (20) years by giving the United States one (1) year's written notice prior to the end of the initial period, and Contractor shall have the right to renew the contract for additional periods of not to exceed forty (40) years each by giving the United States one (1) year's written notice prior to the end of

the then existing period. The initial renewal shall be subject to renegotiation only of the charges set forth herein giving consideration to the circumstances prevailing at the time of renewal as provided in the Act of June 21, 1963 (P. L. 88-44; 77 Stat. 68), and any renewal or renewals after the initial twenty (20)-year renewal shall be on terms and conditions mutually agreeable to the parties pursuant to the provisions of the said Act.

TERMINATION OF CONTRACT

3. This contract or any renewal thereof pursuant to Article 2 may be terminated:

(a) By the United States upon failure of the Contractor to perform its obligations under this contract. The United States will notify the Contractor in writing of its intention to terminate this agreement which notice shall specify each failure of the Contractor, and shall further provide that the Contractor may, within a one hundred twenty (120)-day period from the date of said notice, present the Secretary a detailed program to correct such deficiencies and the Secretary shall accept such program subject to such conditions as he may reasonably impose, and thereby waive the termination notice. No termination procedure will be initiated for issues in dispute and subject to arbitration as provided in Article 17 while such arbitration proceedings are pending or during the period specified in the arbitration decision for correcting the deficiencies.

(b) By the Contractor upon advanced written notice of at least two (2) years prior to the requested termination date.

NON-USE OF WATER

4. The United States shall have the right to withdraw from this contract water service for the quantities of water for which facilities are not constructed to use such water in accordance with the schedule in Article 7. This right to withdraw water service shall be exercised only if the Contractor has failed to proceed diligently in completion of its project as determined by the Contracting Officer; provided, that in no event shall such withdrawal be made before December 31, 1978, as to the first unit; December 31, 1979, as to the second unit, and December 31, 1980, as to the third unit. After such withdrawal, the Contractor shall have no further payment obligation with respect to the water service withdrawn.

CONSTRUCTION AND OPERATION OF FACILITIES

5. All pumps, pipelines, storage tanks, reservoirs, flood control and wasteway canals, waste area dams and reservoirs and other facilities required to take, measure and convey water from Lake Powell to points of use, and to return water to Lake Powell, or to dispose of wastes from points of use hereinafter collectively referred to as facilities, shall be constructed or installed, operated and maintained by the Contractor at its sole expense.

AVAILABILITY OF WATER SERVICE

6. (a) The water contracted for herein is a part of the water apportioned to the State of Arizona under provisions of Article III, Section (a)(1) of the Upper Colorado River Basin Compact (Act of April 6, 1949; 63 Stat. 31).

(b) Contractor and the United States agree that the United States may acquire a capacity entitlement in the Navajo Power Project for the pumping power requirements of the Central Arizona Project upon the terms and conditions set forth in the Colorado River Basin Project Act.

(c) The United States will furnish the Contractor water service during the term of this contract by permitting the Contractor to divert from Lake Powell water annually in the amounts specified in Article 7 at such times as best suits the Contractor's needs at the location established in the rights granted the Contractor pursuant to Section 10 of the Reclamation Project Act of 1939, and the Contractor shall pay for the water service as provided in Article 8. It is recognized that pending completion of preliminary engineering and design studies, the location of the diversion works and works for the return of water cannot be determined and the Contractor and Contracting Officer shall cooperate in obtaining locations therefor. The water service furnished shall be used by the Contractor only for thermal generation of electric energy and all other purposes related to the operation of the Navajo Power Project including mining and coal transportation and ash disposal. The Contractor shall have no holdover storage rights in Lake Powell from year to year, and relinquishes its claim to any annual water service not utilized by December 31 of each year. Any water purchased hereunder that is not called for by December 31 of each year shall become part of the following year's Storage Project water supply and be available for all Storage Project

purposes in such year. It is understood and agreed that any sale, gift, delivery or other disposition of the whole or any part of said water by the Contractor to third parties shall be done exclusively by an assignment of the Contractor's rights and obligations as provided in Article 25.

WATER SCHEDULE

7. (a) The Contractor's right to water service from Lake Powell during the term of this contract shall be in accordance with the following schedule:

<u>Year</u>	<u>Acre-Feet</u>
1974	15,000
1975	30,000
1976	40,000

and for each successive year thereafter during the term of this contract, provided that the difference between the amounts of water diverted under this contract and the amounts of water returned, both measured in a manner approved by the Contracting Officer, shall not exceed 34,100 acre-feet in any calendar year. If the Secretary determines there is additional water for consumptive use which the United States may make available to Contractor under this contract, the parties agree to amend this contract by increasing the 34,100 acre-feet set forth in this subarticle(a) and Article 9 by the amount of such additional water.

(b) The Contractor may accelerate the water schedule contained in this article by six (6) months' written notice to the

United States.

(c) The Contractor shall have the right to permanently relinquish all or a portion of its right to water service provided by this contract by two (2) years' written notice to the United States stating the quantity of water service to be relinquished. In the event of such relinquishment, Contractor shall have no further obligation to pay for the water so relinquished.

RATE AND METHOD OF PAYMENT

8. (a) The Contractor shall pay for water service hereunder at the rate of Seven Dollars (\$7.00) per acre-foot as scheduled in Article 7 or as the schedule may be accelerated or partially relinquished as provided in said article, provided that any water service after the termination of the initial term of this contract shall be in accordance with the renewal contract negotiated pursuant to Article 2. Payment shall be made quarterly in advance in four (4) equal payments on January 1, April 1, July 1 and October 1 of each year commencing with the quarter in which water service is first scheduled hereunder, or as such schedule may be modified; provided, however, that the Contractor shall not take any water from Lake Powell for which the Contractor has not paid for in advance. Should there be any curtailment in water service pursuant to the provisions of Articles 4, 7(c), 12, or 19 a proportionate adjustment in payments required will be made.

(b) The Contractor shall pay to the United States on execution of this contract and thereafter each year on the anniversary of the effective date of this contract, an annual "readiness to serve" charge of thirty cents (30¢) per acre-foot each year for all contracted water for which the Contractor is not paying the \$7.00 per acre-foot annual charge. This charge shall be an earnest money deposit to secure and reserve for the Contractor the right to water service

provided in this contract. The accumulated earnest money deposits on water for which the Contractor commences paying at the \$7.00 rate shall be credited to the first payment due on such water. Should the contract be terminated in whole or in part for any reason, the remaining uncredited earnest money deposits for such terminated water service shall become the property of the United States.

ALTERNATIVE WATER SERVICE AND PAYMENT FOR FLOW
THROUGH COOLING OF UNIT

9. The Contractor anticipates constructing three units of 750 MW or 800 MW nominal capacity each with cooling towers for each unit. The Contractor may elect to construct one of these units to be cooled by a "flow through" method whereby the cooling water diverted is returned to Lake Powell after use provided that the total depletions under this contract will not exceed 34,100 acre-feet. In the event of such election, Contractor shall be permitted to divert a maximum of 30,000 acre-feet per annum to serve the two units having cooling towers with payment therefor as provided in Article 8. Contractor may also divert additional quantities of water as may be necessary to operate the "flow through" unit, provided the cooling water for said "flow through" unit is returned to Lake Powell. Contractor shall pay \$105,000 annually in quarterly payments as provided in Article 8(a), as payment for the water diverted to the "flow through" unit. Designs and plans for the diversion and return of water utilized in the "flow through" unit shall be subject to approval of the Secretary as provided in Article 15(a).

INTEREST UPON DELINQUENCY IN PAYMENT

10. Upon each charge to be paid by the Contractor to the United States pursuant to this contract which shall remain unpaid after the same shall become due and payable, there shall be imposed interest at the rate of one-half of one percent (1/2%) per month of the amount

of such delinquent charge from and after the date when the same became due and until paid, and the Contractor hereby agrees to pay such interest; provided, that no interest shall be charged to the Contractor unless such delinquency continues for more than thirty (30) days; provided, further, that the United States reserves the right to withhold delivery of water at any time the Contractor is delinquent in payment beyond thirty (30) days.

MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION

11. (a) The water to be furnished to the Contractor and to be returned by the Contractor to Lake Powell will be measured, delivered and returned by facilities constructed, operated, and maintained by the Contractor, as approved by the United States and such measurement, delivery and return facilities shall be accessible for inspection at all reasonable times by proper representatives of the United States. The Contractor agrees at its own expense to make any necessary arrangements for transportation of such water from Lake Powell to the place of use.

(b) The United States shall not be responsible for the control, carriage, handling, use or disposal of water furnished the Contractor hereunder.

WATER SERVICE SUBJECT TO COMPACTS, ACTS AND TREATY

12. This contract and all water service pursuant thereto shall be subject to and controlled by the applicable provisions of the Colorado River Compact dated November 24, 1922, and proclaimed by the President of the United States, June 25, 1929, the Boulder Canyon Project Act approved December 21, 1928, the Boulder Canyon Project Adjustment Act of July 19, 1940, the Upper Colorado River Basin Compact dated October 11, 1948, and the Mexican Water Treaty of February 3, 1944. In the event the amount of water service hereunder is required to be curtailed under and by reason of the provisions of the foregoing acts, no liability shall accrue against the United States, its officers,

agents or employees for any damage direct or indirect arising from such curtailment.

MAINTENANCE OF WATER LEVELS IN LAKE POWELL

13. The United States will normally operate Lake Powell so that the water level is maintained above elevation 3490 feet above mean sea level. However, the United States shall not be responsible for the maintenance of any particular water level in Lake Powell in order to permit the Contractor to take water therefrom through the facilities which it installs in accordance with Article 5. Charges shall be due and payable as provided in Article 8 irrespective of the Contractor's inability to take the water except that if the water level drops below elevation 3490' and the Contractor is unable to withdraw water, the annual payments referred to in Article 8 will be proportionately adjusted to reflect the quantity of water service unavailable to the Contractor.

NONRESPONSIBILITY OF THE UNITED STATES
FOR QUALITY OF WATER

14. The operation and maintenance of Storage Project facilities and the construction of new storage facilities for the provision of Storage Project water under this contract shall be performed in such a manner as is practicable to maintain the quality of raw water to be furnished hereunder. The United States is under no obligation to construct or furnish water treatment facilities to maintain or to better the quality of water except to the extent such facilities are expressly referred to elsewhere in this contract as part of the Storage Project facilities to be constructed by the

United States pursuant to Reclamation Law or as otherwise required by law. The United States is pursuing a program of water quality control as a National policy pursuant to the Federal Water Quality Act of 1965 and other similar legislation, including the establishment of and compliance with water quality standards, and will actively promote, support, and encourage the improvement of quality of water furnished hereunder. The Contractor, however, agrees that the United States assumes no liability should the water furnished hereunder be unsuitable for the Contractor's purposes.

WATER POLLUTION CONTROL

15. (a) The Contractor shall cause to be installed and diligently operated as part of the plant facilities, waste water, waste material and sewage control and disposal facilities, the design for which has been first approved by the Secretary. Plans for waste water, waste material and sewage disposal shall be subject to written approval by the Secretary in advance of construction, installation or major modification of facilities for these purposes. In the event agreement cannot be reached on such plan or facilities, the matter shall be submitted to arbitration in accordance with the provisions of Article 17.

(b) The Contractor shall have the right to return water from the Navajo Power Project to Lake Powell at locations and under measurement procedures approved by the Secretary so long as the temperature of such water shall not average more than 90° F., for any 24-hour period.

(c) Nothing herein shall relieve the Contractor from complying with all valid applicable water pollution control laws and regulations under Federal, State or County jurisdiction now or hereafter in force.

AIR POLLUTION CONTROL

16. (a) To minimize smoke, fly ash, and dust in stack emissions, the Contractor shall cause to be installed and diligently operated as part of the Navajo Power Project facilities, equipment employing the most effective, commercially proven electrostatic concept or other equally effective and acceptable equipment available under the technology known at the time of design of said facilities. Such air pollution control equipment shall be operated so as to remove not less than ninety-seven percent (97%) of the particulate matter in the stack emissions in each month and not less than ninety-six percent (96%) thereof in any twenty-four (24)-hour period, unless uncontrollable forces prevent such operation. Designs and plans for the air pollution control equipment, stack and other plant features that may affect air pollution, and facilities for control and disposal of waste or residue from burned fuel, shall be subject to written approval by the Secretary in advance of construction, installation, removal, or major modification thereof; and provided that the Secretary's approval shall not be deemed by implication or otherwise, to relieve the Contractor of any obligation it has assumed under this contract. From time to time, but not less often than once in every ten (10) years, the designated representatives of the Secretary and the Contractor will meet to review technological advances in air pollution control equipment and mutually weigh and decide upon the feasibility of installing additional equipment or modifying existing equipment in the plant facilities, taking into account costs as well as benefits of improved air

pollution control. In the event agreement cannot be reached on the aforesaid designs, plans, equipment or features or the modification or supplementation thereof, or the feasibility of installing additional equipment or modifying existing equipment, or the Contractor's compliance with the air pollution requirements, the matter shall be submitted to arbitration in accordance with the provisions of Article 17.

(b) In the operation of the Navajo Power Project, the Contractor will make or cause to be made such daily tests and measurements and keep or cause to be kept such records as will enable the Contractor to make accurate and complete reports to the Secretary relating to the operation and efficiency of the air pollution control equipment. Said reports shall be furnished to the Secretary not less often than once in each calendar year. Continuous recording equipment will be calibrated against tests performed in conformance with American Society of Mechanical Engineers (ASME) Test Procedures for Determining Dust Concentration in a Gas Stream unless some other procedure for making such tests and measurements may be mutually agreed upon. Such test procedures will be conducted at least every six (6) months. Contractor shall also furnish the Secretary with monthly reports showing the average monthly ash and sulphur content of the coal used.

(c) During normal working hours, representatives of the Secretary shall have access to, the right to inspect, and to copy, all records relating to air pollution from the plant facilities, and such representatives shall have the right to enter upon and inspect

such plant facilities and all parts thereof and appurtenances thereto.

(d) During the initial term of this contract, as provided in Article 1, the Navajo Power Project shall be fueled with coal having no greater sulphur and ash content by weight than 1.5 percent and 14.5 percent on a dry basis, respectively, unless otherwise approved, in writing, by the Contracting Officer. It is understood and agreed that natural gas and oil may be used as ignition fuel and as auxiliary fuel in operating the Navajo Power Project.

(e) Nothing herein shall be construed to relieve the water user from complying with all valid, applicable air pollution control laws and regulations under Federal or State laws now or hereafter in force.

ARBITRATION

17. Whenever a controversy arises as to which arbitration is provided for and such controversy cannot be resolved by the Secretary and the Contractor, either of said parties by written notice to the other may require such controversy to be submitted to arbitration. Within thirty (30) days from the date of the notice, the Secretary and the Contractor shall each name one arbitrator and the two arbitrators so selected shall within sixty (60) days from the date of said notice select a third arbitrator. In the event that either party has not appointed its arbitrator within the specified thirty (30)-day period, then the other party^y may make application to the appropriate United States District Court for Arizona for the appointment of an arbitrator for such party. In the event of the

failure of the two arbitrators to select the third arbitrator either the Secretary or the Contractor may make application to the appropriate United States District Court for Arizona for the appointment of the third arbitrator substantially in accord with the procedure provided in the Federal Arbitration Act (9 U.S.C.A. 1). It is understood and agreed that the Secretary and the Contractor shall each bear the costs and expenses of its respective arbitrator, and the cost and expense of the third arbitrator together with all other costs and expenses incident to said arbitration shall be shared equally by the parties. The decision of any two of the three arbitrators shall be a valid and binding award of the arbitration.

UNCONTROLLABLE FORCES

18. Neither party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed for the purposes of this contract, to mean any cause beyond the control of the party affected, including, but not limited to, drouth, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

19. On account of uncontrollable forces, there may occur at times a shortage during any year in the quantity of water available for furnishing to the Contractor by the United States pursuant to this contract through and by means of the Storage Project, and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage direct or indirect, arising therefrom.

CONTRACTOR TO KEEP BOOKS AND RECORDS

20. The Contractor shall establish and maintain accounts and other books and records sufficient to enable it to furnish, and the Contractor will furnish to the Contracting Officer, upon his request, reports and statements as to the information contained therein pertaining to this contract and the Contractor's operations hereunder.

INSPECTION OF BOOKS AND RECORDS

21. Subject to applicable Federal laws and regulations, the proper officers or agents of the Contractor shall have full and free access at all reasonable times to the Storage Project account books and official records of the Bureau of Reclamation, insofar as the same pertain to the matters and things provided for in this contract, with the right at any time during office hours to make copies thereof, and proper representatives of the United States shall have similar rights with respect to the account books and records of the Contractor as such pertain to this contract.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

22. The expenditure of any money or the performance of any work by the United States herein provided for which may require appropriations by the Congress or the allotment of funds shall be contingent upon such appropriations or allotments being made. The failure of the Congress to appropriate funds or the failure of an allotment of funds shall not relieve the Contractor from any obligations under this contract and no liability shall accrue to the United States in the event such funds are not so appropriated or allotted.

