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

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

I. Recitals

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

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

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

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

78 Fed. Reg. at 8,289;

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

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

78 Fed. Reg. at 8276;

Whereas, EPA proposed to exercise “its authority and discretion under section 301(d)(4) of the Clean Air Act, 42 U.S.C. 7601(d)(4), and 40 CFR 49.11(a) to propose an extended timeframe for an alternative measure” under the Proposed BART Rule for NGS. 78 Fed. Reg. at 8289;
C. Whereas, EPA determined in promulgating the TAR that it could exercise discretionary authority to promulgate FIPs based on section 301(a) of the Clean Air Act, which authorizes EPA to prescribe such regulations as are necessary to carry out the Act, and section 301(d)(4), which authorizes EPA to directly administer Clean Air Act provisions for which EPA has determined it is inappropriate or infeasible to treat tribes as identical to states so as to achieve the appropriate purpose. 40 CFR 49.11. See also 63 FR 7265. Specifically, 40 CFR 49.11(a) provides that EPA:

“[s]hall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 30[1](a) and 301(d)(4), if a tribe does not submit a tribal implementation plan or does not receive EPA approval of a submitted tribal implementation plan.”

78 Fed. Reg. at 8276;

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

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

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

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

H. Whereas, certain concerns have been raised about environmental issues in the vicinity of NGS and the KMC;
I. Whereas, the Parties are interested in the outcome resulting from the EPA’s current rulemaking proceeding regarding the BART for NGS;

J. Whereas, the Parties have participated in discussions relating to the Proposed BART Rule in an effort to jointly develop a Reasonable Progress Alternative to BART that the Parties could jointly present to EPA as a new alternative for EPA to publish as a supplemental Proposed BART Rule for public comment as part of the BART rulemaking process;

K. Whereas, on January 4, 2013, Interior, EPA, and DOE issued the Joint Statement (attached as Appendix D) regarding NGS, which stated that “[t]he NGS owners and stakeholders and the Federal Government are working to ensure that the critical roles that NGS currently plays are maintained while [the agencies] continue to take steps to lower emissions from the NGS and its impacts on the people and the landscapes impacts by the plant’s operations”;

L. Whereas, the goals set forth in the Joint Statement are:

“The DOI, DOE, and EPA will work together to support Arizona and tribal stakeholders’ interests in aligning energy infrastructure investments made by the Federal and private owners of the NGS (such as upgrades that may be needed for NGS to comply with Clean Air Act emission requirements) with long term goals of producing clean, affordable and reliable power, affordable and sustainable water supplies, and sustainable economic development, while minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations”; 

M. Whereas, Interior’s participation in this Agreement is a significant step in furtherance of the goals of the Joint Statement. By entering into this Agreement, Interior reiterates and underscores its commitment to continue to work diligently to achieve the goals of the Joint Statement;

N. Whereas, Interior will design the NREL Phase 2 Study for the purpose of studying options for the future of NGS consistent with the goals of the Joint Statement;

O. Whereas, Interior’s participation in this Agreement will further the goals of both (i) President Obama’s March 2011 “Blueprint for a Secure Energy Future,” which states that “[b]y 2035, we will generate 80 percent of our electricity from a diverse set of clean energy sources – including renewable energy sources like wind, solar, biomass, and hydropower; nuclear power; efficient natural gas; and clean coal,” and (ii) President Obama’s June 2013 “Climate Action Plan,” which provides for deploying clean energy and federal government leadership;

P. Whereas, in the Joint Statement, Interior, EPA, and DOE state that they will work with NGS stakeholders to identify and implement shorter term investments that align with long term Low-emitting Energy goals;
Q. Whereas, Interior has initiated the preparation of an EIS addressing the potential impacts that may result from federal actions required to review, renew or revise the Lease, grants of right-of-way and easements, contracts, and permits for NGS. The Lease and grants of right-of-way and easements begin to expire in 2019, and the terms of the Lease Amendment and grants of right-of-way and easement currently are being considered by the relevant parties. Any timely decisions by EPA regarding BART for NGS will be reflected in the assumptions used to evaluate the impacts of the proposed action and alternatives to continued operation of NGS after 2019. In addition, Peabody has submitted to the Interior’s Office of Surface Mining Reclamation and Enforcement a life-of-mine permit revision application for the KMC, which supplies the coal used at NGS. The impacts associated with that application also will be addressed in the EIS;

R. Whereas, the U.S. Congress enacted the Navajo-Hopi Rehabilitation Act of 1950 to “provide facilities, employment, and services essential in combating hunger, disease, poverty, and demoralization among the members of the Navajo and Hopi Tribes, to make available the resources of their reservations for use in promoting a self-supporting economy and self-reliant communities, and to lay a stable foundation on which these Indians can engage in diversified economic activities and ultimately attain standards of living comparable with those enjoyed by other citizens.” The 1950 Act authorized and directed the Secretary of the Interior to develop “a program of basic improvements for the conservation and development of the resources of the Navajo and Hopi Indians, the more productive employment of their manpower, and the supplying of means to be used in their rehabilitation, whether on or off the Navajo and Hopi Indian Reservations”;

S. Whereas, Congress, through the Colorado River Basin Project Act of 1968 and subsequent approvals, authorized the United States to participate in a thermal generating power plant to provide power for CAP pumping as an alternative to building additional dams on the Colorado River and to augment the revenues credited to the Development Fund. With Congressional approval, the United States acquired a 24.3% entitlement to the capacity and energy from NGS, which resulted in NGS supplying nearly all the power for pumping CAP water;

T. Whereas, the Colorado River Basin Project Act of 1968, as amended and supplemented, provided that surplus federal NGS power not needed for CAP pumping would be sold to help repay the construction costs of CAP;

U. Whereas, the AWSA provided that revenue from sale of surplus federal NGS power would also be used to assist Arizona Indian tribes, including the Community, in putting to use CAP water allocated to them. Some of these tribes relinquished certain senior federal water rights claims pursuant to congressionally authorized water settlements;

V. Whereas, roughly 47% of Arizona’s CAP water is under contract, or available for allocation, to Arizona Indian tribes pursuant to water settlements under which settling tribes relinquish certain senior federal water rights claims in return for
CAP water and infrastructure for delivering CAP water to the tribe and its reservation;

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

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

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

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

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

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

NOW, THEREFORE, the Parties agree as follows:

II. Definitions

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

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

A. This Agreement includes the following elements: (a) a proposed Reasonable Progress Alternative to BART, to be submitted by the Parties to EPA for its consideration to issue as the Final BART Rule (Appendix B); (b) Reclamation’s study of options for replacing the federal share of energy from NGS with Low-emitting Energy, the results of which shall be considered in the NGS-KMS EIS (Section IV); (c) Interior’s commitment to reduce or offset CO₂ emissions by 3 percent per year associated with the electric energy consumed by
its CAP pumping load by 3 percent per year, which over time reduces CO₂ emissions by approximately 11.3 million Metric Tons (Appendix C, Section II), and facilitate the development of Clean Energy by securing at least approximately 26,975,000 MWh of Clean Energy Development Credits (“CDC”) no later than December 31, 2035 (Appendix C, Section III); (d) measures that Interior commits to undertake to mitigate potential impacts from the Final BART Rule and other developments on Affected Tribes, including but not limited to a commitment to expend not less than $100 million from the Reclamation Water Settlements Fund as set forth in Section V.B.4 and the commitment to identify, prioritize and further Low-emitting Energy projects to benefit Affected Tribes (Section V) such as Interior’s support for the Community Solar Facility and Low-emitting Energy projects within the Navajo Nation and Hopi Tribe (Section V.B.7); (e) Interior’s commitment to carry out the NREL Phase 2 Study for the purposes of studying options for the future of NGS consistent with the goals of the Joint Statement (Section V.C and Appendices D and E); (f) a Local Benefit Fund for community improvement projects within 100 miles of NGS or KMC (Section VI); and (g) obligations of the Parties (Section III) and miscellaneous legal provisions (Section VIII).

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

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

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

1. The Parties shall not, at any time, file, or encourage or provide support to any other person or entity to file, a petition for review or reconsideration or any other challenge of the Final BART Rule before EPA or in any
other forum. Further, the Parties shall not, at any time, object to, dispute or challenge for any reason the validity of the Final BART Rule in any judicial, administrative or legislative proceeding, or encourage or provide support for others in doing so.

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

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

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

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

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

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

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

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

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

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

IV. NGS and KMC NEPA Process

A. As part of the NGS-KMC EIS process, Reclamation shall study options for replacing the federal share of energy from NGS with Low-emitting Energy. The study of Low-emitting Energy options referred to in this Section IV.A may be
carried out by Reclamation or under the direction of Reclamation. Subject to Section IV.B, the results of the study shall be incorporated into the NGS-KMC EIS, either in the text of the NGS-KMC EIS itself, as one or more appendices to the NGS-KMC EIS, or by reference, and shall be subject to public review and comment consistent with other information used in the NGS-KMC EIS process. Subject to Section IV.B, if any of the Low-emitting Energy options studied meet the legal criteria for full analysis as an alternative in the EIS, Reclamation shall analyze one or more such Low-emitting Energy alternative in the EIS.