REMEDIES - WAIVERS

23. Except for the provisions in Article 17 relating to Arbitration, nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving either party to this contract of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions hereof which it would otherwise have, provided prior notices as herein agreed have been given. Any waiver at any time by either party to this contract of its rights with respect to any default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any subsequent default or matter.

OFFICIALS NOT TO BENEFIT

24. No Member of or Delegate to Congress or Resident Commissioner and no officer, agent, or employee of the United States Department of the Interior shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this

restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

ASSIGNMENT LIMITED: SUCCESSORS AND ASSIGNS OBLIGATED

25. The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no voluntary assignment or transfer of this contract or any part thereof or interest therein shall be valid unless and until approved by the Contracting Officer; provided, that the Contractor may transfer and assign an undivided interest in this contract to any corporation, cooperative, political subdivision or public agency, and any agency of the State of Arizona, participating with the Contractor in the ownership of the Navajo Power Project, and execution of this contract by the Contracting Officer shall constitute approval by the United States of any such transfer and assignment by the Contractor; provided, however, that the Contractor shall give the Contracting Officer contemporaneous written notice of all such transfers, including authenticated copies of all documents relating thereto. Notwithstanding any such transfer of interest contemplated in this article, the Contractor shall be and remain liable to the United States to keep and perform all of the conditions and covenants in this contract on its part to be kept and performed.

The execution of mortgages, trust deeds, security agreements or other instruments for purposes of security, or judicial trustee's sale made thereunder, shall not be deemed to be a voluntary transfer within the meaning of this article. Any transferee, successor or

assignee of the rights of Contractor whether by voluntary transfer, judicial sale, trustee's sale, or otherwise, shall be subject to all provisions and conditions of this contract to the same extent as though such transferee, successor or assignee were the original contractor hereunder.

Contractor shall not receive any valuable consideration for any assignment in excess of previous payments by the Contractor to the United States for water which has not been used and which is assigned to the assignee. The Contractor shall not exact any brokerage, commission, or fee from any person on the assignment of water to be delivered under this contract. In connection with any assignment, the President or General Manager of the Contractor shall certify to the Contracting Officer that the assignment with respect to water delivery was without consideration except as provided above, and that no brokerage, commission, fee, or other charge of any kind was charged to the assignee or any person acting on behalf of the assignee. The Contractor shall maintain books, records, documents, and all other evidence pertaining to any assignment of rights under this contract, and the Contracting Officer shall have access to and the right to examine any books, records, documents, or other evidence of the Contractor involving any transaction, including assignment, related to this contract. Notwithstanding the foregoing, it is understood that all of the Contractor's costs and expenses under this contract or related to its negotiation may be charged proportionally to all entities participating in or purchasing power from Navajo Power Project.

NOTICES

26. (a) Any notice authorized or required to be given to the United States shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Region 4, Bureau of Reclamation, United States Department of the Interior, P. O. Box 11568, Salt Lake City, Utah 84111. Any notice authorized or required to be given to the Contractor shall be deemed to have been given when mailed, postage prepaid, or delivered to the Secretary, Salt River Project Agricultural Improvement and Power District, P. O. Box 1980, Phoenix, Arizona 85001.

(b) The designation of the addressee or the address given above may be changed by notice in the same manner as provided in this article for other notices.

EQUAL OPPORTUNITY

27. The provisions of Title 42 U.S.C. 2000-e-2(i) provide for the giving of preference to Indians in employment. Except as therein provided and in keeping with any obligation undertaken or which may be undertaken by any of the corporations comprising the Contractor, or their assignees, pursuant to the terms of said Title 42 U.S.C. 2000-e-2(i) to give preference for employment to qualified Indians for work on or near an Indian Reservation, during the performance of this contract the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such

action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of the paragraphs (a) through (g) in every subcontract or purchase

order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions; including sanctions for noncompliance; Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

CONDITIONS PRECEDENT TO DELIVERY OF WATER

28. As a condition precedent to the initial delivery of water hereunder an agreement between the owners of the Navajo Power Project and the Secretary of the Interior or his authorized representative must be consummated for the coordination of the Federal hydroelectric systems with the thermal-electric systems of the owners.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ Stewart L. Udall
Secretary of the Interior

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

ATTEST:

/s/ Don E. Smith
Assistant Secretary

By /s/ V. I. Corbell
President

(SEAL)

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Approving the Allocation of 34,100 Acre-Feet of Water From
the Upper Colorado River Basin and Promising to Limit the
Navajo Tribe's Claim for Water from the Upper Colorado
River Basin to 50,000 Acre-Feet Per Year

WHEREAS:

1. The Navajo Tribe, by Resolution CJY-95-66, supported the construction of a large coal-fuel power plant on the Navajo Reservation near Page, Arizona, and
2. By Resolution CJY-95-66, the Navajo Tribe requested that the Secretary of the Interior take all necessary steps, advisable and incidental, to affirm the right of the Navajo Tribe to 50,000 acre-feet of water allocated to the State of Arizona under the Upper Colorado River Basin Compact, and
3. Resolution CJY-95-66 supported the proposal that a portion of the 50,000 acre-feet of water, allocated by the Upper Colorado River Basin Compact, be used for a power plant located on the Navajo Reservation near Page, Arizona, and
4. The Salt River Project Agricultural Improvement and Power District has proposed to locate a coal-fuel power plant on the Navajo Reservation near Page, Arizona, and to operate said power plant for at least 35 years, and
5. Because the establishment of such a coal-fuel power plant requires the investment of many million dollars, the Salt River Project Agricultural Improvement and Power District needs to be assured of sufficient water to operate said power plant in the amount of 34,100 acre-feet of water per year before making such an investment, and
6. Because the 34,100 acre-feet of water per year must come from the 50,000 acre-feet of water allocated to the State of Arizona by the terms of the Upper Colorado River Basin Compact, the Salt River Project Agricultural Improvement and Power District must be assured that the Navajo Tribe will not assert, for the lifetime of the proposed coal-fuel power plant, or for the next 50 years, or whichever occurs first, claims for water in excess of 50,000 acre-feet per year, and
7. The present water used in the Western Navajo Reservation is estimated to be 13,300 acre-feet per year, and

8. The best estimates of the Bureau of Reclamation and the Resources Division of the Navajo Tribe is that during the foreseeable future the yearly usage of water on the Navajo Reservation will never exceed 17,000 acre-feet per year, and

9. The establishment of the coal-fuel power plant on the Navajo Reservation near Page, Arizona, will provide a market for large amounts of Navajo coal from Black Mesa; and will provide a market for construction material available from the Reservation; and will provide employment opportunities for Navajos; and will provide additional source of electrical power needs for municipal, industrial and domestic developments on the Navajo Reservation, and

10. Because this proposed coal-fuel power plant on the Navajo Reservation near Page, Arizona, at the present time, appears to be the best use of the water of the Upper Colorado River Basin, it appears that approval of this resolution is in the best interest of the Navajo people.

NOW THEREFORE BE IT RESOLVED THAT:

1. In consideration of the Secretary of the Interior executing a contract between the United States and Salt River Project Agricultural Improvement and Power District, operator of the coal-fuel power plant, committing the use of approximately 34,100 acre-feet of water per year for the power plant to be located on the Navajo Reservation near Page, Arizona, the Navajo Tribe of Indians agrees that they will not make demands upon the 50,000 acre-feet of water per year allocated to the State of Arizona, pursuant to the Upper Colorado River Basin Compact, in excess of 50,000 acre-feet of water per year, of which 34,100 acre-feet of water per year shall be used by the coal-fuel power plant to be located on the Navajo Reservation near Page, Arizona.

2. In consideration of the foregoing promise, as stated in Resolved Clause 1 of this resolution, the Secretary of the Interior, his agents and officers and the Salt River Project Agricultural Improvement and Power District, and its agents, officers and assignees, make the following promises to the Navajo Tribe:

A. The Salt River Project Agricultural Improvement and Power District promises to give job preference to all resident Navajos for any position within the power plant or the mine from which the coal is brought for use in the coal-fuel power plant and in any and all facilities related to the production of power by the proposed coal-fuel power plant.

B. The Salt River Project Agricultural Improvement and Power District promises, except during interruptions and curtailment of delivery, that all coal used in the coal fuel power plant located on the Navajo Reservation

near Page, Arizona, shall be purchased from the Black Mesa mines or mines located on Indian lands.

- C. The Salt River Project Agricultural Improvement and Power District promises that it shall lease lands from the Navajo Tribe and locate the coal-fuel power plant on said lands. The terms and conditions of the lease to be determined at a later date, and approved by the Advisory Committee of the Navajo Tribal Council. If such a lease is not executed within the next 12 months, this resolution may be rescinded at the election of the Navajo Tribe of Indians.
- D. The Salt River Project Agricultural Improvement and Power District shall enter into an agreement with the Navajo Tribe of Indians to provide electrical power to Navajo Tribal Utility Authority to be used on or near the Navajo Reservation. The terms and conditions of this agreement shall be approved by the Advisory Committee of the Navajo Tribal Council. If such an agreement is not reached by the time water is to be used to operate the proposed power plant, this resolution may be rescinded at the election of the Navajo Tribe of Indians.
- E. The Secretary of the Interior shall take the necessary action to assure the Navajo Tribe of Indians that if any water is imported into the Upper Colorado River Basin that the Navajo Tribe shall share proportionately in that water, and that the first 34,100 acre-feet of water imported yearly shall be assigned to the Navajo Tribe for its exclusive use and benefit.
- F. The Salt River Project Agricultural Improvement and Power District and others shall contribute to the Navajo Tribe of Indians, on or before July 1st of each year, for the purpose of developing and assisting the Navaho Community College, \$25,000.00 in money for five years, beginning July 1, 1969, for the purpose of establishing a professorial chair at the Navaho Community College.

3. It shall be understood that the Navajo Tribe's promise to limit its claim to 50,000 acre-feet of water per year shall only be for the term of the lifetime of the proposed power plant, or for 50 years, whichever shall occur first, commencing with the date of enactment of this resolution and that this promise shall not be binding on the Navajo Tribe if the first unit of the proposed coal-fuel power plant is not in operation by December 31, 1976.

4. It shall be further understood that the promise made by the Navajo Tribe, pursuant to this resolution, shall only be binding if the promises made by the Secretary of the Interior and the Salt River Project Agricultural Improvement

and Power District, pursuant to this resolution, shall be kept by them.

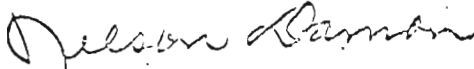
5. The Navajo Tribe shall have the exclusive right to waive or enforce all conditions of this resolution. A waiver by the Navajo Tribe of any condition or promise made to the Navajo Tribe, pursuant to this resolution, shall not be deemed to be waiver of any future or past forfeitures.

6. If, for any reason, this resolution is terminated or expires by reason of the terms and conditions contained in this resolution, the Secretary of the Interior shall take the necessary action to have the 34,100 acre-feet of water per year, allocated to the coal-fuel power plant on the Navajo Reservation near Page, Arizona, returned to the Navajo Tribe for their exclusive use and benefit.

7. The Chairman of the Navajo Tribal Council is hereby authorized and directed to take whatever steps he deems necessary and appropriate to place this resolution into effect.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of 57 in favor and 3 opposed, this 11th day of December, 1968.


Vice Chairman
Navajo Tribal Council

AMENDMENT NO. 1 TO
INDENTURE OF LEASE
NAVAJO UNITS 1, 2 AND 3

BETWEEN

THE NAVAJO NATION

AND

ARIZONA PUBLIC SERVICE COMPANY

DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES

NEVADA POWER COMPANY dba NV ENERGY

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

TUCSON ELECTRIC POWER COMPANY

DATED _____, 20__

TABLE OF CONTENTS

	3
I. RECITALS	5
II. DEFINITIONS	10
III. TERM; EFFECTIVENESS; PAYMENTS	12
IV. SIGNING BONUS	13
V. LEASE PAYMENTS	16
VI. ADDITIONAL PAYMENTS	20
VII. UNITED STATES SIGNING PAYMENT	21
VIII. PAYMENT ESCALATION	25
IX. TERMINATION; TERMINATION OF PAYMENTS	27
X. REVOCATION OF AMENDMENT	28
XI. NAVAJO NATION OWNERSHIP OF THE NAVAJO PROJECT	32
XII. COMPLIANCE WITH AND ADDITIONAL AMENDMENTS TO THE LEASE; FUTURE COOPERATION TO RESOLVE ISSUES	33
XIII. ASSIGNMENTS	34
XIV. REMOVAL OF IMPROVEMENTS; RESTORATION	36
XV. CONSENT TO GRANTS OF RIGHT-OF-WAY AND EASEMENT	41
XVI. LOCAL COMMUNITY INVOLVEMENT	42
XVII. SCHOLARSHIP	43
XVIII. NO THIRD PARTY BENEFICIARIES	44
XIX. APPROVAL UNDER 25 USC §415(a)	44
XX. COUNTERPARTS	44
XXI. EFFECT OF AMENDMENT	44
XXII. INCORPORATION OF PRIOR AGREEMENTS	44
XXIII. MODIFICATION OF AMENDMENT	44
XXIV. SEVERABILITY OF PROVISIONS	45
XXV. AUTHORITY	52
EXHIBIT 1	53
EXHIBIT 2	54
EXHIBIT 3	55
EXHIBIT 3-(cont.)	57
EXHIBIT 4	

AMENDMENT NO. 1 TO INDENTURE OF LEASE

This Amendment No. 1 (the "Amendment") to the Indenture of Lease dated September 29, 1969 (the "Lease") is by and between the Navajo Nation, acting through the Navajo Nation Council and its President, for and on behalf of the Navajo Nation (the Navajo Nation is referred to as "Lessor"), and Arizona Public Service Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company dba NV Energy, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company (formerly known as Tucson Gas & Electric Company) (collectively, together with their successors and assigns, referred to as "Lessees", and each individually referred to as "Lessee"). The Navajo Nation and the Lessees are hereinafter collectively referred to as the "Parties".

The Parties agree as follows:

I. RECITALS

- A. Lessor and Lessees entered into the Lease for the lease of the Leased Lands.
- B. Lessees wish to exercise their right and option to extend the Lease Term as provided in Section 6 of the Lease from and after December 23, 2019, as further amended by the terms and provisions of this Amendment. Except as modified by this Amendment, all of the terms and conditions of the Lease shall remain in full force and effect.
- C. In addition, the Lessees wish to have the Navajo Nation provide its consent to the issuance or extension by the Secretary of the 323 Grants, as more particularly provided in this Amendment.
- D. Under federal law this Amendment requires the approval of the Secretary of the Interior or his delegatee to become effective.

- E. The Secretary will not make a decision with respect to the approval of this Amendment prior to compliance with applicable laws.
- F. The Parties desire to engage in financial transactions related to this Amendment in advance of the Secretary's decision.
- G. The Parties recognize that pursuant to other agreements related to the Navajo Project and as recognized in the Lease, SRP owns 24.3% of the Navajo Generating Station for the use and benefit of the United States of America (the "United States' Share").
- H. The Parties recognize that pursuant to the other agreements related to the Navajo Project SRP is precluded from agreeing to terms in this Amendment that affect the United States' Share without the prior written consent of the United States.
- I. Pursuant to other agreements related to the Navajo Project, the United States and the Lessees are required to provide to SRP advance payment for their separate portions of costs and expenses to be paid by SRP as Operating Agent of NGS, including payments to be paid to the Navajo Nation under the Lease and this Amendment.
- J. Upon receipt by SRP of advance payments from the United States and the Lessees, SRP, as the Operating Agent, shall then make any payment required by the terms of this Amendment to the Navajo Nation.
- K. The Parties recognize that in the event the Secretary were to decide to approve this Amendment and the United States were to provide written notice to SRP providing consent to SRP's execution of this Amendment for the use and benefit of the United States, insofar as this affects the United States' Share, time is

required for the United States to secure necessary funds as, for example, through the issuance of a bond by the operating agent for the Central Arizona Project.

II. DEFINITIONS

"323 Grant" has the meaning set forth in the Lease for those new right-of way and easement grants or extension of existing rights-of-way and easements described in Exhibit 1 and Exhibit 2 attached hereto.

"Additional Payment Accrual Period" has the meaning set forth in Section VI(B) (Additional Payments).

"Additional Payments" has the meaning set forth in Section VI(A) (Additional Payments).

"Affiliate" means, when used in reference to the Participants in the Navajo Project, any other Person that directly, or indirectly, controls, is controlled by, or is under common control with a Participant. For purposes of this definition, "control, "controlled by" and "under common control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, participant interests, other ownership interests or contract.

"Amendment" has the meaning set forth in the opening paragraph of this Amendment.

"Beginning Index" has the meaning set forth in Section VIII(A) (Payment Escalation).

"CAWCD" means the Central Arizona Water Conservation District.

"Chapter Fund" has the meaning set forth in Section XVI(A) (Local Community Involvement).

"Consumer Price Index" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index – U.S. City Average, All Urban Consumers.

"Continued Transmission System Participants" has the meaning set forth in Section IX(C) (Termination; Termination of Payments).

"Effective Date" has the meaning set forth in Section III(B) (Term; Effectiveness; Payments).

"Escalation Factor" has the meaning set forth in Section VIII(A) (Payment Escalation).

"Existing Lease Payments" has the meaning set forth in Section V(B)(2) (Lease Payments).

"Extension Index" has the meaning set forth in Section VIII(A) (Payment Escalation).

"Force Majeure Event" means that neither the Navajo Nation nor any or all of Lessees, shall be deemed to be in default in respect to any obligation under the Lease, as amended, if prevented from fulfilling such obligation by reason of "uncontrollable forces", as such term is defined in Section 24 of the Lease, but excluding action or inaction by the Navajo Nation tribal courts, Council and its President, for and on behalf of the Navajo Nation.

"Four Corners Lease Amendment" has the meaning set forth in Section XV(E)(1) (Consent to Grants of Right-of-Way and Easement).

"Four Corners Participants" has the meaning set forth in Section XV(E) (Consent to Grants of Right-of-Way and Easement).

"Initial Signing Payment" has the meaning set forth in Section VII (United States Signing Payment).

"LADWP" means Department of Water and Power of the City of Los Angeles.

"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 City of Los Angeles, Nevada Power Company, Salt River Project Agricultural and Improvement and Power District and Tucson Gas and Electric Company effective as of December 23, 1969.

"Lease Payment Accrual Period" has the meaning set forth in Section V(B)(1) (Lease Payments).

"Lease Payments" has the meaning set forth in Section V(A)(3) (Lease Payments).

"Leased Lands" has the meaning set forth in the Lease.

"Lease Year" Lease Year 1 means the date this Amendment is signed by the Navajo Nation through the following December 22. Each subsequent Lease Year is the twelve (12) full months beginning December 23 of the preceding Lease Year through December 22 of the subsequent Lease Year.

"Lessee(s)" has the meaning set forth in the opening paragraph of this Amendment.

"Lessor" has the meaning set forth in the opening paragraph of this Amendment.

"Moenkopi-Eldorado Transmission Line" has the meaning set forth in Section XV(E)(1) (Consent to Grants of Right-of-Way and Easement).

"MW" means megawatt.

"Navajo Generating Station Scholarships" has the meaning set forth in Section XVII(A) (Scholarship).

"Navajo Nation" means the Navajo Nation (formerly known as The Navajo Tribe of Indians as stated in the Lease), and includes any political subdivision, including but not limited to any Chapter, Township, Township Commission, enterprise or taxing authority of the Navajo Nation.

"Navajo Nation Interest" has the meaning set forth in Section XI(A) (Navajo Nation Ownership of the Navajo Project).

"Navajo Nation Purchase Option" has the meaning set forth in Section XI(A) (Navajo Nation Ownership of the Navajo Project).

"Navajo Nation Right of First Refusal Option" has the meaning set forth in Section XI(C) (Navajo Nation Ownership of the Navajo Project).

"Navajo Project" means the Navajo Generating Station, associated facilities, railroad and transmission system.

"Net Capacity" means the sum of the unit values reported to the U.S. Energy Information Administration on Form EIA-860 Schedule 3, Part B, Line 2 for summer capability. This data can also be found on the EIA website at <http://www.eia.gov/electricity/data/eia860/index.html>. If the U.S. Energy Information Administration Form EIA-860 Schedule 3, Part B, becomes unavailable to the public, then there shall be substituted a comparable reference, reasonably acceptable to all Parties.

"NGS" means the Navajo Generating Station as defined in the Lease.

"NGS Community Chapters" means the Navajo Nation Bodaway/Gap, Cameron, Coalmine Mesa, Coppermine, Kaibeto, LeChee, Shonto, Tonalea and Tuba City chapters, in which the Navajo Project, associated facilities and 323 Grants are located.

"Non-U.S. Participant" or "Non-U.S. Participants" means respectively, an individual entity of the following list of entities or all of the following entities collectively: Arizona Public Service Company, LADWP, NV Energy, Tucson Electric Power Company and SRP, where SRP's obligation is limited only to that portion of the Navajo Project owned for its own use and benefit. "Non-U.S. Participant" or "Non-U.S. Participants" shall expressly exclude any SRP ownership in the Navajo Project for the use and benefit of the United States. "Non-U.S. Participant" or "Non-U.S. Participants" shall also include any entity other than the U.S. purchasing a future interest in the Navajo Project.

"Notice of Cessation" has the meaning set forth in Section IX(B) (Termination; Termination of Payments).

"Notice of Decision" has the meaning set forth in Section IX(A) (Termination; Termination of Payments).

"Notice of Lease Termination" has the meaning set forth in Section IX(B) (Termination; Termination of Payments).

"Notice of Planned Cessation" has the meaning set forth in Section IX(A) (Termination; Termination of Payments).

"Operating Agent" means SRP as the operating agent of NGS, and its successors.

"Participant" or "Participants" means respectively, an individual entity of the following list of entities or all of the following entities collectively: Arizona Public Service Company, LADWP, NV Energy, Tucson Electric Power Company, SRP and the United States of America, acting through the Bureau of Reclamation pursuant to a delegation of authority by the Secretary of Interior. "Participant" or Participants" shall also include any entity other than the U.S. purchasing a future interest in the Navajo Project as provided for in other Navajo Project agreements.

"Parties" has the meaning set forth in the opening paragraph of this Amendment.

"Payments" means collectively, the payments under this Amendment, including the Signing Bonus, Lease Payments, Additional Payments, payments to the Chapter Fund, payments to the Scholarship Fund, and the Signing Payment.

"Person" means an individual, corporation, unincorporated organization, partnership, limited liability company, joint venture, trust, governmental agency, Tribal government or tribally owned enterprise or other entity.

"Phase I ESA" has the meaning set forth in Section XIV(E)(1) (Removal of Improvements; Restoration).

"Remainder Signing Payment" has the meaning set forth in Section VIII(E) (Payment Escalation).

"Reservation Lands" has the meaning set forth in the Lease.

"Revocation Notice" has the meaning set forth in Section X (Revocation of Amendment).

"Scholarship Fund" has the meaning set forth in Section XVII(A) (Scholarship).

"Secretary" means the Secretary of the United States Department of the Interior or his/her authorized representative or such person or agency as he/she may expressly designate to perform the functions provided in the Lease and this Amendment to be performed by him/her or such federal agency as may succeed to the duties of the Secretary of the Interior under the Lease and this Amendment.

"Secretary Approval" means the Secretary's approval of this Amendment in accordance with title 25, United States Code Section 415(a), written authorization to SRP to execute the amendment for the use and benefit of the United States and issuance of new or renewal of existing 323 Grants for use by the Navajo Project.

"Signing Bonus" has the meaning set forth in Section IV (Signing Bonus).

"Signing Bonus Deadline" has the meaning set forth in Section IV (Signing Bonus).

"SRP" means the Salt River Project Agricultural Improvement and Power District.

"Term" has the meaning set forth in Section III(C) (Term; Effectiveness; Payments).

"Transmission Facility Removal Notice" has the meaning set forth in Section XIV(E) (Removal of Improvements; Restoration).

"United States' Share" has the meaning set forth in Section I(G) (Recitals).

III. TERM; EFFECTIVENESS; PAYMENTS

- A. The recitals set forth in Section I of this Amendment are incorporated into and made part of this Amendment.

- B. This Amendment shall be binding and effective upon all Parties when executed by the Navajo Nation and all of the Lessees, and after the expiration of thirty (30) days following Secretary Approval provided the Operating Agent on behalf of Lessees has not objected to any material deviations in the terms of Secretary Approval from the Parties' submission for Secretary Approval within such thirty (30) day period, with such date referred to herein as the "Effective Date". If the Operating Agent on behalf of the Lessees objects to the terms of Secretary Approval within the thirty (30) day period and the objection is not resolved to the satisfaction of all Parties prior to the earlier of (i) one hundred eighty (180) days after the date of Secretary Approval, or (ii) the expiration of the Lease in accordance with its original term, then this Amendment shall terminate. Notwithstanding the foregoing, the Non-U.S. Participants commit to make all Payments due to the Navajo Nation prior to the Effective Date as provided for in this Amendment following execution by all Non-U.S. Participants.
- C. Subject to the modifications provided for in this Amendment, including without limitation the provisions of Sections IX (Termination; Termination of Payments) and XIV (Removal of Improvements; Restoration), Lessees hereby exercise their right and option as provided in Section 6 of the Lease to extend the term (the "Term") of the Lease from December 23, 2019 through December 22, 2044.
- D. If any transmission line located on 323 Grant premises has not been used for more than two (2) years after the effective date of the renewed or new 323 Grants, then the 323 Grant associated with that line will be deemed to expire pursuant to 25 CFR §169.20.

- E. Subject to the provisions of Section XIV (Removal of Improvements; Restoration), the 323 Grants for the Navajo Project shall be issued by the Secretary and extended through December 22, 2044.
- F. Notwithstanding anything in this Amendment to the contrary, Payments made under this Amendment by SRP, in its capacity as the Operating Agent, are conditioned upon the prior receipt of the funds from the Participants, as applicable, in accordance with the terms of the other Navajo Project agreements. All Payments to be made by the Lessees under this Amendment shall be paid to the Navajo Nation by SRP, as Operating Agent, except for tax payments required in the Lease. Such tax payments shall cease as provided in accordance with Section VI(B)(2) (Additional Payments). Upon receipt by SRP of Payments, SRP, as the Operating Agent, shall then make any payment required by the terms of this Amendment to the Navajo Nation.

IV. SIGNING BONUS

If the Navajo Nation provides its final approval of this Amendment and executes this Amendment on or before February 28, 2013 (or such later date if mutually agreed in writing by the parties) (the "Signing Bonus Deadline"), the Navajo Nation shall receive a signing bonus of one million dollars (\$1,000,000.00) (the "Signing Bonus"). If the conditions to the Signing Bonus are met prior to the Signing Bonus Deadline, SRP as the Operating Agent, shall pay the Non-U.S. Participants' share or portion of the Signing Bonus in the amount of seven hundred fifty-seven thousand dollars (\$757,000.00) to the Navajo Nation within thirty (30) days of the Navajo Nation's execution of this Amendment. Upon Secretary Approval, SRP shall pay the portion of the Signing Bonus attributable to the United States' Share in the amount of two

hundred forty-three thousand dollars (\$243,000.00) on the Effective Date. If the Navajo Nation is delayed or hindered in or prevented from the performance approval and execution of this Amendment by reasons of a Force Majeure Event, the Signing Bonus Deadline shall be extended for the period of the delay.

V. LEASE PAYMENTS

A. Consideration for Lease Payments

1. In consideration for the lease to Lessees of the Leased Lands and Navajo Nation consent to the Secretary's issuance of the new or renewed 323 Grants, Lessees shall pay the Lease Payments, when the Parties have completed the necessary approvals, as set forth in this Amendment. The Parties recognize that the necessary approvals for the pre-2020 Non-U.S. Participants' Lease Payments do not include Secretary Approval.
2. The Parties acknowledge and agree that all Lease Payments in excess of Existing Lease Payments made on or before December 23, 2018 are in consideration for this Amendment and for the Navajo Nation's consent to the issuance or renewal of the 323 Grants by the Secretary.
3. Lessees will pay lease payments to the Navajo Nation annually in advance on or before December 23, the first day of the Lease Year to which the payment is applicable (the "Lease Payments") as further provided below. Lease Payments will be paid to the Navajo Nation in a single payment.

B. Lease Payments Prior to Secretary Approval

1. For the Lease Year 2013, if the Navajo Nation provides final approval and executes this Amendment before December 23, 2013, the Non-U.S.

Participants' 2013 Lease Year Lease Payment shall accrue in the amounts as provided below, which amounts depend on the date of execution of this Amendment by the Navajo Nation:

Date of Navajo Nation Execution of this Amendment	Lease Payment for Lease Year 2013 Amount
December 1, 2012 - April 30, 2013	\$6,369,090.00
May 1, 2013 – July 31, 2013	\$4,776,817.00
August 1, 2013 – October 31, 2013	\$3,184,545.00
November 1, 2013 – December 22, 2013	\$1,592,273.00
On or after December 23, 2013	\$0

If the Navajo Nation executes this Amendment on or after December 23, 2013, but prior to Secretary Approval, the Lease Payment by the Non-U.S. Participants in the amount of six million three hundred sixty-nine thousand ninety dollars (\$6,369,090.00) per Lease Year shall accrue beginning with the first December 23 following execution of this Amendment by the Navajo Nation and will continue until the earlier of: (a) December 23, 2018; or (b) the date when all of the Non-U.S. Participants have executed this Amendment (the "Lease Payment Accrual Period"). The Lease Payment accrued during the Lease Payment Accrual Period shall be paid by the Non-U.S. Participants to the Navajo Nation within thirty (30) days of the execution of this Amendment by all Non-U.S. Participants. Notwithstanding anything contained herein to the contrary, if this Amendment is not approved and executed by all of the Non-U.S. Participants on or before December 22, 2018, then no accrued Lease Payments shall be due by the Non-U.S. Participants to the Navajo Nation.

2. During the Lease Payment Accrual Period, Lessees shall continue to pay to the Navajo Nation the annual lease rental of six hundred eight thousand four hundred dollars (\$608,400.00) as provided in Section 7 of the Lease (the "Existing Lease Payments"). SRP shall continue to pay to the Navajo Nation the portion of the Existing Lease Payment attributable to the United States' Share in the amount of one hundred forty-seven thousand eight hundred forty-one dollars and 20/100 (\$147,841.20) annually until the earlier of: (a) December 23, 2018; or (b) the Effective Date.
3. Beginning on the first December 23 following execution of this Amendment by the Navajo Nation and all Non-U.S. Participants, the Non-U.S. Participants shall make Lease Payments to the Navajo Nation in the amount of six million eight hundred twenty-nine thousand six hundred forty-eight and 84/100 dollars (\$6,829,648.84) per Lease Year and their obligation to pay their portion of the Existing Lease Payments and any other payments made for use of transmission corridors associated with the Navajo Project will end. The Lease Payment in the amount of six million eight hundred twenty-nine thousand six hundred forty-eight and 84/100 dollars (\$6,829,648.84) will continue until the earlier of: (a) December 23, 2018; or (b) the Effective Date.

C. Lease Payments After the Effective Date

1. Upon the Effective Date, Lessees will commence making Lease Payments to the Navajo Nation in the amount of nine million dollars (\$9,000,000.00) for the following Lease Year until terminated in accordance with Section

IX (Termination; Termination of Payments); provided, however, that such payments will not commence until the first December 23 following the Effective Date.

2. The Lease Payment payable after the Effective Date is based upon the total of 7,472 acres for the Navajo Project. If additional acreage for the Navajo Project is required, the Operating Agent shall commission a survey of the portion of land to be added to the Navajo Project to determine the exact acreage. For such additional acreage, if any, the Lease Payment shall be adjusted upward based on \$1,204 per additional acre escalated according to Section VIII (Payment Escalation), except as provided in Section XV.E.1 (Consent to Rights-of-Way and Easement).

D. Escalation of Lease Payments

All Lease Payments, other than Existing Lease Payments, to be made by any Lessee, whether prior to or after the Effective Date or during the Lease Payment Accrual Period, shall be escalated according to Section VIII (Payment Escalation).

VI. ADDITIONAL PAYMENTS

- A. In consideration of the additional payments by Lessees (the "Additional Payments"), the amounts of which are described below, the entirety of Section 7(f) of the Lease and the following language from Section 7(e) of the Lease are deleted effective upon the Effective Date:

"provided, however, that after thirty-five (35) years from the commencement of commercial operation of Unit 3 of the Navajo Generation Station, the foregoing covenants shall lapse as to taxation of the property of Lessees located on the

Leased Lands, or located on Reservation Lands pursuant to the Related Rights, or located pursuant to the rights-of-way and easements referred to in Sections 5(a) and 5(b) hereof; provided that during the remainder of the term of the Lease, no property taxes shall be levied by the Tribe on such property at a rate or in any amount, in relation to value, in excess of one-half (1/2) of the equivalent rate, in relation to value, of the aggregate property taxes levied or imposed by the State of Arizona or any political subdivision thereof, as the case may be, applicable to such property at that time."

The remainder of the language in Section 7(e) of the Lease shall remain in full force and effect.