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

V. Additional Commitments by Interior

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

1. Interior makes these commitments in furtherance of the President’s 2013 “Climate Action Plan” and 2011 “Blueprint for a Secure Energy Future.”

2. The Interior CO₂ Reduction Commitment is as described in Appendix C. Interior will reduce or offset CO₂ emissions associated with the electric energy consumed by its CAP pumping load by 3 percent per year, which over time reduces CO₂ emissions by approximately 11.3 million Metric Tons. This commitment is intended to accomplish two aims: reduce CO₂ emissions and demonstrate the workability of a credit-based system to achieve CO₂ emission reductions. In addition, this commitment provides a potential path to achieve carbon pollution reductions under federal clean air laws, and Interior reserves the right to seek credit for actions taken pursuant to this commitment under any federal carbon reduction program or policy to address climate change.

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

B. Measures to Mitigate Impacts to Affected Tribes

1. Interior shall identify, prioritize and further development of Low-emitting Energy projects, including Advanced Coal, to benefit Affected Tribes.
2. **Interior**, through **Reclamation** and the Bureau of Indian Affairs, shall work with the **Navajo Nation and Hopi Tribe**, upon request, to identify, prioritize and further economic development projects on the Navajo and Hopi Reservations and Navajo and Hopi tribal trust lands to help supplement and replace their reliance on **NGS** and coal.

3. **Reclamation** shall consider and seek to implement, as appropriate, any options for mitigating increased rates for **CAP** water beyond what should have been reasonably expected by each **Affected CAP Tribe** at the time each such tribe entered into its respective **CAP** contract. In determining the respective benefits, if any, to which an **Affected CAP Tribe** might be entitled pursuant to actions contemplated under this **Agreement**, a primary factor for **Interior** to consider shall be the amount of **CAP** water to which any such **Affected CAP Tribe** is entitled pursuant to its **CAP** contract and the **CAP** water costs for which such tribe is responsible.

4. As authorized by 43 USC § 407, entitled “Reclamation Water Settlements Fund,” for each fiscal year 2020-2029, **Interior** shall expend not less than $10,000,000 from available amounts in the Reclamation Water Settlements Fund for the purpose of providing financial assistance for Fixed Operation, Maintenance, and Replacement costs under section 107 of the **AWSA**. If the Secretary of the **Interior** determines that $10,000,000 is unavailable for expenditure in any given fiscal year because expending it at that time would be inconsistent with 43 U.S.C. § 407, including the priorities set forth in 43 U.S.C. § 407(c)(3)(A), the amount not expended in that fiscal year shall be expended in the next fiscal year in which such funds are available and such expenditures would be consistent with 43 U.S.C. § 407.

5. Prior to January 1, 2020, and after the issuance of the final **NREL Phase 2 Study** report, **Interior** shall consult with **Affected CAP Tribes** regarding whether the **Development Fund** is projected to meet the purposes for which it was intended after taking into account developments since the enactment of the **AWSA**.

6. **Interior**, through **Reclamation**, shall meet with **Affected CAP Tribes** at least once a year to discuss **CAP** operations, including any changes in operations or costs, impacts of such operations on **Affected CAP Tribes**, and potential measures to mitigate such impacts.

7. **Low-emitting Energy Projects**
   
a. **Interior**, through **Reclamation**, shall work with **Affected Tribes**, if requested, to identify, prioritize, and further **Low-emitting Energy** projects, including **Advanced Coal**, that will benefit such **Affected Tribes**.
b. **Community Low-emitting Energy Projects**

i. The **Community** currently is developing plans for a 33 MW tracking solar generation facility on its Reservation (“Community Solar Facility”);

ii. **Interior** supports the Community’s development of the Community Solar Facility and shall work with the Community to facilitate its construction, or construction of other Low-emitting Energy projects;

iii. **Interior** shall seek to identify funds, up to $250,000, to assist the Community in funding studies and design associated with the Community Solar Facility or other Community Low-emitting Energy projects;

iv. As requested by the Community, **Interior** shall work with the Community to reduce the scale of PMIP and to reallocate associated federal funding to be used for the Community Solar Facility or other Community Low-emitting Energy projects;

v. **Interior** shall work with the Community to facilitate the Community’s withdrawal of the $53 million operation, maintenance and replacement (OM&R) fund established by the AWSA and the Community’s investment of these funds in the Community Solar Facility or other Community Low-emitting Energy projects;

vi. The **Community** shall set aside in a separate fund an appropriate amount of the profits generated from the Community Solar Facility or other Community Low-emitting Energy projects to be used to offset the Community’s CAP or other water costs;

vii. **Interior** shall assist the Community in identifying federal entities that could purchase power from the Community Solar Facility or other Community Low-emitting Energy projects and shall encourage such federal entities to purchase such power, as appropriate.

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

9. The **Parties** understand that new legislation may be needed to accomplish the benefits described in this **Section V.B**. If legislation is required,
Interior shall comply with all applicable executive branch approval processes regarding support for such legislative activity. No liability under Section V.B shall accrue to Interior if required legislation is not enacted by Congress. Interior shall consult with the Affected Tribes if legislation is not promptly enacted by Congress.

C. NREL Phase 2 Study

1. Interior, through Reclamation, shall commission the NREL Phase 2 Study with the following parameters:
   a. Interior shall design the NREL Phase 2 Study for the purposes of studying options for the future of NGS consistent with the goals of the Joint Statement.
   b. The current outline for the NREL Phase 2 Study is as set forth in Appendix E. As of the date of this Agreement, Interior does not anticipate significant deviations from the current outline set forth in Appendix E.
   c. The final scope of the NREL Phase 2 Study shall be determined by Interior, exercising its sole discretion. Interior shall seek input from NGS stakeholders, including the Parties, regarding the scope of the NREL Phase 2 Study as Interior, in its sole discretion, deems appropriate.

2. Interior, through Reclamation, shall identify funding for and ensure completion of the NREL Phase 2 Study, including all of its components.

VI. Local Benefit Fund

A. In addition to funds made available to the Navajo Nation through the Lease Amendment, SRP, as NGS Operating Agent, shall make a $5 million contribution to a Local Benefit Fund ("LBF").

B. The contribution by SRP, as NGS Operating Agent, to the LBF shall be payable as follows:

1. The SRP, as NGS Operating Agent, shall make a $2.5 million contribution to the LBF 60 days after issuance of the ROD, provided SRP, as NGS Operating Agent, has not objected to the ROD.

2. If the ROD is challenged within two (2) years of issuance, SRP, as NGS Operating Agent, shall make an additional $2.5 million contribution to the LBF 60 days after the ROD is upheld and there are no additional appeals possible.
3. If the ROD is not challenged within two (2) years of issuance, SRP, as NGS Operating Agent, shall make an additional $2.5 million contribution to the LBF two (2) years after issuance of the ROD.

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

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

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

VII. Additional Obligations of the Parties

A. The Parties recognize that the Navajo Nation wishes to seek Treatment as a State (“TAS”) under section 301(d) of the Clean Air Act, 42 U.S.C. § 7601(d), and the Tribal Authority Rule, 40 C.F.R. Part 49. The Navajo Nation intends to seek treatment as a state for Clean Air Act provisions applicable to NGS, except for the Prevention of Significant Deterioration and Nonattainment New Source Review permitting programs. SRP agrees to work with the Navajo Nation to advocate to the EPA that the VCA provides sufficient jurisdictional authority for the Navajo Nation to be awarded TAS status under the Clean Air Act with respect to NGS. As provided in the VCA, the programs for which the Navajo Nation seeks or accepts TAS status shall not contain requirements applicable to NGS that are more stringent than the corresponding federal requirements unless the Navajo Nation has obtained SRP’s written consent to such more stringent requirements, and the Navajo Nation shall not promulgate a tribal implementation plan that contains requirements applicable to NGS that are more stringent than corresponding federal requirements without first obtaining SRP’s express written consent to such requirements. The Navajo Nation agrees that the Navajo Nation Environmental Protection Agency shall provide SRP an opportunity to review and comment on the TAS application before its submittal to EPA.
B. The Navajo Nation and SRP agree that nothing in this Agreement constitutes or shall be construed to constitute a waiver or modification of any provisions of the VCA or the Lease, as amended by the Lease Amendment, including, without limitation, those provisions of the Lease relating to the Navajo Nation’s covenant not to directly or indirectly regulate or attempt to regulate the NGS Participants under the Lease. The Navajo Nation and SRP further agree that nothing in this Agreement provides a basis for assertion of jurisdiction over NGS or the NGS Participants by the Navajo Nation.