B. Additional Payments—Non-U.S. Participants—Prior to Lease Year 2020

1. Subject to Section VI(B)(2) below, upon execution of this Amendment by the Navajo Nation, the amount of one million eight hundred ninety-nine thousand six hundred seventy-two dollars (\$1,899,672.00) shall commence accruing per quarter payable to the Navajo Nation by the Non-U.S. Participants as the Additional Payment (the "Pre-2020 Additional Payment") as further provided below. If the Navajo Nation executes this Amendment on or before April 30, 2013, then the accrued amount of Pre-2020 Additional Payment owed by the Non-U.S. Participants will be calculated quarterly beginning with the January 31, 2013 quarterly payment. If the Navajo Nation executes this Amendment on or after May 1, 2013, then the accrued amount of the Pre-2020 Additional Payment owed by the Non-U.S. Participants will be calculated beginning with the

first quarterly due date following execution of this Amendment by the Navajo Nation. Quarterly payments will be accrued on January 31, April 30, July 31 and October 31 of each year until the earlier of: (a) the date that all of the Non-U.S. Participants execute this Amendment; or (b) October 31, 2019 (the "Additional Payment Accrual Period"). At the end of the Additional Payment Accrual Period, the Pre-2020 Additional Payment then accrued will be paid to the Navajo Nation by the Non-U.S. Participants within thirty (30) days of the execution of this Amendment by all of the Non-U.S. Participants. Notwithstanding anything contained herein to the contrary, if this Amendment is not approved and executed by all of the Non-U.S. Participants on or before October 31, 2019, then no accrued Additional Payment shall be due by the Non-U.S. Participants to the Navajo Nation.

2. Until the Effective Date, the Lessees shall continue paying to the Navajo Nation their respective tax payments owed pursuant to the Lease and the Additional Payment amounts through October 31, 2019 shall be reduced by the amount of the tax payments made to the Navajo Nation by the Lessees. Upon the Effective Date, the obligation of Lessees to pay taxes pursuant to the Lease shall be prorated through the Effective Date and will thereafter cease.
3. Upon execution of this Amendment by the Navajo Nation and all Non-U.S. Participants, the Non-U.S. Participants will begin paying the Pre-2020 Additional Payment in the amount of one million eight hundred

ninety-nine thousand six hundred seventy-two dollars (\$1,899,672.00), minus any taxes paid after the previous quarterly payment, per quarter until the earlier of: (1) October 31, 2019, or (2) the date the Operating Agent gives a Notice of Cessation under Section IX (Termination; Termination of Payments) that NGS has ceased operation.

C. Prior to Lease Year 2020 Additional Payment—United States

If Secretary Approval is provided prior to October 2019, upon the Effective Date, SRP will begin making Additional Payments to the Navajo Nation attributable to the United States' Share in the amount of six hundred nine thousand eight hundred two dollars (\$609,802.00) per quarter until October 31, 2019.

D. Commencing Lease Year 2020 Additional Payments—Lessees

1. If the Effective Date occurs prior to December 23, 2019, and if the Operating Agent has not given a Notice of Cessation to the Navajo Nation pursuant to Section IX (Termination; Termination of Payments), Lessees shall pay the Additional Payment of thirty-four million dollars (\$34,000,000.00) per Lease Year in quarterly installments of eight million five hundred thousand dollars (\$8,500,000.00) to the Navajo Nation beginning on January 31, 2020. The quarterly payments will be due on January 31, April 30, July 31 and October 31 of each Lease Year and will continue through October 31, 2044, subject to the adjustment provision in Section VI(D)(2) below (relating to Net Capacity) and the termination provisions in Section IX (Termination; Termination of Payments).

2. If the Net Capacity is reduced from the existing Net Capacity of 2,250 MW by a cumulative amount of ten percent (10%) or more at any time prior to the expiration of the Term, the Additional Payments will be reduced by the total percentage of such reduction. If the Net Capacity of NGS is increased over the existing Net Capacity of 2,250 MW by a cumulative amount of by ten percent (10%) or more at any time prior to the expiration of the Term, the Additional Payments shall be increased by the total percentage of such increase. Thereafter, any future Net Capacity reduction or increase percentages will result in a proportionate decrease or increase in the Additional Payment.

E. Escalation of Additional Payments

All Additional Payments, to be made by any Lessee, whether or not prior to or after Lease Year 2020 or during the Additional Payment Accrual Period, shall be escalated according to Section VIII (Payment Escalation).

VII. UNITED STATES SIGNING PAYMENT

Upon the Effective Date, SRP shall make an Initial Signing Payment to the Navajo Nation attributable to the United States' Share in the amount of one million dollars (\$1,000,000.00) (the "Initial Signing Payment"), which includes the United States' portion of any Signing Bonus and a portion of the Additional Payments. In addition, as set forth in the following sentence, SRP shall pay the Remainder Signing Payment to the Navajo Nation attributable to the United States' Share, the amount of which is dependent on the date the Navajo Nation executes this Amendment and the date of Secretary Approval, as set forth in Exhibit 3 attached hereto. In order to provide CAWCD, the operating agent for the Central Arizona Project, sufficient time to

obtain financing, the Remainder Signing Payment shall be paid as soon as practicable, but no later than eighteen (18) months after the Effective Date. The Navajo Nation and SRP shall collaborate with CAWCD and the United States on efforts to minimize the time needed to pay the Remainder Signing Payment. The Initial Signing Payment and the Remainder Signing Payment are subject to escalation as provided in Section VIII (Payment Escalation) below.

VIII. PAYMENT ESCALATION

- A. The "Beginning Index" (BI) for all adjustment dates is the Consumer Price Index that is published for October, 2011. The "Extension Index" (EI) is the Consumer Price Index published for the October immediately preceding the then current adjustment date. The "Escalation Factor" (EF) for all adjustment dates is the increase in the Consumer Price Index as determined by dividing the Extension Index by the Beginning Index as shown in the following equation:

$$EF = EI/BI.$$

If the EF for any adjustment date is less than the EF of the previous year adjustment date, the EF of the previous year adjustment date is to be used for calculating the adjusted payment. If the manner in which the Bureau of Labor Statistics determines the Consumer Price Index is materially revised, the Parties shall make an adjustment in the revised index which will produce a result equivalent, as nearly as possible, to that which would have been obtained if the Consumer Price Index had not been so revised. If the Consumer Price Index becomes unavailable to the public or if the equivalent data is not readily available to enable the Parties to make the calculations referred to herein, then there shall be substituted therefore a comparable index, reasonably acceptable to all Parties, based on the changes in the cost of living or purchasing power of the consumer

dollar, published by an agency of the federal government, or in the absence thereof, by a nationally recognized financial reporting service.

B. At the end of any accrual period, the accrued amount is escalated using the immediately prior October CPI value for the Extension Index.

1. That portion of the accrued amount resulting from lease, community, or scholarship payments will be escalated according to the following equation:

$$\text{Escalated Payment} = (\text{accrued amount})(\text{EF}).$$

2. That portion of the accrued amount resulting from Additional Payments will be escalated according to the following equation:

$$\text{Escalated Payment} = (\text{accrued amount})(1 + 25\%(\text{EF}-1))$$

C. The escalated Lease Payment shall be calculated each Lease Year prior to the Lease Payment due date (each an "adjustment date") commencing with the first Lease Payment paid to the Navajo Nation, after the accrued Lease Payment amount has been paid, to an amount equal to \$9,000,000 multiplied by the Escalation Factor as shown in the following equation:

$$\text{Escalated Lease Payment} = \$9,000,000 \times \text{Escalation Factor}.$$

D. The Additional Payment shall be escalated:

1. For the Additional Payments that were accrued during the Accrual Period, add all the Additional Payments accrued but not paid and multiply this value by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

$$\text{Escalated Additional Payment} = \text{Accrued Additional Payment} \times (1 + 25\%(EF-1))$$

Where the Extension Index is equal to the latest available October CPI value at the time the accrued payment is due.

2. For the Additional Payments that occur after the Accrual Period, but prior to the Effective Date, multiply the amount of one million eight hundred ninety-nine thousand six hundred seventy-two dollars (\$1,899,672.00) per quarter by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

$$\text{Escalated Additional Payment} = \$1,899,672 \times (1 + 25\%(EF-1))$$

Where the Extension Index is equal to the latest available October CPI value at the time the quarterly Additional Payment is due.

3. For the Additional Payments that occur after the Effective Date but prior to December 23, 2019, add the Additional Payments due by the Non-U.S. Lessees (\$1,899,672.00) to the amount attributable to the United States' Share (\$609,802.00) and then multiply that value (\$2,509,474) by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

$$\text{Escalated Additional Payment} = \$2,509,474 \times (1 + 25\%(EF-1))$$

Where the Extension Index is equal to the latest available October CPI value at the time the quarterly Additional Payment is due.

4. For the Additional Payments that occur after December 22, 2019, multiply the amount of eight million five hundred thousand dollars (\$8,500,000.00)

per quarter by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

$$\text{Escalated Additional Payment} = \$8,500,000 \times (1 + 25\%(EF-1))$$

Where the Extension Index is equal to the latest available October CPI value at the time the quarterly Additional Payment is due.

- E. The Initial Signing Payment shall be escalated at the time of payment (the "adjustment date") to an amount equal to:

$$\text{Initial Signing Payment} = (\$243,000)(EF) + (757,000(1 + 25\%(EF-1)))$$

The Remainder Signing Payment shall be escalated at the time of payment (the "adjustment date") to an amount equal to:

1. The portion of the Remainder Signing Payment that is determined pursuant to Exhibit 3 and annotated as "Lse Pmts (100%)," is multiplied by the Escalation Factor as shown in the following equation:

$$\text{Escalated Payment (attributable to Lease Payments)} =$$

$$\text{"Lse Pmts (100%)" Amount} \times EF.$$

2. The portion of the Remainder Signing Payment that is determined pursuant to Exhibit 3 and annotated as "Addl Pmts (25%)," is multiplied by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

$$\text{Escalated Payment (attributable to Additional Payment)} =$$

$$\text{"Addl Pmts (25%)" Amount} \times (1 + 25\%(EF-1)).$$

The two values calculated in subparagraph 1 and 2 above are added together and result in the "Remainder Signing Payment", which shall be paid according to Section VII (United States Signing Payment).

IX. TERMINATION; TERMINATION OF PAYMENTS

- A. At any time, if Lessees determine that they will cease operation of NGS prior to the expiration of the Term, the Operating Agent shall provide preliminary written notice to the Navajo Nation at least ninety (90) days prior to the permanent cessation of commercial operation of NGS (a "Notice of Planned Cessation"). For ninety (90) days after providing the Navajo Nation a Notice of Planned Cessation, Lessees shall consider proposals by the Navajo Nation for modified terms and conditions of the Lease to provide for continued commercial operations at NGS. If the Navajo Nation is not a Participant at the time of the Notice of Planned Cessation, Lessees shall provide the Navajo Nation data and other information that Lessees collectively are utilizing to make the determination to cease commercial operation of NGS, so long as the Navajo Nation enters into a mutually acceptable non-disclosure agreement to govern the disclosure of such data and information. Individual Participants and the United States are not required to provide proprietary data and other information to the Navajo Nation that they would otherwise not share with the other Participants. Any time following the end of the ninety (90) day period, the Operating Agent shall provide written notice to the Navajo Nation of Lessees' final decision regarding cessation or continuation of commercial operation at NGS (the "Notice of Decision"). Nothing contained in this Section or in this Amendment shall be deemed to create

any obligation by Lessees to accept any proposals by the Navajo Nation or any obligation by the Navajo Nation to provide a proposal for the continued operation of the Navajo Project.

- B. The Operating Agent shall provide written notice to the Navajo Nation upon cessation of commercial operations at NGS (the "Notice of Cessation"). Upon compliance with provision of all applicable notices, Lessees may terminate the Lease at any time prior to the expiration of the Term by providing written notice of Lease termination to the Navajo Nation (the "Notice of Lease Termination"). The Notice of Lease Termination shall state the planned date for termination of the Lease, upon which date the terms of Section XIV (Removal of Improvements; Restoration) are applicable.
- C. If some or all of the Participants owning interests in the Navajo Western or Navajo Southern transmission systems of the Navajo Project wish to continue the operation and use of either or both transmission systems ("Continued Transmission System Participants") after a Notice of Decision to cease commercial operation of NGS has been sent, the Continued Transmission System Participants shall provide written notice of such intent to the Navajo Nation. The Continued Transmission System Participants and the Navajo Nation shall negotiate in good faith for new terms and conditions to support the continued operation of the transmission systems or portion thereof.
- D. Lessee's are obligated to continue making Payments, once started, until that obligation is terminated as follows: (1) Lessee's obligation to pay Additional Payments to the Navajo Nation shall immediately terminate upon the provision of

the Notice of Cessation; (2) Lessee's obligation to pay the Lease Payments, payments to the Chapter Fund and payments to the Scholarship Fund shall terminate on the earlier of (a) the date of completion of removal of improvements and restoration of the Leased Lands and 323 Grants premises in accordance with Section XIV (Removal of Improvements; Restoration), or (b) December 23, 2044.

E. This Section shall survive the termination or expiration of the Lease.

X. REVOCATION OF AMENDMENT

A. Prior to the Effective Date, the Navajo Nation or the Non-U.S. Participants may revoke their approval of this Amendment by written notice to all Parties (a "Revocation Notice"), whereupon this Amendment shall become null and void and the following refund provisions shall apply:

1. If the Navajo Nation has approved and executed this Amendment on or before January 1, 2014, and one or more Non-U.S. Participants have not executed this Amendment by the later of January 1, 2014 or thirty (30) days after publication of the final Federal Implementation Plan for Best Available Retrofit Technology under the Regional Haze Rule for NGS in the Federal Register, then the Navajo Nation may revoke its execution of this Amendment and approval of the 323 Grants without any requirement to refund the Signing Bonus and the Non-U.S. Participants shall not be required to pay any accrued payments provided for in this Amendment; provided, however, that if on January 1, 2014 any Non-U.S. Participant is diligently pursuing an application for a required authorization of this Amendment, is waiting on a pending decision for an authorization of this

Amendment, or is pursuing an appeal of a required authorization for this Amendment, then the date for the Non-U.S. Participants to approve and execute this Amendment shall be extended by six (6) months.

2. If the Navajo Nation revokes its execution of this Amendment or its approval of any of the 323 Grants after execution of this Amendment by all Non-U.S. Participants, or if the Navajo Nation executed this Amendment after January 1, 2014 and subsequently revokes its execution of this Amendment and approval of any of the 323 Grants, then the Navajo Nation shall, within thirty (30) days of the Revocation Notice, refund to the Non-U.S. Participants all payments that the Non-U.S. Participants have paid pursuant to this Amendment prior to the Revocation Notice, less the amount that would have been paid under the Lease and less the amount paid for the Signing Bonus. This refund obligation shall survive the revocation of approval of this Amendment by the Navajo Nation.

- B. If the Non-U.S. Participants revoke their execution of this Amendment prior to the Effective Date, the Navajo Nation shall be permitted to retain all Payments made prior to the Revocation Notice by the Non-U.S. Participants pursuant to this Amendment.

XI. NAVAJO NATION OWNERSHIP OF THE NAVAJO PROJECT

- A. If, with the consent of the Participants, SRP or any other current Lessee and LADWP agree to and complete the purchase and sale of all or a portion of LADWP's ownership interest in the Navajo Project prior to December 23, 2019, the Navajo Nation, acting on its own behalf or through an enterprise or authority

designated by the Navajo Nation, shall have the option (the "Navajo Nation Purchase Option") to acquire an ownership interest of up to 170 MWs in the Navajo Project of the share of LAWDP acquired by SRP or any other current Lessee (the "Navajo Nation Interest"). The Navajo Nation Interest shall include a share of the transmission rights purchased by SRP or any other current Lessee, where such share is determined by dividing the MWs of the Navajo Nation Interest by the MWs SRP or any other current Lessee acquires from LADWP. The Navajo Nation Purchase Option may be exercised by the Navajo Nation following the date that LADWP's ownership interest is transferred to SRP or any other current Lessee in accordance with the same terms, conditions and procedures in effect for ownership interest transfers between the Lessees at the time of the transfer of any portion of the LAWDP ownership to other Lessees. Future agreements, including but not limited to the Navajo Project Co-Tenancy Agreement modifications, for Navajo Nation direct ownership in the Navajo Project are required to be mutually acceptable by the parties to the agreement, including existing Participant release of liability for the seller.

B. If the Navajo Nation elects to exercise the Navajo Nation Purchase Option, the transfer of ownership shall occur in two phases. Separate phases are necessary to address requirements and options pre- and post-Effective Date. Future agreements for either the "virtual ownership" or the "direct ownership" phases described below must be mutually acceptable to the applicable parties thereto.

1. The first phase shall be a "virtual ownership" agreement that provides an ownership-like cost/benefit structure. In this phase, the Navajo Nation

shall pay its share of the total Navajo Project costs that serve as the basis for charges to the other Participants and would receive the applicable MWs of capacity it will be purchasing or its respective percentage of output during unit curtailments or outages. Delivered energy would be subject to the same operational risks as any other Participant.