C. Nothing in the terms of this Agreement shall preclude the NGS Participants from seeking to obtain GHG emission reduction credits, or similar commodities associated with activities committed to in this Agreement, under any federal or state law or policy to the extent permitted under such applicable law or policy.

D. Through a process established by mutual agreement of the Parties, the Parties shall meet in person or by teleconference at least semi-annually after execution of this Agreement to discuss material issues associated with the implementation of the Agreement and other issues identified by mutual agreement. SRP, as NGS Operating Agent, shall be responsible for scheduling and organizing such meetings.

E. SRP, on its own behalf, shall assist the Community in furtherance of the contemplated Community Solar Facility described in Section V.B.7.b. by:

1. Providing scheduling and delivery services from the Community Solar Facility to a point on SRP’s system accessible to an offtaker or offtakers of the project’s output at rates consistent with SRP’s Open Access Transmission Tariff.

2. Providing reserves at market based rates to cover deviations in output from a day-ahead energy schedule. SRP would be excused from providing this service between the hours of 3 pm and 6 pm in the months of July and August.

3. Providing a cost estimate for and be willing to provide advisory services in interconnection design, requests for proposals management, and technology selection to the Community.

F. The current NGS Co-Tenants shall cease their operation of conventional coal-fired generation at NGS no later than December 22, 2044. At its election, consistent with the Lease Amendment, the Navajo Nation may continue plant operations at NGS after December 22, 2044 consistent with EPA approval.
VIII. General Provisions

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

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

C. Dispute Resolution

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

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

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

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

2. Governing Law.

   a. Any claims under this Agreement by or against Interior or determining an Interior obligation shall be determined by federal law; provided, however, that Arizona law will supply the rule of decision to the extent allowed by federal law.
b. With the exception of a claim involving Interior, as described in Section VIII.C.2.a, any claims under this Agreement against the Navajo Nation shall be determined by Navajo Nation law. Except for a Party asserting a claim against the Navajo Nation under this Agreement and only to the extent necessary to resolve that claim, no Party consents to the civil, criminal, legislative, or regulatory jurisdiction of any federal, state, tribal or local government entity or authority or waives any defenses to claims of jurisdiction by executing this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

L. **Enforceability:**

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

2. Except as provided in Section VIII.L.1:
a. The provisions of this Agreement shall take effect only if and on the date that EPA issues a Final BART Rule that adopts the Reasonable Progress Alternative to BART or a proposal not materially different from the Reasonable Progress Alternative to BART (the “Enforceability Date”).

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

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

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

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

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

P. Reservation of Claims. The Parties agree that the United States’ performance under this Agreement may mitigate or remedy any previous breach of trust claims for which causes of action might have accrued. Nothing in this Agreement shall be construed as an implied or express admission by the United States
concerning the viability or merits of such previous claims for which causes of action might have accrued. The Non-federal Parties reserve the right to assert any legal claims against the United States, including breach of trust claims, based on violations of this Agreement and any other basis available to any such Non-federal Party. The United States reserves all defenses to such claims, including jurisdictional defenses and any other available defenses.

Q. Costs and Fees. Each Party shall bear its own costs and legal fees associated with activities under this Agreement.
IN WITNESS WHEREOF, each of the **Parties** hereto has caused this **Agreement** to be executed as of the date set forth above by its duly authorized representative.

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: [Signature]

Jay M. Johnson
General Counsel

By: [Signature]

David V. Modeer
General Manager

**ENVIRONMENTAL DEFENSE FUND**

By: [Signature]

Vickie Patton
General Counsel

**GILA RIVER INDIAN COMMUNITY**

By: [Signature]

Gregory Mendoza
Governor

**NAVAJO NATION**

By: [Signature]

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

LEGAL REVIEW AND APPROVAL:

By: ______________________
    Jay M. Johnson
    General Counsel

By: ______________________
    David V. Modeer
    General Manager

By: ______________________
    Vickie Patton
    General Counsel

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ENVIRONMENTAL DEFENSE FUND

GILA RIVER INDIAN COMMUNITY

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CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ENVIRONMENTAL DEFENSE FUND

By: __________________________
   Vickie Patton
   General Counsel

GILA RIVER INDIAN COMMUNITY

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General Manager

ENVIRONMENTAL DEFENSE FUND

By: ___________________________  
Vickie Patton  
General Counsel

GILA RIVER INDIAN COMMUNITY

By: ___________________________  
Gregory Mendoza  
Governor

NAVAJO NATION

By: ________________  
Ben Shelly  
President
Legal Review and Approval:

By: Karilee S. Ramaley
   Senior Attorney

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By: Michael Hummel
   Associate General Manager
   Chief Power System Executive

UNITED STATES DEPARTMENT OF
THE INTERIOR

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

By: Kevin K. Washburn
   Assistant Secretary - Indian Affairs

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

WESTERN RESOURCE ADVOCATES

By: John Nielsen
   Energy Program Director
Legal Review and Approval:

By: ____________________________
    Karilee S. Ramaley
    Senior Attorney

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

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    Michael Hummel
    Associate General Manager
    Chief Power System Executive

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    John Nielsen
    Energy Program Director
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WESTERN RESOURCE ADVOCATES

By: John Nielsen
    Energy Program Director
# LIST OF APPENDICES

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APPENDIX A
DEFINITIONS

1. **30-Day Rolling Average** means the average NOx emission rate for a Unit, expressed in lb/MMBtu, and calculated in accordance with the following procedure: first, sum the total pounds of NOx emitted from the Unit during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days; second, sum the total heat input to the Unit in MMBtu during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days; and third, divide the total number of pounds of NOx emitted during the thirty (30) Unit Operating Days by the total heat input during the thirty (30) Unit Operating Days. A new 30-Day Rolling Average shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average shall include all emissions that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and malfunction.

2. **Advanced Coal** means an electricity generation unit combusting coal using advanced technologies, such as carbon capture and storage (CCS), with a conversion efficiency such that its CO2 emissions are less than or equal to 1,000 lb CO2/MWh. If a future CO2 emissions limit is established through a final rule issued by EPA, the 1,000 lb CO2/MWh shall be replaced with such a limit.

3. **Affected CAP Tribe** means any federally recognized Indian tribe located in the State of Arizona that has an allocation of CAP water.

4. **Affected Tribe** means the Hopi Tribe, the Navajo Nation and any Affected CAP Tribe.

5. **Agreement** means this Technical Work Group Agreement Related to Navajo Generating Station, including all Appendices.

6. **Appendix** means an attachment, appendix or exhibit to this Agreement, each of which is hereby incorporated into the Agreement.


8. **BART** or “Best Available Retrofit Technology” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established on a case-by-case basis taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

9. **Base Period Emissions** means 2,457,927 metric tons CO2, which is the average annual CO2 emissions associated with electricity production dedicated to serving the CAP.
pumping load, including line losses, during the 2001-2008 period. It is assumed that emission of non-CO\textsubscript{2} GHGs do not contribute significantly to CO\textsubscript{2}e emissions for electricity production dedicated to serving the CAP pumping load, and therefore, only CO\textsubscript{2} emissions are considered in the establishment of Base Period Emissions.

10. **CAP** or “Central Arizona Project” means the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. §1521 et seq.), as amended. The CAP consists of a 336-mile water distribution system built to deliver more than 1.5 million acre-feet of Colorado River water annually from Lake Havasu in western Arizona to agricultural users, Indian tribes, and millions of municipal water users in Maricopa, Pinal, and Pima counties, Arizona. The CAP includes at least 14 pumping plants to lift water approximately 3,000 feet.

11. **CAP Dedicated Generation** means Dedicated Generation unless that generation in total produces more energy in a year than the CAP pumping load, in which case the CAP Dedicated Generation is the dedicated generation proportionately reduced by multiplying the energy produced from each generator times the ratio of the CAP load to the total megawatt-hours produced from Dedicated Generation.

12. **Capacity Factor** means the ratio (expressed as a percentage) of the net electricity generated in a given calendar year to the energy that could have been hypothetically generated at continuous full-power operation during the same period, i.e., running full time at rated power.

13. **CAWCD** means the Central Arizona Water Conservation District, the political subdivision of the State of Arizona organized in accordance with A.R.S. §48-3701 et seq. that has contracted with the United States to be the operating agent of the CAP.


15. **Clean Energy** means electric energy produced by a generator with a CO\textsubscript{2} emission rate less than or equal to 500 lb/MWh.