2. Upon the receipt of all regulatory, board and other approvals of the transfer of the acquired interest required by any Participant or the Navajo Nation, including any required Secretary Approval, the Navajo Nation may convert the "virtual ownership" into "direct ownership" of the Navajo Nation Interest. If the Navajo Nation elects to convert its "virtual ownership" interest into "direct ownership", the purchased interest shall be subject to the same Navajo Project agreements' requirements as any other Participant, including existing Participant release of liability for the seller. Each existing Participant must approve the release of the seller(s) and obtaining the release would be a condition of closing the Navajo Nation Interest. Upon the transfer of the ownership interest in the Navajo Project to the Navajo Nation, the Navajo Nation shall assume all the rights and responsibilities of Navajo Project ownership as provided in the various Navajo Project agreements then in effect.

- C. If the Navajo Nation elects not to exercise the Navajo Nation Purchase Option, then the Lessees shall provide the Navajo Nation, acting on its own behalf or through an enterprise or authority designated by the Navajo Nation, a right of first refusal option (the "Navajo Nation Right of First Refusal Option") to purchase

any proposed Navajo Project ownership interest for sale by any Lessee on substantially the same terms and conditions as a proposed sale that occurs on or after the Effective Date of this Amendment. If a Lessee proposes to sell all or a portion of its ownership interest in the Navajo Project, other than the portion SRP owns for the use and benefit of the United States, such Lessee shall provide written notice to the Navajo Nation thereof stating the terms and conditions on which it intends to sell such ownership interest. The exercise of the Navajo Nation Right of First Refusal Option and subsequent transfer of the proposed Navajo Project ownership interest shall be in accordance with the same terms, conditions and procedures then in effect for ownership interest transfers between the Lessees. For purposes of exercising the Navajo Nation Right of First Refusal Option, the Navajo Nation shall be given an ownership proxy of NGS of 7.5%. Future agreements that will be made for direct ownership are required to be mutually acceptable by the parties to the agreement, including existing Participant release of liability for the seller.

- D. The Participants shall provide the Navajo Nation, pursuant to an executed non-disclosure agreement, data and other information regarding NGS costs and operations necessary to help the Navajo Nation decide whether to exercise the Navajo Nation Purchase Option or Navajo Nation Right of First Refusal Option. Individual Participants and the United States are not required to provide proprietary data and other information to the Navajo Nation that they would otherwise not share with the other Participants.

XII. COMPLIANCE WITH AND ADDITIONAL AMENDMENTS TO THE LEASE; FUTURE COOPERATION TO RESOLVE ISSUES

- A. Except as specifically modified by this Amendment, all of the terms and conditions of the Lease shall remain in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall govern and control. The provisions of this Section XII shall survive the expiration or termination of the Lease and 323 Grants.
- B. Without limiting the foregoing, the provisions in Section 16 of the Lease addressing "Operation of Navajo Generating Station" shall remain effective through the date the removal of the improvements and restoration of the Reservation Lands as set forth in Section XIV (Removal of Improvements; Restoration) is completed.
- C. Section 10 of the Lease is amended to delete subsections (a), (b) and (c) such that Section 10 of the Lease shall now read as follows:
- The Lessees shall comply with all air pollution laws and regulations under federal or state laws now or hereafter in force.*
- D. Section 18 of the Lease is deleted in its entirety and replaced with the following language:
- Employment at the Navajo Generating Station will be based on qualifications without regard to race, color, creed, religion, national origin, disability, sex, or age, except that to the extent allowed by law preference will be given to qualified Navajos. The Parties recognize that there are certain positions at the Navajo Generating Station for which superior abilities are requirement for job selection. In the event that federal law prohibits Lessees from providing employment*

preference based on tribal affiliation, Lessees will give preference to qualified Indians rather than to Navajos.

- E. Section 28 of the Lease is amended to delete subsections (a) and (b) such that Section 28 of the Lease shall now read as follows:

The Lessees shall comply with all water pollution control laws and regulations under federal, state or county jurisdiction, now or hereafter in force.
- F. Section 36 of the Lease is deleted in its entirety.
- G. The Parties agree to use commercially reasonable efforts to resolve issues that arise during the Term, including, but not limited to, the use of Voluntary Compliance Agreements.

XIII. ASSIGNMENTS

- A. The Parties hereby amend the provisions of Section 13 of the Lease to add the following to the existing circumstances in which each Lessee may transfer or assign its rights and interests in the Lease without need for consent of the Navajo Nation or the Secretary at any time:
 - 1. to the Navajo Nation, its enterprises and authorities; or
 - 2. to an Affiliate.
- B. Except as provided in Section 13 of the Lease, as amended by this Amendment, all other assignments shall be subject to the prior written consent of the Navajo Nation, which consent shall not be unreasonably withheld or delayed, prior to approval by the Secretary. The Navajo Nation shall not charge any fee for reviewing a requested assignment except for routine administrative processing fees.

- C. Within thirty (30) days of any assignment permitted without Navajo Nation consent in the Lease, as amended by this Amendment, the assignor Lessee will provide the Navajo Nation with written notice indicating the parties to the assignment, date of assignment and relationship between the assignor and assignee.

XIV. REMOVAL OF IMPROVEMENTS; RESTORATION

- A. Upon the provision of a Notice of Lease Termination by the Lessees, or other termination or expiration of the Lease, the removal and restoration of the Leased Lands shall be in accordance with the provisions of Section 12 of the Lease, provided that removal and restoration shall be limited to those actions required by Section 12 of the Lease and the applicable laws and regulations of the United States in force at the time of decommissioning of the Navajo Project.
- B. The Navajo Nation acknowledges and agrees that the removal of improvements and restoration of the 323 Grants premises shall be completed in accordance with and limited to those actions required by the 323 Grants and the applicable laws and regulations of the United States, provided such removal and restoration activities shall be completed no later than December 23, 2045, subject to Sections XIV(D) and (E) below.
- C. If the removal of improvements and restoration of Leased Lands and the 323 Grants premises extends beyond the expiration of the Term of the Lease, Lessees shall have until December 23, 2045 to complete removal of improvements and restoration of the Leased Lands and 323 Grants premises. In consideration of the foregoing, Lessees shall continue to pay the Lease Payments, Local Community

Involvement Payments and Scholarship Payments until the earlier of (1) the date of completion of removal of improvements and restoration of the Leased Lands and 323 Grants premises, or (2) December 23, 2044.

- D. If Lessees determine that they cannot complete removal and restoration on the Leased Lands and 323 Grants by December 23, 2045, Lessees and the Navajo Nation shall commence good faith negotiations for compensation, to be paid to the Navajo Nation for prospective periods of occupation, use or burden of the Leased Lands and 323 Grants.
- E. Lessees shall provide written notice to the Navajo Nation at least eighteen (18) months prior to the planned start of removal of any transmission facilities (the "Transmission Facility Removal Notice").
1. Within thirty (30) days of receipt of a Transmission Facility Removal Notice, the Navajo Nation may request in writing that Lessees provide the Navajo Nation, at Lessees' sole cost and expense, a Phase I Environmental Site Assessment (the "Phase I ESA") of the affected 323 Grant(s) consistent with ASTM E1527 and U.S. Environmental Protection Agency's All Appropriate Inquiry rule.
 2. Lessees shall provide the Phase I ESA to the Navajo Nation within six (6) months of the Navajo Nation's request to provide a Phase I ESA.
 3. Within six (6) months of the delivery of the Phase I ESA to the Navajo Nation, the Navajo Nation shall provide written notice to Lessees that Lessees (a) should proceed with removal and restoration of the transmission facilities associated with the 323 Grant(s), or (b) should

instead transfer ownership to the Navajo Nation of all or any specifically identified improvements then existing on the right of way associated with the 323 Grants. In the event no notice is given, the Navajo Nation shall be deemed to have notified Lessees to proceed with removal of the transmission facilities and restoration of the property with the 323 Grant(s).

4. If the Navajo Nation provides, or is deemed to have provided, notice to Lessees that removal of the transmission improvements and restoration of the associated 323 Grants is required, Lessees shall complete removal and restoration as set forth in this Section XIV (Removal of Improvements; Restoration).

F. If Lessees are required to conduct post-closure monitoring or similar activities on the Reservation Lands, the Navajo Nation shall provide access to Lessees and their contractors for such activities at no cost to Lessees and their contractors except for nominal administrative processing fees.

G. The provisions of this Section shall survive the expiration or termination of the Lease and 323 Grants.

XV. CONSENT TO GRANTS OF RIGHT-OF-WAY AND EASEMENT

- A. The Navajo Nation hereby provides its consent to the issuance or extension by the Secretary of all 323 Grants required by the Navajo Project and associated facilities, including the transmission system, listed on Exhibits 1 and 2 attached hereto, through December 22, 2044 and as provided in Section XIV (Removal of Improvements; Restoration). The Navajo Nation hereby consents to the inclusion

of the following language in all 323 Grants required by the Navajo Project and associated facilities, including the transmission system in substantially the form stated below:

"All facilities, structures, improvements, equipment and property (other than nonremovable buildings) of whatever kind and nature constructed, placed or affixed by the grantees of the 323 Grants on the granted lands pursuant to rights acquired by the grant of rights-of-way, expressly including but not being limited to the Navajo Generating Station, all facilities and structures used therewith and related thereto, all rail transportation facilities, transmission facilities and the related switchyards therefor (hereinafter called "removable property"), as against the United States, the Secretary, the Navajo Nation and all other parties and persons whomsoever (including without limitation any party acquiring any interest in the granted lands or any interest in or lien, claim or encumbrance against any of such facilities, structures, improvements, equipment and property of whatever kind and nature), shall be deemed to be and remain personal property of the grantees of the 323 Grants, not affixed to the realty, and, subject to Section XIV(E) of the Lease Amendment No. 1, removable by the grantees of the 323 Grant at any time prior to or within twenty-four (24) months after expiration or earlier termination for any reason of the §323 grant. Subject to Section XIV(B) of the Lease Amendment No. 1, the grantees of the 323 Grants may remove, at or prior to twenty-four (24) months following the expiration or earlier termination of the §323 grant, all removable property except as set forth in the Lease and any amendments to the Lease.."

- B. The Navajo Nation agrees to cooperate with Lessees to complete all necessary federal and state environmental reviews and obtain all necessary regulatory approvals, and shall support Lessees and the Navajo Project in any National Environmental Policy Act or other similar impact analysis with the Department of Interior, other federal or state agencies or the Navajo Nation. In no event shall the Navajo Nation take a position with the Department of Interior or other agency that is adverse to Lessees with respect to the approval of this Amendment or the issuance of the listed 323 Grants. The foregoing is not intended to preclude the Navajo Nation or any person from participating in or commenting on any necessary environmental reviews.
- C. It is the Parties' intention that the Navajo Project and the Four Corners Project have all 323 Grants necessary to operate in the event one of the plants ceases operation. The Parties acknowledge and consent to the required transfers of then-existing transmission 323 Grants.
- D. The Navajo Nation acknowledges and agrees that the users of the Moenkopi Switchyard shall continue to own and operate those assets for the benefit of either or both the Navajo Southern Transmission System and the Moenkopi – Eldorado Transmission Line even if there is a partial decommissioning of either transmission system or if there is a need to transfer the facilities between such users.
- E. The Navajo Nation hereby consents to the inclusion of terms in the new or renewed 323 Grants required by either the Four Corners Project or the Navajo Project that will provide a right to transfer 323 Grants or facilities listed in Section

XV(E)(1) and XV(E)(2) below between the Participants and the participants in the Four Corners Project ("Four Corners Participants") without further approval by either the Secretary or the Navajo Nation in the following instances:

1. In the event the Four Corners Project permanently ceases to operate and the Navajo Project continues to operate, the Navajo Nation agrees that the Four Corners Participants may transfer to the Participants all of the facilities in the Moenkopi Switchyard and the portion of the 500 kV Eldorado transmission line west from the Moenkopi Switchyard to the western boundary of the Navajo Nation (the "Moenkopi-Eldorado Transmission Line"), notwithstanding any provision otherwise in Amendment and Supplement No. 2 and Amendment and Supplement No. 3 to Supplemental and Additional Indenture of Lease between the Navajo Nation and the Four Corners Participants (the "Four Corners Lease Amendment"). Upon transfer of the Moenkopi Switchyard and Moenkopi-Eldorado Transmission Line facilities, as provided in this Section, the Lease Payment will be adjusted upward by an amount equal to \$1,600.00 per acre escalated according to Section VIII(C) (Payment Escalation) multiplied by the number of acres included in the 323 Grants for the Moenkopi Switchyard and the Moenkopi-Eldorado Transmission Line set forth in Exhibit 2 attached hereto.
2. In the event the Navajo Project permanently ceases to operate and the Four Corners Project continues to operate, the Participants in the Navajo Project, upon agreement by the Four Corners Participants to grant access

to the Navajo Nation to such 323 Grants and facilities on the 323 Grant according to applicable FERC rules then in effect, may transfer the 323 Grant and facilities for the Navajo Southern Transmission System from one mile east of the Moenkopi Switchyard to the southern border of the Navajo Nation to the Four Corners Participants. The 323 Grant shall expire on July 6, 2041 or upon the Four Corners Project permanently ceasing operations, whichever occurs earlier. The 323 Grant for this portion of the line will include a condition that any transfer of the 323 Grant to the Four Corners Participants will include an annual payment of \$1600 per acre escalated according to Section VIII (Payment Escalation) multiplied by the number of acres included in the 323 Grants for the Navajo Southern Transmission System from one mile east of the Moenkopi Switchyard to the southern border of the Navajo Nation.

3. Upon expiration of the 323 Grants transferred between the Four Corners Participants and the Participants pursuant to Sections XV(E)(1) and XV(E)(2) above, the removal of improvements or transfer of facilities located within the 323 Grants shall occur in conformity with the applicable lease, as amended, for the last operating plant (either NGS or Four Corners Project) and the then-applicable 323 Grant.
4. In consideration for the Navajo Nation's consent to the terms and conditions of this Section XV, the Navajo Nation shall have the right, subject to applicable FERC rules then in effect, to access the lines and switchyard(s) located on any 323 Grant that is transferred as a result of

this Section, and which are associated with the Navajo Project for the purpose of transmitting electricity generated from projects sited on Navajo Nation lands or projects in which the Navajo Nation has an ownership interest.

XVI. LOCAL COMMUNITY INVOLVEMENT

- A. Upon the execution of this Amendment by the Non-U.S. Participants, a fund (the "Chapter Fund") shall be created and administered by Lessees for the benefit of the NGS Community Chapters. Upon execution of this Amendment by the Navajo Nation, 75.7% of two percent (2%) of nine million dollars (\$9,000,000.00) (which is \$136,260.00) shall begin to accrue during the Lease Payment Accrual Period. The accrued proceeds shall be escalated according to Section VIII(B) (Payment Escalation) and paid into the Chapter Fund within thirty (30) days after the date that the Navajo Nation and all Non-U.S. Participants execute this Amendment. Notwithstanding anything contained herein to the contrary, if this Amendment is not approved and executed by all of the Non-U.S. Participants on or before December 23, 2018, then no accrued Non-U.S. Participant portion of the Lease Payments intended for the Chapter Fund shall be due and owing by the Non-U.S. Participants to the Navajo Nation.
- B. After the Navajo Nation and all Non-U.S. Participants have executed this Amendment, SRP shall pay an amount equal to 75.7% of two percent (2%) of the then current Lease Payment into the Chapter Fund each Lease Year at the time of payment of the Lease Payment until the earlier of: (1) December 23, 2018; or (2) the Effective Date.

- C. If and when SRP pays the Remaining Signing Payment amount described in Section VII (United States Signing Payment) that portion of the payment that is attributable to the Chapter Fund for periods prior to the Effective Date shall be paid into the Chapter Fund. If and when the Effective Date occurs, SRP shall pay an amount equal to two percent (2%) of the then current Lease Payment into the Chapter Fund each Lease Year at the time of payment of the Lease Payment until termination of the Lease and compliance with Section XIV (Removal of Improvements; Restoration) by the Lessees.

XVII. SCHOLARSHIP

- A. Upon the execution of this Amendment by the Non-U.S. Participants, a fund (the "Scholarship Fund") shall be created and administered in cooperation with Lessees by the Office of Navajo Nation Scholarship and Financial Assistance for the use of awarding scholarships and financial assistance to eligible applicants ("Navajo Generating Station Scholarships"). Upon execution of this Amendment by the Navajo Nation, 75.7% of 2.78% of nine million dollars (\$9,000,000.00) (which is \$189,401.40) shall begin to accrue during the Lease Payment Accrual Period. The accrued proceeds shall be escalated according to Section VIII(B) (Payment Escalation) and paid into the Scholarship Fund within thirty (30) days after the date that the Navajo Nation and all Non-U.S. Participants execute this Amendment. Notwithstanding anything contained herein to the contrary, if this Amendment is not approved and executed by all of the Non-U.S. Participants on or before December 23, 2018, then no accrued Non-U.S. Participant portion of the

Lease Payments intended for the Scholarship Fund shall be due and owing by the Non-U.S. Participants to the Navajo Nation.

- B. After the Navajo Nation and all Non-U.S. Participants have executed this Amendment, SRP shall pay an amount equal to 75.7% of 2.78% of the then current Lease Payment into the Scholarship Fund each Lease Year at the time of payment of the Lease Payment until the earlier of: (1) December 23, 2018; or (2) the Effective Date.
- C. If and when SRP pays the Remaining Signing Payment amount described in Section VII (United States Signing Payment), that portion of the payment that is attributable to the Scholarship Fund for periods prior to the Effective Date shall be paid into the Scholarship Fund.
- D. If and when the Effective Date occurs, SRP shall pay an amount equal to 2.78% of the then current Lease Payment into the Chapter Fund each Lease Year at the time of payment of the Lease Payment until the termination of the Lease and compliance with Section XIV (Removal of Improvements; Restoration) by the Lessees.
- E. The amounts paid into the Scholarship Fund pursuant to this Section are in addition to the scholarship amounts paid by NGS through Peabody Western Coal Company.

XVIII. NO THIRD PARTY BENEFICIARIES

No Persons other than the Parties and the successors and assigns of such Parties, shall have any rights, privileges, waivers, obligations or remedies whatsoever under the Lease or this Amendment.

XIX. APPROVAL UNDER 25 USC §415(a)

The Parties acknowledge and agree that this Amendment shall not be effective until approved by the Secretary in accordance with Title 25, United States Code Section 415(a).

XX. COUNTERPARTS

This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

XXI. EFFECT OF AMENDMENT

Except as specifically modified by this Amendment, all of the terms and conditions of the Lease remain in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall govern and control.

XXII. INCORPORATION OF PRIOR AGREEMENTS

This Amendment and the Lease contain the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

XXIII. MODIFICATION OF AMENDMENT

This Amendment may not be modified, nor may any right or obligation hereunder be waived orally, and no such amendment or modification shall be effective for any purpose unless it is in writing and signed by all Parties and approved as required by the United States.

XXIV. SEVERABILITY OF PROVISIONS

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of such law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be invalid, then

such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

XXV. AUTHORITY

All Non-U.S. Participants (excluding SRP on behalf of the U.S. prior to receipt of Secretary Approval) have the legal authority to, and are not prohibited by law, from executing this Amendment; provided, however, that the effectiveness of this Amendment shall be subject to Secretary Approval and the provisions of Section X (Revocation of Amendment).

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be signed in their behalf by their duly authorized officers as of the date first above set out.

THE NAVAJO NATION

By: _____
Name: _____
Title: _____

ARIZONA PUBLIC SERVICE COMPANY

Attest: _____
Title: _____

By: _____
Name: _____
Title: _____

DEPARTMENT OF WATER AND POWER OF
THE CITY OF LOS ANGELES

By: The Board of Water and Power Commissioners

Attest: _____
Title: _____

By: _____
Name: _____
Title: _____

NV ENERGY

Attest: _____
Title: _____

By: _____
Name: _____
Title: _____

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND
POWER DISTRICT,
FOR THE USE AND BENEFIT OF SRP

Attest: _____
Title: _____

By: _____
Name: _____
Title: _____

TUCSON ELECTRIC POWER
COMPANY

Attest: _____
Title: _____

By: _____
Name: _____
Title: _____

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

Attest: _____
Title: _____

By: _____
Name: _____
Title: _____

Approval of this Amendment is hereby given pursuant to Title 25, United States Code Section 415(a) and consent is hereby given to SRP to execute the Amendment for the use and benefit of the United States:

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENTS

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, the _____ of the Navajo Tribal Council of The Navajo Nation, on behalf of The Navajo Nation.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
_____, by _____, the _____ of the
ARIZONA PUBLIC SERVICE COMPANY, a corporation, on behalf of said corporation.

Notary Public

My commission expires:

STATE OF CALIFORNIA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
_____, by _____, the _____ of THE
BOARD OF WATER & POWER COMMISSION OF THE DEPARTMENT OF WATER AND
POWER OF THE CITY OF LOS ANGELES, a department organized and existing under the
Charter of the City of Los Angeles, a municipal corporation of the State of California, on behalf
of said corporation.

Notary Public

My commission expires:

STATE OF NEVADA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
_____, by _____, the _____ of NV
ENERGY, a Nevada corporation, on behalf of said corporation.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, the _____ of the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Arizona agricultural improvement district, on behalf of said district.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, the _____ of the TUCSON ELECTRIC POWER COMPANY, an Arizona corporation, on behalf of said corporation.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
_____, by _____, the _____ of the
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an
Arizona agricultural improvement district, on for the use and benefit of the United States.

Notary Public

My commission expires:

EXHIBIT 1

323 GRANTS

323 Grant Description	Acres
Plant Site	1,020.13
Ash Disposal Site	764.87
Road between Plant site and Ash Disposal	30.19
Lake Pump Station	4.47
Road between Pump Station and N228	3.13
Piping and Road between Plant and Lake Pump	40.06
Power Line to Lake Pump	9.06
Coal conveyor from mine to Loading station	66.32
Coal Loading station near the Mine	99.88
Railroad Path	1,520.47
Western Transmission System	41.22
Southern Transmission System	3,862.579
230KV Tie Line	1.0239
Preston Mesa Communications Site	0.22
Zilnez Mesa Communication Site	2.37
Total	7,466*
* Note: The Lease Payment of \$9,000,000.00 per Lease Year is for the entire Navajo Project, and includes 323 Grants for up to and including 7,472 acres.	

EXHIBIT 2

Moenkopi-Eldorado Switchyard and Transmission Line 323 Grants

ROW Description	Acres
Moenkopi Switchyard*	25
Moenkopi – Eldorado Transmission Line*	327.27
Total	352.27

*Payment for these 323 Grants will not begin until the Four Corners Participants transfer the facilities on these 323 Grants to the NGS Participants and will be made in accordance with Section XV(E)(a). (Consent to Grants of Right-Of-Way and Easement).

EXHIBIT 3

United States Remainder Signing Payment

Upon the Effective Date of the Amendment, SRP shall pay the Navajo Nation the Initial Signing Payment (which is \$1,000,000.00) escalated according to Section VIII (Payment Escalation). The Remainder Signing Payment will be escalated and paid as soon as possible but no later than 18 months after the Effective Date. SRP and the Navajo Nation will collaborate with the USBR and the CAWCD on efforts to minimize the time needed to make the Remainder Signing Payment.

See Exhibit 3-(cont.) for an example of the escalation calculation of the Remainder Signing Payment.

(Only the amount listed below the date of Navajo Nation approval and across from the Effective Date is paid. The amounts shown are not additive and are not escalated)

Effective Date		Date Approved by Navajo Nation						
		Jan-Feb 2013	Mar-Apr 2013	May-Jul 2013	Aug-Oct 2013	Nov-Dec 2013	Jan 2014	Feb-Apr 2014
Dec 24 2015 - Jan 2016	Remainder Signing Pmt	\$ 15,068,821	\$ 14,825,821	\$ 13,037,494	\$ 11,858,969	\$ 10,680,444	\$ 7,984,673	\$ 7,374,871
	Addl Pmts (25%)	\$ 6,560,626	\$ 6,560,626	\$ 5,341,022	\$ 4,731,220	\$ 4,121,418	\$ 4,121,418	\$ 3,511,615
	Lse Pmts (100%)	\$ 8,508,194	\$ 8,265,194	\$ 7,696,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
Feb - Apr 2016	Remainder Signing Pmt	\$ 15,678,623	\$ 15,435,623	\$ 13,647,296	\$ 12,468,771	\$ 11,290,247	\$ 8,594,476	\$ 7,984,673
	Addl Pmts (25%)	\$ 7,170,428	\$ 7,170,428	\$ 5,950,824	\$ 5,341,022	\$ 4,731,220	\$ 4,731,220	\$ 4,121,418
	Lse Pmts (100%)	\$ 8,508,194	\$ 8,265,194	\$ 7,696,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
May - Jul 2016	Remainder Signing Pmt	\$ 16,288,425	\$ 16,045,425	\$ 14,257,098	\$ 13,078,573	\$ 11,900,049	\$ 9,204,278	\$ 8,594,476
	Addl Pmts (25%)	\$ 7,780,231	\$ 7,780,231	\$ 6,560,626	\$ 5,950,824	\$ 5,341,022	\$ 5,341,022	\$ 4,731,220
	Lse Pmts (100%)	\$ 8,508,194	\$ 8,265,194	\$ 7,696,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
Aug - Oct 2016	Remainder Signing Pmt	\$ 16,898,227	\$ 16,655,227	\$ 14,866,900	\$ 13,688,376	\$ 12,509,851	\$ 9,814,080	\$ 9,204,278
	Addl Pmts (25%)	\$ 8,390,033	\$ 8,390,033	\$ 7,170,428	\$ 6,560,626	\$ 5,950,824	\$ 5,950,824	\$ 5,341,022
	Lse Pmts (100%)	\$ 8,508,194	\$ 8,265,194	\$ 7,696,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
Nov - Dec 23 2016	Remainder Signing Pmt	\$ 17,508,029	\$ 17,265,029	\$ 15,476,702	\$ 14,298,178	\$ 13,119,653	\$ 10,423,882	\$ 9,814,080
	Addl Pmts (25%)	\$ 8,999,835	\$ 8,999,835	\$ 7,780,231	\$ 7,170,428	\$ 6,560,626	\$ 6,560,626	\$ 5,950,824
	Lse Pmts (100%)	\$ 8,508,194	\$ 8,265,194	\$ 7,696,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
Dec 24 2016 - Jan 2017	Remainder Signing Pmt	\$ 19,635,078	\$ 19,392,078	\$ 17,603,751	\$ 16,425,226	\$ 15,246,702	\$ 12,550,931	\$ 11,941,129
	Addl Pmts (25%)	\$ 8,999,835	\$ 8,999,835	\$ 7,780,231	\$ 7,170,428	\$ 6,560,626	\$ 6,560,626	\$ 5,950,824
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,392,243	\$ 9,823,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
Feb - Apr 2017	Remainder Signing Pmt	\$ 20,244,880	\$ 20,001,880	\$ 18,213,553	\$ 17,035,029	\$ 15,856,504	\$ 13,160,733	\$ 12,550,931
	Addl Pmts (25%)	\$ 9,609,637	\$ 9,609,637	\$ 8,390,033	\$ 7,780,231	\$ 7,170,428	\$ 7,170,428	\$ 6,560,626
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,392,243	\$ 9,823,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
May - Jul 2017	Remainder Signing Pmt	\$ 20,854,682	\$ 20,611,682	\$ 18,823,355	\$ 17,644,831	\$ 16,466,306	\$ 13,770,535	\$ 13,160,733
	Addl Pmts (25%)	\$ 10,219,439	\$ 10,219,439	\$ 8,999,835	\$ 8,390,033	\$ 7,780,231	\$ 7,780,231	\$ 7,170,428
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,392,243	\$ 9,823,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
Aug - Oct 2017	Remainder Signing Pmt	\$ 21,464,484	\$ 21,221,484	\$ 19,433,158	\$ 18,254,633	\$ 17,076,108	\$ 14,380,337	\$ 13,770,535
	Addl Pmts (25%)	\$ 10,829,242	\$ 10,829,242	\$ 9,609,637	\$ 8,999,835	\$ 8,390,033	\$ 8,390,033	\$ 7,780,231
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,392,243	\$ 9,823,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
Nov - Dec 23 2017	Remainder Signing Pmt	\$ 22,074,287	\$ 21,831,287	\$ 20,042,960	\$ 18,864,435	\$ 17,685,911	\$ 14,990,140	\$ 14,380,337
	Addl Pmts (25%)	\$ 11,439,044	\$ 11,439,044	\$ 10,219,439	\$ 9,609,637	\$ 8,999,835	\$ 8,999,835	\$ 8,390,033
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,392,243	\$ 9,823,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
Dec 24 2017 - Jan 2018	Remainder Signing Pmt	\$ 24,201,335	\$ 23,958,335	\$ 22,170,008	\$ 20,991,484	\$ 19,812,959	\$ 17,117,188	\$ 16,507,386
	Addl Pmts (25%)	\$ 11,439,044	\$ 11,439,044	\$ 10,219,439	\$ 9,609,637	\$ 8,999,835	\$ 8,999,835	\$ 8,390,033
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,519,291	\$ 11,950,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353
Feb - Apr 2018	Remainder Signing Pmt	\$ 24,811,137	\$ 24,568,137	\$ 22,779,811	\$ 21,601,286	\$ 20,422,761	\$ 17,726,990	\$ 17,117,188
	Addl Pmts (25%)	\$ 12,048,846	\$ 12,048,846	\$ 10,829,242	\$ 10,219,439	\$ 9,609,637	\$ 9,609,637	\$ 8,999,835
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,519,291	\$ 11,950,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353
May - Jul 2018	Remainder Signing Pmt	\$ 25,420,940	\$ 25,177,940	\$ 23,389,613	\$ 22,211,088	\$ 21,032,563	\$ 18,336,792	\$ 17,726,990
	Addl Pmts (25%)	\$ 12,658,648	\$ 12,658,648	\$ 11,439,044	\$ 10,829,242	\$ 10,219,439	\$ 10,219,439	\$ 9,609,637
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,519,291	\$ 11,950,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353
Aug - Oct 2018	Remainder Signing Pmt	\$ 26,030,742	\$ 25,787,742	\$ 23,999,415	\$ 22,820,890	\$ 21,642,366	\$ 18,946,595	\$ 18,336,792
	Addl Pmts (25%)	\$ 13,268,450	\$ 13,268,450	\$ 12,048,846	\$ 11,439,044	\$ 10,829,242	\$ 10,829,242	\$ 10,219,439
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,519,291	\$ 11,950,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353
Nov - Dec 23 2018	Remainder Signing Pmt	\$ 26,640,544	\$ 26,397,544	\$ 24,609,217	\$ 23,430,693	\$ 22,252,168	\$ 19,556,397	\$ 18,946,595
	Addl Pmts (25%)	\$ 13,878,253	\$ 13,878,253	\$ 12,658,648	\$ 12,048,846	\$ 11,439,044	\$ 11,439,044	\$ 10,829,242
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,519,291	\$ 11,950,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353

EXHIBIT 3-(cont.) Remainder Signing Payment escalation calculation example

Assumptions:

Navajo Nation execution of Amendment occurs on June 15, 2013
Effective Date is September 15, 2017

Then:

The proper set of numbers to use to calculate the escalated Remainder Signing Payment is found by going across the top of the chart in Exhibit 3 to the column with the heading:

May-Jul 2013

Then go down the first column in Exhibit 3 until the rows that say:

Aug - Oct 2017	Remainder Signing Pmt
	Addl Pmts (25%)
	Lse Pmts (100%)

The intersection of this column and these rows contain the following values:

\$ 19,433,158
\$ 9,609,637
\$ 9,823,520

This means that the total un-escalated Remainder Signing Payment for the conditions in the assumptions above is \$19,433,158. Of this total, \$9,609,637 is to be escalated as provided in Section VIII.E.1 and \$9,823,520 is to be escalated as provided in Section VIII.E.2.

Additional Assumptions:

CPI for October 2011 = 226.421
CPI for October 2017 = 266
CPI For October 2018= 275
EF = 275/226.421 = 1.215
EF-1 = 0.215

The Remainder Signing Payment is to be paid within 18 months of the Effective Date. Under the assumptions above, the Remainder Signing Payment will be due by March 15, 2019. If it is paid on March 15, 2019, the Remainder Signing Payment would be:

$$\begin{aligned}
 \text{Total} &= [9609637(1+.25(\text{EF}-1))] &+& [(9823520)(\text{EF})] \\
 &= [9609637(1+.25(.215))] &+& [(9823520)(1.215)] \\
 &= [9609637(1+.05375)] &+& [11935576] \\
 &= [10126154] &+& 11935576 \\
 &= \$22,061,730
 \end{aligned}$$

The portion of the Remainder Signing Payment that would be payable to the Community Fund is:

$$\begin{aligned}
 \text{Comm. Fund Amt} &= (.02/(1+.02+.0278))\$ 11935576 \\
 &= (.02/1.0478)\$ 11935576
 \end{aligned}$$

$$=.019(\$11935576)$$

$$=\$227,821.50$$

The portion of the Remainder Signing Payment that would be payable to the Scholarship Fund is:

$$\text{Sch. Fund Amt} = (.0278/1.0478)(\$11935576)$$

$$=.0265(\$11935576)$$

$$=\$316,671.12$$

The portion of the Remainder Signing Payment that would be payable against the Lease would be:

$$\text{Lease Amt} = \$11,935,576 - \$227,821.50 - \$316,671.12 - \$-$$

$$= \$11,391,083.38$$

If the Remainder Signing Payment was made earlier than 18 months following the Effective Date such that the October, 2018 CPI is not available, but the October, 2017 CPI is available, then the Remainder Signing Payment would be calculated using:

$$\text{EF} = 266/226.421 = 1.175 \text{ and } \text{EF}-1 = .175$$

EXHIBIT 4

Escalation Calculation Examples

The following calculations are examples of how Payments are escalated in accordance with Section VIII. In the event of a conflict Section VIII governs.