16. **Clean Energy Coefficient** (“CEC”) means the coefficient applied to Qualifying Projects for purposes of meeting the **Interior Clean Energy Development Commitment**. The CEC shall be in accordance with the following table:
<table>
<thead>
<tr>
<th>CO₂ Emission Rate</th>
<th>CEC¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 lb/MWh (Renewable Energy)</td>
<td>2.0</td>
</tr>
<tr>
<td>500 lb/MWh (Clean Energy)</td>
<td>1.0</td>
</tr>
<tr>
<td>1,000 lb/MWh² (Other Low-Emitting Energy³)</td>
<td>0.5</td>
</tr>
</tbody>
</table>

1. CECs for a CO₂ emission rate between these values shall be prorated.
2. If a future CO₂ emissions limit is established for Advanced Coal through a final rule issued by EPA, the 1,000 lb CO₂/MWh shall be replaced with such a limit.
3. “Other Low-Emitting Energy” refers to Low-Emitting Energy that is not either Clean Energy or Renewable Energy.

17. **Clean Energy Development Credits ("CDC")** means MWh, as calculated and accrued in accordance with Appendix C, associated with Clean Energy initiatives, that may be applied toward the Interior Clean Energy Development Commitment.

18. **CO₂ or Carbon Dioxide** means a naturally occurring gas, and also a by-product of burning fossil fuels and biomass as well as land-use changes and other industrial processes. It is the principal human caused greenhouse gas that affects the Earth’s radiative balance. It is the reference gas against which other greenhouse gases are measured and therefore has a GWP of 1. While it is acknowledged that CO₂ is not technically the same as carbon, these terms may be used interchangeably in this Agreement, with both terms meant to convey CO₂ or Carbon Dioxide as the operative metric. It is also acknowledged that some CRC accrual mechanisms (as described in Section II.D.1 of Appendix C) may include accounting for non-CO₂ GHGs, and that the use of the term “CO₂”, “Carbon Dioxide” and “carbon” will include, where applicable, the non-CO₂ GHG’s contribution to total CO₂e.

19. **CO₂e** means a metric measure used to compare the emissions from various GHGs on the basis of their GWP, by converting amounts of other gasses to the equivalent amount of CO₂ with the same GWP. The CO₂e for a gas is derived by multiplying the Metric Tons of the gas by the associated GWP.

20. **CO₂ Reduction Credit (CRC)** means an instrument that may be applied toward the Interior CO₂ Reduction Commitment, in a format to be determined by Interior (physical or electronic), that represents one Metric Ton of CO₂, and is used to track and account for CO₂ emission reductions.

21. **Community** means the Gila River Indian Community, a federally recognized Indian tribe.

22. **Community Solar Facility** means the solar facility that the Community currently contemplates developing on its reservation as described in Section V.B.7.a.
23. **Curtailment** means a reduction in operations such that a **Unit**’s average annual **Capacity Factor** is less than a baseline.

24. **Dedicated Generation** means electricity generation that is assigned to serving the **CAP** pumping load, and that is either owned by **Interior**, or is committed to **Interior** or **CAWCD** pursuant to a power purchase agreement that specifies the particular generation source from which the energy comes.


27. **Efficiency Improvement** means actions that reduce a **Unit**’s heat rate: that is, the amount of coal (Btu) to generate one **kWh** of energy. A lower heat rate means less coal to generate the same amount of energy.

28. **Efficient Natural Gas** means an electricity generation unit combusting natural gas with a conversion efficiency such that its **CO₂** emissions are less than or equal to 1,000 **lb CO₂/MWh**.

29. **EIS** or **NGS-KMC EIS** means the “Navajo Generating Station-Kayenta Mine Complex Environmental Impact Statement” being prepared by **Reclamation**, acting as lead federal agency, pursuant to **NEPA**.

30. **Emissions & Generation Resource Integrated Database (eGRID)** means “a comprehensive source of data on the environmental characteristics of almost all electric power generated in the United States. These environmental characteristics include air emissions for nitrogen oxides, sulfur dioxide, carbon dioxide, methane, and nitrous oxide; emissions rates; net generation; resource mix; and many other attributes.”

31. **Enforceability Date** means the date described in **Section VIII.L.2** hereto.

32. **EPA** means the U. S. Environmental Protection Agency.


34. **Final BART Rule** means the final source-specific **FIP** addressing regional haze requirements for **NGS**.


36. **Generic Power** means the system power attributes defined according to the **NERC Subregion** where the **Qualifying Project** is located, based on the most recent published data reported in **EPA**’s **eGRID** data system at the time the **Qualifying Project** is implemented. **CO₂** emissions for **Generic Power** shall be calculated as follows:
\[ \frac{\sum_i CO_2 \text{ emissions (tons CO}_2\text{)}}{\sum_i net \text{ generation (MWh)}} = \text{system emission rate (tons CO}_2/\text{MWh)} \]

where \( i \) designates electric generators within the subject NERC Subregion

37. **GHG** means greenhouse gas, which is a gas other than water vapor with a global warming potential, as identified in the most current Assessment Report from the Intergovernmental Panel on Climate Change.

38. **GWh** means gigawatt-hour.

39. **GWP** or Global Warming Potential means a measure of the total energy that a gas absorbs over a particular period of time (usually 100 years) compared to carbon dioxide pursuant to reports published by the Intergovernmental Panel on Climate Change.

40. **Interior** means the U. S. Department of the Interior, including its bureaus and agencies.

41. **Interior Clean Energy Development Commitment** means the commitment by Interior to facilitate clean energy development as set forth in Section III and Appendix C.

42. **Interior CO\textsubscript{2} Reduction Commitment** means the commitment of Interior to reduce or offset CO\textsubscript{2} emissions as set forth in Section II and Appendix C. Any CRCs accrued that reflect non-CO\textsubscript{2} GHG reductions will count toward meeting this commitment based on a conversion to CO\textsubscript{2}e.

43. **Joint Statement** means the Joint Federal Agency Statement Regarding Navajo Generating Station issued by Interior, EPA and DOE, dated January 4, 2013, a copy of which is attached as Appendix D.

44. **KMC** means the Kayenta Mine Complex.

45. **kWh** means kilowatt-hour.

46. **lb** means pounds.

47. **LBF** or Local Benefit Fund means the fund established pursuant to Section VI to be used to fund local community improvement projects.

48. **LBF Oversight Committee** means a committee managed by SRP (directly or through a trust) and consisting of one representative from any Party that wants to participate in such committee.

49. **Lease** means the Indenture of Lease – Navajo Units 1, 2 and 3 between the Navajo Tribe of Indians and Arizona Public Service Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company, effective as of December 23, 1969.

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50. **Lease Amendment** means Amendment No. 1 to the Lease.

51. **LNB/SOFA** means Low NOx Burners/Separated Overfire Air, the NOx emissions control system installed on one Unit per year at NGS between 2009 and 2011.

52. **Low-emitting Energy** means energy generated from Renewable Resources, as well as nuclear, Efficient Natural Gas, and Advanced Coal facilities.

53. **Metric Ton** means 1,000 kilograms, approximately 2,205 lb.

54. **MMBtu** means million British thermal units.

55. **MW** means megawatt.

56. **MWh** means megawatt-hour.

57. **Navajo Nation** means the Navajo Nation, a federally recognized Indian tribe.

58. **NEPA** means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.


60. **NERC Subregion** means a subregion defined and used by the NERC.

61. **NGS or Navajo Generating Station** means the steam electric generating station located on the Navajo Reservation near Page, Arizona, on lands leased under the Lease, consisting of Units 1, 2 and 3, each 750 MW (nameplate rating), the switchyard facilities, and all facilities and structures used or related thereto.

62. **NGS Baseline** means normal operations of NGS based on historical performance. For purposes associated with this Agreement only and exclusively related to the Interior Clean Energy Development Commitment and associated computations, Interior, in consultation with the Parties, may review the NGS Baseline values every three years after the effective date of this Agreement and at Interior’s discretion may revise the NGS Baseline values if there have been material changes affecting NGS operations. The initial NGS Baseline values, applicable to all three NGS Units for purposes associated with this Agreement only and exclusively related to the Interior Clean Energy Development Commitment and associated computations, are as follows:

   a. An annual Capacity Factor of 88%;
   b. Annual net generation of 17,344,800 MWh/year; and
   c. A CO₂ emission rate of 2,079 lb CO₂/MWh, or 1.04 tons CO₂/MWh

63. **NGS Co-Tenants** means the non-federal owners of NGS.

64. **NGS-KMC** means the Navajo Generating Station and Kayenta Mine Complex collectively.
NGS Operating Agent means SRP as the operating agent of NGS, and its successors.

NGS Participants means the NGS Co-Tenants together with the United States, acting through Reclamation.

NHPA means the National Historic Preservation Act, 16 U.S.C. § 470 et seq.

Non-federal Parties means a collective reference to the entities that have signed this Agreement except for Interior. Non-federal Party may be used when referring to any of the Non-federal Parties individually.

NOx means nitrogen oxides expressed as nitrogen dioxide.

NREL means DOE’s National Renewable Energy Laboratory.

NREL Phase 2 Study means the NREL Phase 2 NGS report, which is further described in Section V.C. A draft of contemplated scope elements associated with this study is included in Appendix E.

NTUA means the Navajo Tribal Utility Authority, an enterprise of the Navajo Nation.

Offset means a reduction in CO₂ emissions, other than reductions associated with Qualifying Projects, which are accurately measured, verifiable, enforceable, voluntary, additional and permanent. Any offset certified by the Climate Action Reserve shall be usable as an Offset for purposes of the Interior CO₂ Reduction Commitment. Offsets may include GHG emission reductions that are attributed to a REC and that otherwise meet the criteria of this definition.

Parties mean a collective reference to the entities that have signed this Agreement. Party may be used when referring to any of the Parties individually.

Peabody means Peabody Western Coal Company, a subsidiary of Peabody Energy, which operates the KMC.

PMIP means the Pima-Maricopa Irrigation Project, a water delivery system built, or anticipated to be built on the Community’s reservation as authorized by section 301(a) of the Colorado River Basin Project Act (43 U.S.C. § 1521 et seq.), as amended, and Title II of the AWSA.


Qualifying Project means those projects meeting the requirements set forth in section IV of Appendix C.

Reasonable Progress Alternative to BART means the Parties’ proposal set forth in Appendix B.
80. **Reasonably Attributable Visibility Impairment** means visibility impairment that is caused by the emission of air pollutants from one source or a small number of sources, 40 C.F.R. §§ 51.302-51.306.

81. **Reclamation** means the U.S. Bureau of Reclamation.

82. **Regional Haze** means visibility impairment that is caused by the emissions of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources.

83. **Regional Haze Rules** means rules published by EPA in 1999 to address **Regional Haze**, 40 CFR Part 51, Subpart P.

84. **Renewable Energy** means energy generated from **Renewable Resources**.

85. **Renewable Energy Credit** or **REC** means a tradable instrument representing generation from an eligible renewable energy resource issued by the Western Renewable Energy Generation Information System, the Electric Reliability Council of Texas, the Midwest Renewable Energy Tracking System, PJM Interconnection’s Environmental Information Services, NEPOOL’s Generation Information System, or the North American Renewables Registry.

86. **Renewable Resources** means wind, solar, sustainable bioenergy, geothermal, ocean energy, and hydroelectric facilities.

87. **Reserve Energy** means, in general terms, the electrical energy required for **CAP** pumping requirements, and is currently approximately 2/3 of **Interior’s** 24.3% share in NGS.

88. **ROD** means the Record of Decision to be issued by **Interior** following completion of the NGS-KMC EIS after compliance with NEPA, ESA and NHPA.

89. **SCR** or **Selective Catalytic Reduction** means a pollution control device for reducing **NOx** emissions through the use of selective catalytic reduction technology.

90. **Section** means a section or subsection of this **Agreement**.

91. **SRP** means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the state of Arizona.

92. **Surplus Energy** means, in general terms, the electrical energy from **NGS** sold at market rates with revenues deposited in the **Development Fund** to offset CAWCD’s **CAP** repayment obligation and to fund Indian water rights settlements pursuant to the **AWSA**, and is currently approximately 1/3 of the **Interior’s** 24.3% share in NGS.

93. **Ton** means a short-ton which equals to 2,000 lb.
94. **Unit** means any one or more of **NGS** Units 1, 2 and 3.

95. **Unit Operating Day** means, for any **Unit**, any calendar day on which that **Unit** fires fossil fuel.

96. **Voluntary Compliance Agreement** means the Voluntary Compliance Agreement entered into between **SRP**, as Operating Agent of **NGS**, Arizona Public Service Company, as operating agent of Four Corners Power Plant, and the Navajo Nation.

97. **WECC** means the **Western Electricity Coordinating Council**.
APPENDIX B

I. Reasonable Progress Alternative to BART

A. The NGS total NOx emission cap for purposes of this Agreement will be based on 2009-2044 emissions calculated by the EPA in the Final BART Rule (“2009-2044 NOx cap”).

1. The 2009-2044 NOx cap shall be determined based on an emission rate of 34,152 tons per year beginning in 2009 and ending five (5) calendar years following issuance of the Final BART Rule and 5,345 tons per year for each year thereafter.

2. 34,152 tons per year corresponds to the NOx emissions calculated by EPA in the Proposed BART Rule that would have occurred each year prior to installation of SCR if LNB/SOFA had not been installed.

3. 5,345 tons per year corresponds to the NOx emissions calculated by EPA in the Proposed BART Rule based on an annual NOx emission rate of 0.055 lb/MMBtu once SCR is installed and operational on all three Units. The NGS Participants agree that the 2009-2044 NOx cap may be calculated based on an annual NOx emission rate of 0.055 lb/MMBtu for SCR, despite the position of the NGS Co-Tenants that this emission rate is unachievable for a retrofit application when startup, shutdown and load following emissions are included.

4. Example: If EPA were to issue a Final BART Rule that adopted the Proposed BART Rule prior to December 31, 2013, the 2009-2044 NOx cap would be calculated as follows: 34,152 tons/year x 10 years (i.e., 2009-2018) + 5,345 tons/year x 26 years (i.e., 2019-2044) = 480,490 tons.

B. To ensure that the proposed alternative meets the “better than BART” criteria, the NGS Participants agree to maintain emissions below the 2009-2044 NOx cap by complying with one of the following alternatives. If any of the conditions set forth in Alternative A occur, the NGS Participants will comply with Alternative A; if not, the NGS Participants will comply with Alternative B:

1. Alternative A.

   a. If both the Los Angeles Department of Water and Power (LADWP) and NV Energy (NVE) exit NGS by December 31, 2019 without selling their ownership interests, the NGS Participants commit to ceasing coal generation on one Unit at NGS on or before January 1, 2020.
b. If both LADWP and NVE exit NGS by December 31, 2019 by selling their ownership interests to one or more of the existing NGS Co-Tenants (including a current or future parent or holding company of such NGS Co-Tenants), the following provisions apply:

   i. If the Navajo Nation exercises the option set forth in Section XI.A of the Lease Amendment (“Navajo Nation Purchase Option”), or the option set forth in Section XI.C of the Lease Amendment (“Navajo Nation Right of First Refusal Option”), if effective:

      (a) The NGS Participants commit to reducing generation from NGS by the amount of the LADWP and NVE ownership interests, less the ownership interest purchased by the Navajo Nation. The reduction in generation would begin on January 1, 2020. The NGS Participants reserve the right to determine whether the reduction in generation would be achieved by permanently shutting down a Unit or by curtailing generation by the required amount. For example, if LADWP and NVE exit NGS by December 31, 2019 and the Navajo Nation decides to purchase 100 MW, the remaining NGS Participants would reduce total generation at NGS by an amount calculated as follows:

         (i) LADWP Share: 21.2% of 2250 MW = 477 MW

         (ii) NVE Share: 11.3% of 2250 MW = 254 MW

         (iii) Navajo Nation Share: 100 MW

         (iv) NGS Participant Curtailment:

               477 MW + 254 MW – 100 MW = 631 MW

      (b) If the NGS Participants are able to increase the capacity of two NGS Units by the sum of the amount purchased by the Navajo Nation and 19 MW (the shortfall between the LADWP and NVE ownership interest and the capacity of one Unit at NGS) without the need to obtain a Prevention of Significant Deterioration (PSD) or Nonattainment New Source Review (NNSR) permit for such increase in capacity (e.g., by netting out of this requirement so that there is no significant net increase in emissions), the NGS

Appendix B-2
Appendix B

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

(c) Notwithstanding any other provision of this Agreement, capacity additions at NGS shall be limited to 189 MW (based on net output) unless the CO$_2$ emission rate at NGS is less than or equal to that of Advanced Coal.

ii. If the Navajo Nation does not exercise the Navajo Nation Purchase Option or the Navajo Nation Right of First Refusal Option by December 31, 2019, the NGS Participants commit to ceasing coal generation on one Unit at NGS on or before January 1, 2020.

c. If LADWP exits NGS by December 31, 2019 by selling its ownership interest to one or more of the existing NGS Participants (including a current or future parent or holding company of such NGS Participants), and NVE exits NGS by December 31, 2019 without selling its ownership interest, the provisions set forth in Paragraphs I.B.1.b.i. and I.B.1.b.ii. apply.

d. If LADWP exits NGS by December 31, 2019 without selling its ownership interest, and NVE exits NGS by December 31, 2019 by selling its ownership interest to one or more of the existing NGS Participants (including a current or future holding company of such NGS Participants), the provisions set forth in Paragraphs I.B.1.b.i. and I.B.1.b.ii. apply.

e. If either LADWP or NVE exit NGS by December 31, 2019 by selling their ownership interests to a third party, Alternative B applies.

f. EPA shall impose a 30-Day Rolling Average limit of 0.07 lb/MMBtu on two Units at NGS, beginning no later than
December 31, 2030. This limit, achievable by installing SCR or an equivalent technology, shall be applied on a Unit-by-Unit basis.