These are the base assumptions for all the examples below:

NN approval on February 15, 2013

Non-U.S. Participants Approval April 10, 2014

Oct. 2011 CPI (BI) = 226.421 (actual)

Oct. 2013 CPI (EI) = 233.211 (assumed)

Oct. 2014 CPI (EI) = 235.111 (assumed)

Accrual Period Escalation

Based on the above assumptions, the accrual amount will be paid before May 9, 2014. Therefore, the Extension Index that should be used is the October 2013 CPI value of 233.211 (assumed)

Accrued Lease Payments

= \$6,369,090 for Dec 23, 2012

= \$6,369,090 for Dec 23, 2013

Total accrual lease Payments = \$12,738,180

Escalated Value = (accrued amount)(EF) where $EF = EI/BI$

Escalated Value = $\$12,738,180(233.211/226.421)$

= \$13,120,177.44

Accrued Community Payments

= \$9,000,000(.757)(0.02)

= \$136,260 for Dec 23, 2012 and also for Dec. 23, 2013

Total Accrued Community Payments $\$136,260 + \$136,260 = \$272,520$

Escalated Value = (accrued amount)(EF) where $EF = EI/BI$

Escalated Value = $\$272,520(233.211/226.421)$

= \$280,692.43

Accrued Scholarship Payments

= \$9,000,000(.757)(0.0278)

= \$189,401.40 for Dec 23, 2012 and also for Dec. 23, 2013

Total Accrued Scholarship Payments $\$189,401.40 + \$189,401.40 = \$378,802.80$

Escalated Value = (accrued amount)(EF) where $EF = EI/BI$

Escalated Value = $\$378,802.80(233.211/226.421)$

= \$390,162.48

Accrued Additional Payments

= \$1,899,672 for Jan/2013, Apr/2013, Jul/2013, Oct/2013, Jan/2014

= \$1,899,672(5)

Total Accrued Additional Payments = \$9,498,360

Escalated Value = (accrued amount) $(1+.25(EF-1))$ where $EF = EI/BI$

$$\begin{aligned}
\text{Escalated Value} &= \$9,498,360(1+.25(EF-1)) \\
&= \$9,498,360(1+.25((233.211/226.421)-1)) \\
&= \$9,498,360(1+.25(1.03-1)) \\
&= \$9,498,360(1+0.075) \\
&= \$10,210,737
\end{aligned}$$

$$\begin{aligned}
\text{Total Accrued Payment due to the Navajo Nation by May 9, 2014} \\
&= \$13,120,177.44 + \$280,692.43 + \$390,162.48 + \$10,210,737 \\
&= \$24,001,769.35
\end{aligned}$$

Lease Payment following execution by the Navajo Nation and all Non-U.S. Participants

Non-U.S. Participants Lease Payment due on December 23, 2014

$$\begin{aligned}
\text{Escalated Value} &= \$6,829,648.84(EF) \text{ where } EF=EI/BI \\
&= \$6,829,648.84(EF) \\
&= \$6,829,648.84(235.111/226.421) \\
&= \$6,829,648.84(1.038) \\
&= \$7,091,769.62
\end{aligned}$$

Additional Payment following execution by the Navajo Nation and all Non-U.S. Participants

Non-U.S. Participants Additional Payment due on April 30, 2014, July 31, 2014, October 31, 2014

$$\begin{aligned}
&= \$1,899,672 (1+.25(EF-1)) \text{ where } EF=EI/BI \\
&= \$1,899,672(1+.25(233.211/226.421)-1)) \\
&= \$1,899,672(1+.25(1.03-1)) \\
&= \$1,899,672(1+.25(0.03)) \\
&= \$1,899,672(1+.0075) \\
&= \$1,899,672(1.0075) \\
&= \$1,913,919.54
\end{aligned}$$

John J. Egbert - 011469

johnnegbert@jsslaw.com

Paul G. Johnson – 010309

pjohnson@jsslaw.com

JENNINGS, STROUSS & SALMON, P.L.C.

A Professional Limited Liability Company

The Collier Center, 11th Floor

201 East Washington Street

Phoenix, Arizona 85004-2385

Telephone: (602) 262-5911

Attorneys for Plaintiff Salt River Project
Agricultural Improvement and Power District

Lisa M. Coulter - 010199

lcoulter@swlaw.com

SNELL & WILMER, LLP

One Arizona Center

400 E. Van Buren

Phoenix, Arizona 85004-2202

Telephone: (602) 382-6000

Attorneys for Plaintiff Headwaters Resources,
Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT, a municipal
corporation and political subdivision of the
State of Arizona, HEADWATERS
RESOURCES, INC., a Utah corporation;

Plaintiffs,

vs.

REYNOLD R. LEE, CASEY
WATCHMAN, WOODY LEE,
PETERSON YAZZIE, EVELYN
MEADOWS, HONORABLE HERB
YAZZIE, HONORABLE LORENE B.
FERGUSON, HONORABLE CATHY
BEGAY, LEONARD THINN and SARAH
GONNIE,

Defendants.

No. CV 08-8028-PCT-

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

**(Evidentiary Hearing and/or Oral
Argument Requested)**

1 Plaintiffs Salt River Project Agricultural Improvement and Power District ("SRP")
 2 and Headwaters Resources, Inc. ("Headwaters") hereby move the Court to grant a
 3 preliminary injunction pursuant to Rule 65, Fed. R. Civ. P., in Plaintiffs' favor, enjoining
 4 certain tribal officials of the Navajo Nation from proceeding in excess of their
 5 jurisdiction and contrary to law, and to restrain two employee/plaintiffs from proceeding
 6 under Navajo jurisdiction. The purpose of the requested preliminary injunction is to
 7 protect Plaintiffs from unlawful and unauthorized assertions of tribal jurisdiction and
 8 regulation until Plaintiffs obtain permanent relief through either the dispute resolution
 9 procedures provided in a lease with the Navajo Nation, or this Court's determination of
 10 this action on the merits. This Motion is supported by the attached Memorandum and
 11 declarations, the Appendix of exhibits attached hereto and the Verified Complaint in this
 12 action.
 13
 14
 15

16 DATED this 3rd day of March, 2008.

17 JENNINGS, STROUSS & SALMON, P.L.C.

18 By s/John J. Egbert
 19 John J. Egbert
 20 Paul G. Johnson
 21 The Collier Center, 11th Floor
 22 201 East Washington Street
 23 Phoenix, Arizona 85004-2385
 24 Attorneys for Plaintiff SRP

25 SNELL & WILMER, LLP

26 By s/Lisa M. Coulter (with permission)
 Lisa M. Coulter
 One Arizona Center
 400 East Van Buren
 Phoenix, Arizona 85004-2202
 Attorneys for Plaintiff Headwaters

I. PRELIMINARY STATEMENT

SRP and Headwaters have filed this action to obtain a ruling that any employment actions or grievances by present or former employees at NGS are not subject to adjudication or other forms of regulation by the Office of Navajo Labor Relations (“ONLR”), the Navajo Nation Labor Commission (“NNLC”) or the Navajo Nation Supreme Court (“NNSC”). The immediate need for a preliminary injunction arises because the NNLC has scheduled two hearings in early April, 2008 (at the direction of the NNSC) to consider the employment complaints of Leonard Thinn (“Thinn”), a former employee of SRP at NGS, and Sarah Gonnies, a former employee of Headwaters at NGS.

3

1 Plaintiffs have exhausted all tribal procedures as to the jurisdictional issue, because
2 Plaintiffs are in the process of pursuing the alternative dispute remedies specified in the
3 lease, and because Plaintiffs otherwise meet the standards, a preliminary injunction
4 should be issued to maintain the status quo until the jurisdictional issue is resolved
5 through either the alternative dispute resolution procedures or the decision of this Court.
6

7 Specifically, Plaintiffs request a preliminary injunction prohibiting Defendants,
8 during the term of the 1969 Lease (defined below) and except as provided in the 1969
9 Lease, from (1) commencing, prosecuting, maintaining or considering any tribal
10 proceedings against SRP, the other Participants, and/or their contractors (including
11 Headwaters), seeking to regulate the operation of NGS related to employment relations;
12 (2) applying the Navajo Preference in Employment Act against SRP, the other
13 Participants, and/or their contractors (including Headwaters) with respect to the operation
14 of NGS; (3) regulating or attempting to regulate, directly or indirectly, the operation of
15 NGS by SRP, the other Participants, and/or their contractors (including Headwaters),
16 related to employment relations at NGS.
17
18

19 **II. FACTS**

20 **A. The 1969 Lease and § 323 Grant**

21 In 1969, SRP and the other Participants entered into a lease with the Navajo
22 Nation for the construction and operation of NGS on Navajo reservation lands (“the 1969
23 Lease,” attached as Appendix Exhibit 1). In addition to the payment of rents, the
24 Participants also agreed “to give preference in employment to local Navajos” to help
25
26

1 reduce the extremely high rates of unemployment that plagued the reservation. (Ex. 1 at
 2 § 18). In return, the Navajo Nation (among other things) expressly renounced and
 3 waived regulatory authority over NGS, except as expressly provided in the 1969 Lease:
 4

5 Operation of Navajo Generation Station. The Tribe
 6 covenants that, other than as expressly set out in this Lease, **it**
 7 **will not directly or indirectly regulate or attempt to**
 8 **regulate the Lessees in the construction, maintenance or**
 9 **operation of the Navajo Generation Station** and the
 10 transmission systems of the Lessees, or the construction,
 11 maintenance or operation of the fuel transportation system of
 12 the Lessees or the Fuel Transporter. This covenant shall not
 be deemed a waiver of whatever rights the Tribe may have to
 regulate retail distribution of electricity on the Reservation
 Lands. Nothing herein shall convey to the Lessees, or any of
 them, any rights to engage in retail distribution of electricity
 on Reservation Lands.

13 (Ex. 1 at § 16 (emphasis added)). These and all other rights to which SRP is entitled
 14 under the 1969 Lease also extend to SRP's agents and contractors (such as Headwaters).
 15 (Ex. 1 at § 11). The 1969 Lease was approved by the Secretary. (Ex. 1 at p. 70).
 16

17 In conjunction with the 1969 Lease, the Secretary granted to the Participants
 18 easements and rights-of-way to the leased lands pursuant to 25 U.S.C. § 323 ("the § 323
 19 Grant," attached to Appendix as Exhibit 2). The Secretary determined that the
 20 construction, maintenance and operation of NGS would benefit the Navajo Nation and
 21 would foster the development of resources of the Navajo reservation, and made the § 323
 22 Grant to induce the Participants to proceed with the development of NGS. (Ex. 2 at p. 3).
 23 The § 323 Grant gave to the Participants the rights of "quiet enjoyment and peaceful and
 24 exclusive possession of the Granted Lands." (Ex. 2 at § 21). In reliance on the 1969
 25
 26

1 Lease and the § 323 Grant, SRP and the other Participants have invested in excess of \$1.1
2 billion in the construction of NGS. Moreover, the Participants have fully complied with
3 their obligations under the 1969 Lease.
4

5 **B. The Navajo Preference in Employment Act**

6 In 1985, the Navajo Nation enacted an ordinance entitled the Navajo Preference in
7 Employment Act (“NPEA”) which, among other things, purports to require all employers
8 doing business on or near the Navajo reservation to give certain preferences in
9 employment to Navajos, pay a “prevailing wage” established by the ONLR, and not
10 terminate an employment relationship “without cause.” The NPEA authorizes the ONLR
11 to investigate complaints. It also authorizes the NNLC to conduct hearings on complaints
12 and, if it finds a violation of NPEA, issue remedial orders which may include orders of
13 back pay, reinstatement, directed hiring, displacement of non-Navajo employees,
14 injunctive relief and civil fines.
15
16

17 Shortly after NPEA was enacted, disputes arose between the Navajo Nation and
18 SRP as to whether NPEA applied to SRP. SRP has consistently asserted that ONLR and
19 NNLC lack jurisdiction to enforce NPEA at NGS. However, without waiving any rights
20 to assert their respective positions, the Navajo Nation and SRP were able to avoid for
21 many years legal disputes on this issue by cooperatively developing a preference plan
22 which SRP adopted in 1987. (See Appendix Exhibits 3-5).
23

24 **C. The Thinn and Gonnie Claims**

25 On December 2, 2004, Leonard Thinn, a former SRP employee at NGS who is
26

1 Navajo, filed a charge with the ONLR, alleging SRP's termination of his employment
2 violated NPEA. The ONLR determined there was probable cause to believe SRP had
3 violated NPEA and issued a Notice of Right to Sue to Thinn. Thinn then filed a
4 complaint against SRP with the NNLC. The NNLC granted SRP's motion to dismiss
5 based on the non-regulation provision of the 1969 Lease, and dismissed Thinn's
6 complaint for lack of jurisdiction. (*See* Appendix Exhibit 6).

8 Similarly, on March 2, 2005, Sarah Gonnies, a former employee of Headwaters at
9 NGS who is Navajo, filed a charge with the ONLR, alleging violations of NPEA. The
10 ONLR issued a Notice of Right to Proceed to Gonnies, and she filed a complaint against
11 Headwaters with the NNLC. Headwaters filed a motion to dismiss for lack of
12 jurisdiction, which motion the NNLC also granted. (*See* Appendix Exhibit 7).

14 Thinn and Gonnies then appealed the jurisdictional issue to the NNSC. That court
15 held that NPEA applies to SRP and Headwaters notwithstanding the non-regulation
16 provision of the 1969 Lease. It therefore reversed the NNLC's dismissals and remanded
17 to the NNLC for further proceedings on the merits of the Thinn and Gonnies claims. (*See*
18 Appendix Exhibit 9).

20 On January 25, 2008, the NNLC issued notices of hearing in the Thinn and Gonnies
21 matters for April 8, 2008 and April 2, 2008, respectively. (*See* Appendix Exhibits 10-
22 11). SRP has invoked dispute resolution procedures with the Secretary, under the 1969
23 Lease (*see* Appendix Exhibit 12), and both SRP and Headwaters have moved the NNLC
24 to stay the April hearings in deference to the dispute resolution procedures under the
25
26

1 1969 Lease. (See Appendix Exhibits 13-15). The NNLC denied the motions to stay by
 2 orders dated February 27, 2008. (See Appendix Exhibits 16-17).

3 **III. ARGUMENT - THE COURT SHOULD ISSUE A PRELIMINARY**
 4 **INJUNCTION**

5 SRP, the other Participants, and their contractors (including Headwaters), have a
 6 legitimate interest in protecting their rights contained in the 1969 Lease. The Navajo
 7 Nation properly entered into the 1969 Lease with SRP, and the Navajo Nation has
 8 obtained numerous benefits from the 1969 Lease. The tribal Defendants are now
 9 threatening to take actions in the employment arena that are contrary to the 1969 Lease.
 10 The Court should enjoin the Defendants from taking such actions while Plaintiffs pursue
 11 the alternative dispute remedies provided in the 1969 Lease and, if necessary, while this
 12 Court considers and decides the issues in this action.

13 **A. Standard for Obtaining Preliminary Injunction**

14 Plaintiffs are entitled to a preliminary injunction if they demonstrate “either: (1) a
 15 likelihood of success on the merits and the possibility of irreparable injury; or (2) . . .
 16 serious questions going to the merits . . . and the balance of hardships tips sharply in
 17 [Plaintiffs’] favor.” *Clear Channel Outdoor Inc. v. City of Los Angeles*, 340 F.3d 810,
 18 813 (9th Cir. 2003); *Southwest Voter Registration Education Project v. Shelley*, 344 F.3d
 19 914 (9th Cir. 2003). These two tests are at opposite ends of a continuum, so that the
 20 stronger the likelihood of success on the merits, the less relative hardship to the plaintiff
 21 must be shown. *See Clear Channel*, 340 F.3d at 813; *Southwest Voter*, 344 F.3d at 918.

1 **B. Plaintiffs Have a Strong Likelihood of Prevailing on the Merits**

2 It is now beyond dispute that the issue raised in this litigation -- whether the tribal
3 official defendants have acted or are threatening to act in excess of their lawful juris-
4 diction – is a question of federal law. *National Farmers Union Ins. Cos. v. Crow Tribe*,
5 471 U.S. 845, 852, 105 S. Ct. 2447, 2452 (1985) (“The question whether an Indian tribe
6 retains the power to compel a non-Indian property owner to submit to the civil juris-
7 diction of a tribal court is one that must be answered by reference to federal law and is a
8 ‘federal question’ under [28 U.S.C.] § 1331.”); *Peabody Coal Co. v. Navajo Nation*, 373
9 F.3d 945, 952 (9th Cir. 2004) (“Whether a tribal court may assert jurisdiction over non-
10 Natives is certainly a question of federal law”), *cert. denied* 543 U.S. 1054 (2005).