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

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

i. 2009-2011 emissions (30,501 + 24,427 + 19,837 tons) = 74,765 tons

ii. 2012-2019 emissions from 3 Units with LNB/SOFA (23,325 tons/year x 8 years) = 186,600 tons
iii. 2020-2029 emissions from 2 Units with LNB/SOFA and 1 Unit shutdown (23,325 tons/year x 2/3 x 10 years) = 155,500 tons

iv. 2009-2029 NOx cap (74,765 + 186,600 + 155,500 tons) = 416,865 tons

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

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

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

INTERIOR CO₂ REDUCTION COMMITMENT
AND
INTERIOR CLEAN ENERGY DEVELOPMENT COMMITMENT

I. Interior makes the following two commitments to further a low carbon and clean energy future:

A. reducing or offsetting CO₂ emissions associated with electricity serving the CAP pumping load ("Interior’s CO₂ Reduction Commitment"); and

B. facilitating Clean Energy development ("Interior’s Clean Energy Development Commitment").

II. Interior’s CO₂ Reduction Commitment

A. Interior will not exceed its Base Period Emissions associated with the CAP pumping load in calendar years 2013 and 2014, and will reduce total CO₂ emissions from its Base Period Emissions by 3% per year from 2015 through the end of 2031, which results in an approximate cumulative reduction of 11.3 million Metric Tons CO₂ from Base Period Emission levels. Interior will satisfy any shortfall in the Interior CO₂ Reduction Commitment of 11.3 million Metric Tons CO₂ from the Base Period Emission levels no later than December 31, 2035.

B. Before January 1, 2032, Interior will determine whether, and if so under what conditions, the Interior CO₂ Reduction Commitment period should be extended, considering best available scientific information regarding climate change at that time.

C. Interior will meet the emission reduction goals established in Section II.A of this Appendix by accruing CRCs annually as described in Section II.D, and retiring the necessary CRCs at the end of each compliance period, as described in Section II.E.

D. Accrual of CRCs

1. Interior will accrue one CRC each calendar year for:

   a. each Metric Ton less than one thousand Metric Tons CO₂ that is emitted from the CAP Dedicated Generation for every GWh produced by that generation in that year; for example:
i. a solar generator serving the CAP pumping load that generates one GWh with zero CO₂ emissions would accrue 1,000 CRCs;

ii. a combined-cycle natural gas generator serving the CAP pumping load that generates one GWh and emits 400 Metric Tons CO₂ would accrue 600 CRCs;

iii. an Advanced Coal plant serving the CAP pumping load that generates one GWh and emits 450 Metric Tons CO₂ would accrue 550 CRCs;

iv. an efficiency improvement at a coal plant serving the CAP pumping load that reduces the emission rate from 1,000 to 900 Metric Tons CO₂ per GWh would accrue 100 CRCs per GWh.

b. each Metric Ton of emission reductions from Qualifying Projects. The amount of the CRCs for Qualifying Projects shall be the annual difference between the CO₂ emissions from the Qualifying Project and the CO₂ emissions resulting from an equal amount of Generic Power;

c. each Offset; and

d. each unused, documented reduction (e.g., allowances or credits) obtained by Interior from another program that achieves real, measurable, permanent, and verifiable reductions of CO₂ emissions over time.

2. CRCs shall accrue after December 31, 2012.

3. For any electric generating facility that is awarded RECs associated with its electricity production, emission reductions associated with that facility will only be recognized in the accrual of CRCs if the REC associated with that production is or will be retired by Interior.

4. CRCs do not expire and may be used at any time unless and until they are retired to demonstrate compliance with the Interior CO₂ Reduction Commitment.

5. Interior may claim CRCs from Qualifying Projects as part of the Interior CO₂ Reduction Commitment if Interior has the exclusive right to claim CO₂ reductions resulting from the Qualifying Project.

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E. Retirement of CRCs to achieve CO\(_2\) emission reduction goals.

1. **Interior** will demonstrate the achievement of the CO\(_2\) emission reduction goals of this Section by the retirement of CRCs. **Interior** shall first retire CRCs on or before July 1, 2018 for the 2013 through 2017 period, and shall subsequently retire CRCs on or before July 1\(^{st}\) every 5 years thereafter for each preceding 5-year period ending with 2031. If necessary to eliminate any shortfall in achieving its CO\(_2\) Reduction Commitment, **Interior** shall retire additional CRCs on or before December 31, 2035.

2. **Interior** will retire on the compliance dates set forth herein one CRC for each MWh of the CAP pumping load during that compliance period, less its Base Period Emissions reduced by the percentages required throughout that compliance period, as set forth in Section IIA of this Appendix. Specifically, at the end of each compliance period, **Interior** will retire the cumulative CRCs required for each year of that period. In each year, the CRC retirement obligation equals the amount expressed by the following equation:

\[
CRC_{\text{retired}} = L_y - E_b \cdot (1 - R_y)
\]

Where,

\[y = \text{year (2013, 2014, …, 2031)}\]
\[L_y = \text{CAP pumping load (MWh) in year } y \text{ multiplied by 1.0 Metric Ton CO}_2 \text{ per MWh}\]
\[E_b = \text{Base Period Emissions [Metric Tons]}\]
\[R_y = \text{the reduction required in } y \text{ (e.g. 0.00 in 2013 and 2014, 0.03 in 2015, 0.06 in 2016, 0.09 in 2017, …, 0.51 in 2031)}\]

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

F. Continuing Efforts.

1. As part of the Additional Obligations of the Parties described in Section VII of the Agreement, EDF, WRA, **Interior**, and any other Party that elects to participate shall meet on or before October 15, 2013, and at least semi-annually through calendar year 2015 to share information and individual comments on any aspect of the implementation and administration of **Interior**’s CO\(_2\) Reduction Commitment. After 2015, these parties shall continue to meet as necessary to effectively administer the **Interior CO\(_2\) Reduction Commitment**.

2. **Interior** will consider mechanisms to compensate for shifting emissions responsibility associated with reduced Reserve Energy sales that increase Surplus Energy sales.
III. Interior’s Clean Energy Development Commitment.

A. Interior will facilitate the development of Clean Energy by accruing approximately 26,975,000 MWh of CDCs by December 31, 2035 as described below.

B. The Interior Clean Energy Development Commitment facilitates an increasing percent of Clean Energy from 2015 through the end of 2035. This commitment is based on the U.S. share of the NGS Baseline on the date of execution of this Agreement, which is 4,214,786 MWh per year.

C. To achieve the Interior Clean Energy Development Commitment, Interior shall accrue CDCs pursuant to the following schedule:

<table>
<thead>
<tr>
<th>Date</th>
<th>Cumulative Interior Clean Energy Development Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31, 2020</td>
<td>1,264,436 MWh</td>
</tr>
<tr>
<td>December 31, 2025</td>
<td>4,636,265 MWh</td>
</tr>
<tr>
<td>December 31, 2030</td>
<td>12,644,359 MWh</td>
</tr>
<tr>
<td>December 31, 2035</td>
<td>26,974,633 MWh</td>
</tr>
</tbody>
</table>

D. The above schedule reflects a 2% per year increase in clean energy during the period 2016 through 2025, followed by a 6% per year increase in clean energy during the period 2026 through 2035. This schedule is intended to provide Interior a reasonable path to achieve 80 percent clean energy for the U.S. share of NGS by 2035, in furtherance of President Obama’s March 31, 2011 “Blueprint for a Secure Energy Future.”

E. Interior may satisfy a CDC shortfall in achieving a goal as set forth above in the next period by accruing an additional amount that is not less than the shortfall, plus all the CDCs that are to be achieved for that next period.

F. CDCs accrue after December 31, 2010.

G. Interior will meet the clean energy development goals in Section III.A of this Appendix by accumulating CDCs, as described in Section III.H.

H. CDCs.

1. Interior may accrue CDCs from any of the following, in any combination:
a. **Curtailments, Efficiency Improvements**, and retirements at NGS;

b. **Qualifying Projects**; and

c. **Offsets**, allowances, credits, or other similar instruments that **Interior** has secured, such that for each such instrument that represents a **Metric Ton** of **CO₂**, **Interior** shall accrue 1.3 MWh of CDCs.

d. **RECs** (as expressed in MWh) that **Interior** has secured, unless those **RECs** are associated with a **Qualifying Project** from which **Interior** accrues CDCs.

2. To the extent necessary, **Interior** shall develop additional credit accrual protocols and mechanisms for **CDCs**.

3. **CDC** calculation methodology for **Curtailments, Efficiency Improvements**, and retirements.

   a. Except as identified in section III.H.3 of this **Appendix**, **Interior** shall accrue **CDCs** from actual **Curtailments** and **Efficiency Improvements** at NGS equal to its contractually allocated ownership share of NGS (24.3% at this time).

   i. **Interior** shall accrue **CDCs** regardless of which NGS Unit is the subject of the **Curtailment** or **Efficiency Improvement** and regardless of the **NGS Participant** with which such **Curtailments** or **Efficiency Improvements** are associated.

   ii. **CDCs** attributable to an **Efficiency Improvement** shall initially be calculated based on engineering estimates provided by the vendor of the installed **Efficiency Improvement**. After the **Efficiency Improvement** has been in operation for three full calendar years, **Interior** may at its discretion commission an engineering performance study to determine the efficiency improvement actually achieved over the three-year period, and may adjust historic and future **CDCs** based on the study’s findings.
4. Except as identified in section III.H.3 of this Appendix, for any and all retirements at NGS, Interior shall accrue CDCs equal to a prorated amount of 11.5% based on a full unit retirement of its contractually allocated ownership share of NGS (24.3% at this time). Interior shall accrue CDCs regardless of which NGS Unit is the subject of the retirement and regardless of the NGS Participant with which such retirement is associated.

5. Interior shall accrue a CDC for each reduced MWh from all Curtailments, retirements, and Efficiency Improvements initiated or caused to be initiated by Interior for such Curtailments, retirements, and Efficiency Improvements associated with the U.S.’s share of NGS.

I. Continuing Efforts. As part of the Additional Obligations of the Parties described in Section VII of the Agreement, Interior and any Party that elects to participate shall meet to share information and individual comments on any aspect of the implementation and administration of Interior’s Clean Energy Development Commitment.

IV. Qualifying Projects

A. For purposes of this Agreement, a Qualifying Project must meet the following two criteria:

1. the project, or portions thereof, must be:

   a. undertaken, funded, authorized or sponsored, in whole or in part, by any federal agency party to the Joint Statement and bureaus thereof regardless of geographic location; or

   b. undertaken, funded, authorized or sponsored, in whole or in part, by any other federal agency for projects benefiting Affected Tribes; or

   c. undertaken, funded, authorized or sponsored, in whole or in part, by Affected Tribes or CAWCD; or

   d. associated with NGS, CAP features, or KMC regardless of the funding, initiating, or sponsoring entity.

2. With respect to Qualifying Project that could impact National Parks, qualifying projects shall include safeguards for avoiding such impacts, including protection of scenic views, water, wildlife, air quality,
dark night skies, soundscapes, and geologic resources in keeping with Interior principles for advancing renewable energy development in a way that protects our nation’s natural and cultural heritage.

B. **CRCs** and **CDCs** may be accrued for a **Qualifying Project** and do not require any specific actions at NGS.

C. For **Qualifying Projects** that produce electric energy, the amount of the CDCs accrued shall be equal to the MWh generated by the Qualifying Project multiplied by a CEC.

D. For **Qualifying Projects** that produce electric energy, all CO₂ calculations shall be “burner tip” based and shall not incorporate “life-cycle” CO₂ emissions or losses, including but not limited to those associated with mining, drilling, manufacturing, processing, transportation, storage, handling, reservoir vegetation and other off-gassing, among other things.

E. **CAWCD** will not be financially responsible for implementing any **Qualifying Project** not undertaken by CAWCD, unless it otherwise agrees in writing.

F. The following multipliers shall be applied to CDCs that Interior accrues toward the **Interior Clean Energy Development Commitment** (These multipliers are not applicable to CRCs and the **Interior CO₂ Reduction Commitment**):
   1. 2.0 for **Qualifying Projects** benefitting an **Affected Tribe**;
   2. 1.5 for **Qualifying Projects** benefitting any other federally recognized Indian Tribe; and
   3. 1.0 for all other **Qualifying Projects** except as otherwise defined in this Appendix.

G. **Qualifying Projects** shall include but not be limited to the following:
   1. Non-hydropower **Low-emitting Energy** projects (e.g., the **Community Solar Facility**, a community or large scale solar facility on Navajo Nation or Hopi Tribal lands, or a wind facility funded by a federal agency party to the Joint Statement);
   2. Hydropower generation efficiency improvement or up-rate projects (e.g., increasing generation capacity through rotor and stator improvements on one or more units at a dam, installing load following software at a dam, installing wide-head turbines at a dam);
3. New hydropower projects including low-head hydropower projects (e.g., installing low-head hydropower in a Reclamation reserved work or transferred work canal);

4. New pumped-storage projects. The amount of the CDCs accrued shall take into account the full range of benefits provided by the Qualifying Project, including integrating renewable electrical energy into the power system.

5. **Low-emitting Energy** purchase agreements or **Low-emitting Energy** spot market purchases for use by CAP (e.g., Boulder Canyon Project Act (Hoover Dam) power that CAWCD may buy from Western Area Power Administration for CAP);

6. Remarketing of existing hydropower resources to benefit an Affected Tribe (e.g., Boulder Canyon Project remarketing in 2017, Colorado River Supply Project remarketing in 2024, or Parker-Davis Project remarketing in 2028).

7. **Low-emitting Energy** projects initiated by any entity requiring agreements (interconnection or otherwise) for the shared use of transmission features that are wholly or partially owned/controlled by federal entities (e.g., Perrin Ranch Wind Farm in northern Arizona that utilizes NGS Transmission Lines to deliver power to market.). The amount of the CDCs accrued under this Section shall be based on the federal government’s share of ownership in the transmission assets at the Qualified Project’s point of interconnection, and the number of transmission territories between the Qualified Project and its intended point of sale (as indicated by number of transmission tariffs under which charges are assessed).

8. Grants of rights-of-way or land use agreements issued that support third-party Renewable Energy generation projects on federal lands: that is, where the generation project is not being undertaken, funded, or sponsored by the federal government (see IV.A.1.a. of this Appendix) (e.g., a grant of right-of-way permit issued to a company for a wind generation facility on Reclamation reserved or withdrawn lands).
   
a. Up to 10% of the Interior Clean Energy Development Commitment shall be deemed satisfied if by December 31, 2020 the Federal government has issued permits or granted easements for 350 MW of new Renewable Energy on federal land, and the permitted projects are in commercial operation. Projects that have been permitted but have not begun commercial operation by December 31, 2020 shall count on a provisional basis through December 31, 2035.
b. Notwithstanding the period of time for qualification for CDCs and set forth in section III.F. of this Appendix, Qualifying Projects under this subsection shall be restricted to those projects for which no land use application has been filed as of the date of this Agreement and for which the application has been granted by December 31, 2020;

c. Notwithstanding the type and breadth of Qualifying Projects otherwise established in this Appendix, the type of projects for grants of rights-of-way or similar land use agreements, unless they benefit an Affected Tribe, shall be restricted to Renewable Energy projects (Low-emitting Projects shall be considered if they benefit an Affected Tribe.);

d. This subsection does not apply to projects on Reclamation infrastructure, whether reserved or transferred: that is, other subsections under IV.G shall be applied for such projects; for example, subsection IV.G.3, shall apply for a third-party low-head hydropower project in a Reclamation canal.

9. Energy efficiency projects to reduce the electrical demand of the CAP. Energy efficiency projects shall accrue 2 CDCs per MWh saved.

a. The amount of the CDCs accrued under this section shall be calculated based on reduced electrical demand from existing conditions at the time of the signing this Agreement.

b. To quantify the CDCs accrued under this Section, Interior will consult with an independent evaluator with expertise in energy efficiency measurement and verification protocols.

10. Efficient building projects, including new construction, rehabilitations, retrofits, and replacements (e.g., Leadership in Energy and Environmental Design certification for new or existing federal buildings). Energy efficiency projects shall accrue 2 CDCs per MWh saved. To quantify the CDCs accrued under this Section, Interior will consult with an independent evaluator with expertise in energy efficiency measurement and verification protocols.

11. Other projects that sequester or avoid the creation of CO₂and satisfy the criteria to qualify as an Offset, including but not limited to those related to agricultural, coal mine, landfill, oil field, gas field, or organic waste methane capture; forestry; fuel switching.
12. To quantify the CRCs accrued under this Section, Interior may consult with an independent evaluator with expertise in carbon accounting for such projects as needed.

V. General Provisions

A. CRCs and CDCs may be accrued for the same action without diminishment of each other.

B. Reclamation shall coordinate with the other federal agencies party to the Joint Statement and bureaus thereof to coordinate the administration and disposition of non-Reclamation Qualifying Project CRCs and CDCs.

C. Interior, acting through Reclamation, shall have the sole authority to approve the creation and accrual of CRCs and CDCs for the purposes of this Agreement.

D. Nothing in this Appendix shall be construed as limiting the authority of any program outside this Appendix to determine crediting eligibility under the rules of that program.

E. Nothing herein affects Interior’s obligations to comply with any current or future federal policy, regulation, law, or judicial ruling.