11 Plaintiffs are clearly likely to prevail on the merits on this issue of federal law
12 because the outcome in this case is controlled by the Ninth Circuit’s decision in *Arizona*
13 *Public Service Co. v. Aspaas*, 77 F.3d 1128 (9th Cir. 1996).¹ *Aspaas* involved a nearly
14 identical non-regulation covenant in a lease between the Navajo Nation and Arizona
15 Public Service Company (“APS”) for the land on which the Four Corners power plant is
16 located. Relying on *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 102 S. Ct. 894
17 (1982), the Ninth Circuit held that the non-regulation covenant was an unmistakable
18 waiver of whatever power the Navajo Nation otherwise would have had to regulate
19 APS’s employment decisions at the plant. *Aspaas*, 77 F.3d at 1135. In so holding,
20
21
22
23
24

25 ¹ The NNLC (*see* Appendix Exhibits 6-7) and even the Navajo Nation Department of
26 Justice (*see* Appendix Exhibit 8) recognized that *Aspaas* is persuasive and governs the
analysis in this case.

1 *Aspaas* rejected the Navajo Nation’s argument that its Tribal Council lacked authority to
2 waive sovereign police power in lease agreements, characterizing that argument as
3 “untenable.” *Id.*

4
5 Furthermore, the United States Supreme Court’s decision in *Montana v. United*
6 *States*, 450 U.S. 544, 101 S. Ct. 1245 (1981), and its progeny – particularly those decided
7 since *Aspaas* – also demonstrate that Plaintiffs are likely to prevail on the merits. In
8 *Montana*, the Supreme Court noted that “through their original incorporation into the
9 United States as well as through specific treaties and statutes, Indian tribes have lost
10 many of the attributes of sovereignty,” *id.* at 563, 101 S. Ct. at 1245, and “concluded that
11 the inherent sovereignty of Indian tribes was limited to ‘their members and their
12 territory’; ‘Exercise of tribal power beyond what is necessary to protect tribal self-
13 government or to control internal relations is inconsistent with the dependent status of the
14 tribes.’” *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 650-51, 121 S. Ct. 1825, 1830
15 (2001) (quoting *Montana*, 490 U.S. at 564, 101 S. Ct. at 1245).

16
17
18 *Montana* established the analytical framework for deciding when a tribe has
19 retained inherent sovereign authority over the activities of nonmembers like SRP and
20 Headwaters. The general rule is that “the inherent sovereign powers of an Indian tribe **do**
21 **not** extend to the activities of nonmembers of the tribe.” *Id.* at 565, 101 S. Ct. at 1258
22 (emphasis added). That general rule applies regardless of whether the activities the tribe
23 seeks to regulate occur on tribal land or non-Indian fee lands, or anything in between.
24
25 *Nevada v. Hicks*, 533 U.S. 353, 359-60, 121 S. Ct. 2304, 2310 (2001) (“the general rule
26

1 of *Montana* applies to both Indian and non-Indian land”); *Strate v. A-I Contractors*, 520
2 U.S. 438, 454, 117 S. Ct. 1404, 1413 (1997) (tribal land for which the federal government
3 granted a right-of-way to the State is “equivalent, for nonmember governance purposes,
4 to alienated, non-Indian land”). *Montana* recognizes only two narrow exceptions to that
5 general rule:
6

7 To be sure, Indian tribes retain inherent sovereign power to
8 exercise some forms of civil jurisdiction over non-Indians on
9 their reservations, even on non-Indian fee lands. [1] A tribe
10 may regulate, through taxation, licensing, or other means, the
11 activities of nonmembers who enter consensual relationships
12 with the tribe or its members, through commercial dealing,
13 contracts, leases, or other arrangements. [2] A tribe may also
14 retain inherent power to exercise civil authority over the
conduct of non-Indians on fee lands within its reservation
when that conduct threatens or has some direct effect on the
political integrity, the economic security, or the health or
welfare of the tribe.

15 *Id.* at 565-66, 101 S. Ct. at 1258 (citations omitted). Neither exception applies here.

16 The *Montana* rule’s first exception recognizes that a non-Indian entity may be
17 subject to some regulation by the tribe as a result of entering into a consensual
18 relationship (such as a lease) with the tribe. However, this exception is limited by the
19 requirement “that the tax or regulation imposed by the Indian tribe have a nexus to the
20 consensual relationship itself.” *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656, 121
21 S. Ct. 1825, 1833 (2001).
22

23 In this case, there is no question that SRP and the other Participants entered into a
24 consensual relationship with the Navajo Nation when they entered into the 1969 Lease.
25 However, that consensual relationship itself expressly provides that the Navajo Nation
26

1 “will not directly or indirectly regulate or attempt to regulate the Lessees in the
2 construction, maintenance or operation” of NGS, “other than as expressly set out in this
3 Lease.” Thus, SRP “cannot be said to have consented” to the Navajo Nation’s regulation
4 of its employment practices at NGS by entering into the 1969 Lease, *see Atkinson*, 532
5 U.S. at 657, 121 S. Ct. at 1834; to the contrary, the Navajo Nation’s covenant not to
6 regulate or even attempt to regulate is an express component of the consensual
7 relationship. Accordingly, the 1969 Lease cannot be the basis for the Navajo Nation to
8 claim additional regulatory authority under *Montana*’s first exception because that very
9 lease disclaims such authority.
10
11

12 The *Montana* rule’s second exception also has no application to this case.

13 Clarifying the limited scope of this exception, the Supreme Court stated:

14 Read in isolation, the *Montana* rule’s second exception
15 can be misperceived. Key to its proper application, however,
16 is the Court’s preface: “Indian tribes retain inherent power to
17 punish tribal offenders, to determine tribal membership, to
18 regulate domestic relations among members, and to prescribe
19 rules of inheritance for members. But a tribe’s inherent
power does not reach beyond what is necessary to protect
tribal self-government or to control internal relations.”

20 *Strate*, 520 U.S. at 459, 117 S. Ct. at 1416 (Court’s internal edits omitted). Addressing
21 this exception, the Court also later clarified: “Tribal assertion of regulatory authority
22 over nonmembers must be connected to th[e] right of the Indians to make their own laws
23 and be governed by them.” *Hicks*, 533 U.S. at 361, 121 S. Ct. at 2311.
24

25 Applying this standard, the court in *MacArthur v. San Juan County*, 497 F.3d 1057
26 (10th Cir. 2007), held that the second exception did not apply to facts very similar to those

1 in this case. The plaintiffs in that case, some of whom were Navajo employees of San
2 Juan Health Services District (“SJHSD”), obtained a preliminary injunction against
3 SJHSD in Navajo tribal court and sought to enforce it in federal court. The Tenth Circuit
4 affirmed the district court’s refusal to enforce the Navajo Court’s injunctive relief
5 because the tribal court lacked adjudicatory authority over SJHSD. Explaining why that
6 case did not fit within the *Montana* rule’s second exception, the court stated:

8 Despite Plaintiffs’ attempts to make more of it, this case
9 essentially boils down to an employment dispute between
10 SJHSD and three of its former employees, two of whom
11 happen to be enrolled members of the Navajo Nation. While
12 the Navajo Nation undoubtedly has an interest in regulating
13 employment relationships between its members and non-
14 Indian employers on the reservation, that interest is not so
15 substantial in this case as to affect the Nation’s right to make
its own laws and be governed by them. . . . The right at issue
in this case is the Navajo Nation’s claimed right to make its
own laws and have *others* be governed by them, not the right
to self-government.

16 *Id.* at 1075 (emphasis in original). Similarly, this case arises not out of efforts by Navajo
17 Nation to govern itself, but out of tribal officials’ efforts to require Plaintiffs to comply
18 with a tribal ordinance, NPEA. Thus, *Montana*’s second exception does not apply.

19 The Supreme Court has also clarified that when the tribe lacks the power to assert
20 a landowner’s right to occupy and exclude others from the land at issue, that “may
21 sometimes be a dispositive factor” also leading to the conclusion that the second
22 exception does not apply. *See Nevada v. Hicks*, 533 U.S. 353, 360, 121 S. Ct. 2304, 2310
23 (2001); *see also Strate*, 520 U.S. at 454, 456, 117 S. Ct. at 1413-14 (by virtue of a
24 federally-granted right-of-way, to which the tribes had consented, the tribes “cannot
25
26

1 assert a landowner's right to occupy and exclude," and therefore the tribal court lack
2 jurisdiction because the portion of highway built on the right-of-way was "equivalent, for
3 nonmember governance purposes, to alienated, non-Indian land"); *South Dakota v.*
4 *Bourland*, 508 U.S. 679, 689, 1138 S. Ct. 2309, 2316-17 (1993) (tribe's loss of "right of
5 absolute and exclusive use and occupation . . . implies the loss of regulatory jurisdiction
6 over the use of the land by others").

7
8 In this case, the § 323 Grant, to which the Navajo Nation consented, expressly
9 gives SRP and the other Participants the rights of "quiet enjoyment and peaceful and
10 exclusive possession" of the lands on which NGS is built. Consequently, regulation of
11 employment decisions at NGS is not necessary to protect tribal self-government or to
12 control internal relations.

13
14 Accordingly, for all the reasons discussed above, Plaintiffs have a very strong
15 likelihood of succeeding on the merits in this case.

16
17 **C. Plaintiffs Will Suffer Irreparable Harm if Defendants Are Not**
18 **Enjoined**

19 As set forth above, Plaintiffs have a strong likelihood of succeeding on the merits.
20 At this stage therefore, Plaintiffs need show only the possibility of irreparable harm.
21 *Clear Channel Outdoor*, 340 F.3d at 813.

22 Plaintiffs are easily able to show the possibility of irreparable harm. If the NNLC
23 hearings concerning the Thinn and Gonnies claims are allowed to proceed, it will destroy
24 Plaintiffs' right to be free from the tribal regulation to which Plaintiffs are entitled under
25 the 1969 Lease and § 323 Grant, and will open the door to regulation of NGS
26

1 employment issues by Navajo authorities. This treat of harm is both significant and
2 unquantifiable. SRP and the other Participants bargained for the right to be free of such
3 regulation, it was granted to them in the 1969 Lease and § 323 Grant, and they have
4 relied on it in constructing and operating NGS. SRP and the other Participants agreed to
5 give preference in employment to Navajos on the condition that they and their contractors
6 would not be subject to having any aspect of the operation of NGS (including, most
7 especially, employment matters) regulated by the Navajo Nation courts or legal system.
8

9
10 Absent injunctive relief, SRP has and will also spend considerable time and
11 resources in defending such actions. Because the Navajo Nation (and even the Tribal
12 Defendants) enjoy sovereign immunity from suit for monetary damages, this harm is
13 necessarily irreparable. *Prairie Bank of Potawatomi Indians v. Pierce*, 253 F.3d 1234,
14 1251 (10th Cir. 2001) (affirming finding of irreparable harm to tribe because of state
15 sovereign immunity); *Wisconsin v. Stockbridge-Munsee Community*, 67 F. Supp. 2d 990,
16 1019-20 (E.D. Wis. 1999) (finding irreparable harm because of tribal sovereign
17 immunity).
18

19 As in *Aspaas*, the Tribal Defendants are proceeding in excess of their jurisdiction,
20 in violation of law, and should be enjoined. Enforcement of NPEA by Navajo officials
21 will have a negative impact on the operations of NGS. When a government official is
22 proceeding in an arbitrary manner, the proper remedy is an injunction. *See U.S. v.*
23 *Central Eureka Mining Co.*, 357 U.S. 155, 166 n.12, 78 S. Ct. 1097, 1103 n.12 (1958);
24 *Seneca-Cayuga Tribe of Oklahoma v. Oklahoma*, 874 F.2d 709, 716 (10th Cir. 1989) (fact
25
26

1 that "...Tribes would be forced to expand time and effort on litigation in a court that does
2 not have jurisdiction over them," supports issuance of preliminary injunction). Because
3 of this, Plaintiffs have and will suffer irreparable injury, and have no adequate remedy at
4 law, unless the injunctive relief they seek is ordered. *Stockbridge-Munsee*, 67 F. Supp.
5 2d at 1020.
6

7 Unless enjoined, there is clearly the possibility that Plaintiffs will be irreparably
8 harmed because the non-regulation clause will be undone, and because the efficient
9 operation of NGS will suffer. In addition, monetary damages are not available because of
10 tribal sovereign immunity.
11

12 **D. The Balance of Hardships Tips in Plaintiffs' Favor**

13 The balance of hardships tips in favor of the Plaintiffs here because of the
14 disruption of the operations of NGS if the Navajo Nation is able to regulate employment
15 matters at NGS. Because Thinn, Gonnies, and any other potential employee/plaintiff
16 would have all of the State and federal rights that any non-Navajo would have in the
17 employment area, there is no hardship to them or to the other Defendants if the
18 bargained-away right of the Navajo Nation to intervene in employment matters at NGS is
19 not available to such employee/plaintiffs. Indeed, NGS has operated for decades without
20 employment relations being subject to Navajo regulations.
21
22

23 **E. The Public Interest Supports Granting Plaintiff Injunctive Relief**

24 Granting a preliminary injunction to Plaintiffs in this matter would serve the
25 public interest. The public has an interest in the sanctity of contract, and in the efficient
26

1 operation of NGS under the terms and conditions agreed to by SRP and the Navajo
2 Nation as set forth in the 1969 Lease, and approved by the Secretary of the Interior. As
3 set forth above, Thinn, Gonnies and any other workers at NGS are not without a remedy.
4 NGS has been operating successfully for decades and has provided many benefits to the
5 public and to the Navajo Nation and its people under the terms of the 1969 Lease. The
6 public interest would suffer if the efficient operations of NGS were undermined.

7
8 **IV. CONCLUSION**

9
10 Plaintiffs are entitled to the preliminary injunction against the Defendants prayed
11 for above and in the Verified Complaint in order to protect Plaintiffs from unlawful
12 assertions of tribal jurisdiction and regulation until Plaintiffs obtain permanent relief
13 through either the dispute resolution procedures provided in the 1969 Lease or this
14 Court's determination of this action on the merits. Accordingly, Plaintiffs request that
15 this Court order the requested injunctive relief, together with all other and further
16 appropriate relief.
17

18 DATED this 3rd day of March, 2008.

19
20 JENNINGS, STROUSS & SALMON, P.L.C.

21 By s/ John J. Egbert

22 John J. Egbert
23 Paul G. Johnson
24 The Collier Center, 11th Floor
25 201 East Washington Street
26 Phoenix, Arizona 85004-2385
Attorneys for Plaintiff SRP

1
2 SNELL & WILMER, LLP

3 By s/Lisa M. Coulter (with permission)

4 Lisa M. Coulter
5 One Arizona Center
6 400 East Van Buren
7 Phoenix, Arizona 85004-2202
8 Attorneys for Plaintiff Headwaters
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Salt River Project Agricultural Improvement
10 and Power District, a municipal corporation
11 and political subdivision of the State of
Arizona, Headwaters Resources, Inc., a Utah
corporation,

12 Plaintiffs,

13 v.

14 Reynold R. Lee, Casey Watchman, Woody
15 Lee, Peterson Yazzie, Evelyn Meadows,
16 Honorable Herb Yazzie, Honorable Louise
G. Grant, Honorable Eleanor Shirley,
Leonard Thinn and Sarah Gonnig,

17 Defendants.

No. CV 08-8028-PCT-JAT

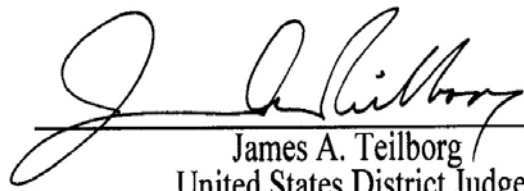
PERMANENT INJUNCTION

18
19 Defendants Reynold R. Lee, Casey Watchmen, Woody Lee, Peterson Yazzie,
20 Evelyn Meadows, Honorable Herb Yazzie, Honorable Louise G. Grant, and Honorable
21 Eleanor Shirley, acting in their official capacities as representatives of the Navajo Nation,
22 are permanently enjoined during the term of the 1969 Lease and except as provided in the
23 1969 Lease, from (1) commencing, prosecuting, maintaining or considering any tribal
24 proceedings against SRP, the other Participants, and/or their contractors (including
25 Headwaters), seeking to regulate the operation of NGS related to employment relations;
26 (2) applying the NPEA against SPR, the other Participants, and/or their contractors

1 (including Headwaters) with respect to the operation of NGS; and (3) regulating or
2 attempting to regulate, directly or indirectly, the operation of NGS by SPR, the other
3 Participants, and/or their contractors (including Headwaters), related to employment
4 relations at NGS.

5 Dated this 28th day of January, 2013.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



James A. Teilborg
United States District Judge