F. If a future federal policy, regulation, law, or judicial ruling affecting the Interior CO\textsubscript{2} Reduction Commitment or the Interior Clean Energy Development Commitment becomes applicable, the Parties will meet and confer regarding how to proceed.

G. Interior shall not be liable for any failure to satisfy the Interior CO\textsubscript{2} Reduction Commitment or the Interior Clean Energy Development Commitment described in this Appendix.

H. Interior shall issue annual reports on its progress towards the Interior CO\textsubscript{2} Reduction Commitment and the Interior Clean Energy Development Commitment. Each annual report shall detail the source and disposition of CRCs and CDCs, the difference between the total amount of CRCs and CDCs applied and the applicable goal for the reporting year, the number of CRCs and CDCs accrued but not yet used for compliance, explanations for any shortfalls, and plans by which subsequent goals will be achieved. To the extent possible, plans for achieving subsequent goals will specify projects for which CRCs and CDCs are anticipated.
APPENDIX D

JOINT FEDERAL AGENCY STATEMENT REGARDING NAVAJO GENERATING STATION

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

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

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

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

1. **Create a long-term DOI-EPA-DOE Navajo Generating Station Working Group**
   The three Agencies have created an NGS Working Group comprised of Deputy Secretaries from DOI and DOE and the Deputy Administrator from EPA as well as key staff from each relevant office or bureau in each Agency. The DOI is lead for the working group, which will involve additional Federal agencies as appropriate. The purpose of this NGS Working Group is to collect sound, scientifically based information on issues relating to NGS for the Federal Government, and to help ensure that the three Agencies work with stakeholders to complete the NGS Roadmap (see item 2 below).

2. **Work with stakeholders to develop a Navajo Generating Station roadmap**
   The NGS Working Group intends to work with stakeholders, including NGS plant owners, Navajo Nation, Hopi Tribe, CAP, Gila River Indian Community and other Arizona Indian tribes who receive water from CAP, non-Indian CAP water users, and environmental and community groups, to develop a roadmap for accomplishing the goals described above. The roadmap should include action recommendations and initial steps to begin implementing key recommendations. It should be consistent with Federal trust responsibilities to federally recognized Indian tribes in the region.

3. **Complete the Phase 2 report on Navajo Generating Station clean energy options**
   Under the direction and coordination of the NGS Working Group, DOI, EPA, and DOE intend to jointly support, through funding or other means, and working together with other NGS owners, tribes and stakeholders, the DOE National Renewable Energy Laboratory’s (NREL) “Phase 2” Navajo Generating Station report will analyze a full range of clean energy options for NGS over the next several decades. This Phase 2 NGS report is scheduled to be initiated in 2013 and will build on preliminary findings from the last chapter of the 2011-2012 NREL “Phase 1” report titled “Navajo Generating Station and Air Visibility Regulations: Alternatives and Impacts.” The results of this report will inform further development of the NGS roadmap (see item 2 above).

4. **Support shorter term investments that align with long term clean energy goals**
   The three Agencies will work together with stakeholders to identify and implement actions that support implementation of the BART requirements at NGS in a way that reduces emissions while supporting the goals described above in both the near term and the long term. A primary consideration will be fulfillment of Federal trust responsibilities to Indian tribes affected by NGS. Agency actions may include reviewing current and expected future agency resources (grants, loans, and other applicable resources) for potential use towards pollution control, renewable energy
development, water delivery, or other regional needs, and seeking funding to cover expenses for plant pollution control or other necessary upgrades for the Federal portion of NGS.

Ken Salazar
Secretary
Department of the Interior

Date JAN 04 2013

Steven Chu
Secretary
Department of Energy

Date JAN 04 2013

Lisa P. Jackson
Administrator
Environmental Protection Agency

Date JAN 04 2013
APPENDIX E

NREL Phase 2 Study Draft Scope Elements

**Joint Statement Goals***

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

**Joint Statement Goal Actions***

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

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

<table>
<thead>
<tr>
<th>Near-Term</th>
<th>Short-Term</th>
<th>Mid-Term</th>
<th>Long-Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>~2019</td>
<td>~2027</td>
<td>~2044</td>
</tr>
</tbody>
</table>

**“Implementation Time Horizon”, which are approximate timeframes, should be differentiated from “Milestones” as the former is intended to communicate the approximate timeframe an initiative or project is implemented on the ground, while the latter is intended to communicate the steps necessary to produce the identified deliverable(s).**
2a.1 – Central Arizona Project Tribal Water Users Impacts and Options

Activity Definition

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

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

Assumptions/Constraints/Notations

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

Some elements of the Development Fund may be able to provide funding to implement this scope element or a subsequent project.

- Because this could be considered an implementation action necessary under AWSA, it may be possible to utilize funding that currently exists in the Development Fund to conduct this study and, pending its relationship to the fund, implement the project.

- WaterSMART (Sustain and Manage America’s Resources for Tomorrow)/Secure Water Act - Public Law 111-11, Rural Water Supply Act - Public Law 109-451, or Native American Affairs (NAA) Technical Assistance Program (TAP) may be able to provide funding to implement this scope element or a subsequent project.

Implementation Time Horizon
- Short-Term to Mid-Term

Deliverable(s)
- Appraisal Level Report of Findings

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

Final Report of Findings – September 2014
Joint Statement Goal/Goal Action Nexus

1. **Joint Statement** Goal
   
   (A) clean, affordable and reliable power
   
   (B) affordable and sustainable water supplies
   
   (C) sustainable economic development
   
   (D) minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations

2. Work with Stakeholders to develop a NGS roadmap

3. Complete the NREL Phase 2 Study

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

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

Assumptions/Constraints/Notations

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

Implementation Time Horizon

- Short-Term to Mid-Term
Deliverable(s)
– Appraisal Level Report of Findings

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

Final Report of Findings – September 2014

**Joint Statement Goal/Goal Action Nexus**

1. **Joint Statement Goal**
   (A) clean, affordable and reliable power
   (B) affordable and sustainable water supplies
   (C) minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations

2. Work with Stakeholders to develop a NGS roadmap

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

4. Support short term investments that align with long term **Low-emitting Energy** goals
2b.1 – Navajo Nation Options

Activity Definition

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

Assumptions/Constraints/Notations

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

**Implementation Time Horizon**

– Short-Term to Mid-Term

**Deliverable(s)**

– Appraisal Level Report of Findings

**Milestones**

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

Final Report of Findings – September 2014

**Joint Statement** Goal/Goal Action Nexus

1. **Joint Statement** Goal
   (A) clean, affordable and reliable power
   (B) affordable and sustainable water supplies
   (C) sustainable economic development
   (D) minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations

2. Work with Stakeholders to develop a NGS roadmap
3. Complete the NREL Phase 2 Study
4. Support short term investments that align with long term **Low-emitting Energy**
2b.2 – Hopi Tribe Options

Activity Definition

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

Assumptions/Constraints/Notations

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

Appendix E-10
Implementation Time Horizon

- Short-Term to Mid-Term

Deliverable(s)

- Appraisal Level Report of Findings

Milestones

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

Final Report of Findings – September 2014

**Joint Statement** Goal/Goal Action Nexus

1. **Joint Statement** Goal
   - (A) clean, affordable and reliable power
   - (B) affordable and sustainable water supplies
   - (C) sustainable economic development
   - (D) minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations

2. Work with Stakeholders to develop a NGS roadmap

3. Complete the NREL Phase 2 Study

4. Support short term investments that align with long term **Low-emitting Energy**
2c – Roadmap for Post-Lease Energy Options to Replace NGS (Federal Share)

Activity Definition

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

Assumptions/Constraints/Notations

- This scope element will integrate the results defined in other NREL Phase 2 Study scope elements to the fullest extent practicable.
- NREL Phase 1 supplement “Navajo Generating Station and Clean-Energy Alternatives: Options for Renewables” would be cited as a reference and perhaps springboard.
- Benefits to non-Federal NGS utility owners/participants will be addressed by each utility in the context of its own integrated resource planning activities, and will not be considered under NREL Phase 2 Study.
- Final scope for this element would take into account scoping details and identified alternatives defined in the NGS-KMC EIS.
- Potential Non-Federal Participants
  
  o Affected Tribes
  o Non-Governmental Organizations (NGO)
  o NIA Water Users
  o CAWCD
  o ADWR
  o SRP

- Programmatic funds may be allocated to conduct planning evaluations of potential options: for example, potential use of “programmatic” resources or existing authorized projects/studies to evaluate power-/water-related options.
- Development Fund may be able to provide funding to implement this scope element or a subsequent project.
  
  o Because this could be considered an implementation action necessary under AWSA, it may be possible to utilize funding that currently exists in the Development Fund to conduct this study and pending its relationship to the fund, project implementation.

- Other stakeholders/partners could provide funding.
Implementation Time Horizon
   – Mid-Term to Long-Term

Deliverable(s)
   – Peer Reviewed Report

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

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