

Hopi Tribe, United Mine Workers And Peabody Seek Judgment Affirming CAP's Legal Obligation To Purchase NGS Power

PHOENIX, May 1, 2018 [PRNewswire-USNewswire/](#) -- Because federal law compels the board of the Central Arizona Project (CAP) to purchase power for its aqueduct system from the Navajo Generating Station (NGS), the Hopi Tribe, the United Mine Workers of America and Peabody today jointly asked the U.S. District Court for the District of Arizona to enter a judgment affirming the obligation. The stakeholders are also asking the court to confirm that all of CAP's power requirements must come from NGS so long as the plant remains open.

NGS was built at the direction of the federal government to serve as the power source for the CAP and to help fulfill the federal government's trust responsibility by providing jobs and revenues for the Hopi. Much of Arizona's growth and prosperity has come from the generation of affordable power and access to water.

The CAP is a 336-mile aqueduct that moves water to the central and southern parts of Arizona, reaching 80 percent of the state's population. The U.S. Congress directed the U.S. Bureau of Reclamation (BOR) to construct the CAP, and federal law requires the BOR to operate and maintain the CAP and acquire the CAP's power requirements from NGS, the filing states.

Recently CAP staff has made the decision that federal law does not require the board to acquire the CAP's power requirements from NGS, and the CAP board must halt this illegal action, the filing states. The CAP board has publicly disavowed its obligation to take NGS power and is pressing forward with a process to procure much of its power beyond 2020 from other sources.

This position would have devastating impacts on those that benefit from the continued operation of NGS, including the Hopi Tribe and represented miners who produce the coal used to fuel NGS, the action states.

"Tribal leaders agreed to develop a mine and a power plant on sovereign lands using tribally owned coal to move water across the state with the assurance that we would receive a sustaining revenue stream for 70 years," said Hopi Chairman Timothy Nuvangyaoma.

"The loss of 85 percent of our annual general fund based on the whims of the utility owners and the CAP would be devastating to the Hopi people. CAP staff cannot be allowed to continue this illegal approach. This plant should operate another quarter century as Congress intended."

"The real injustice is that traditional working families and tribal people who have offered their land and resources for the benefit of the entire state stand to lose the most if the NGS is forced into early closure," said United Mine Workers of America President Cecil Roberts. "The CAP must fulfill its obligation to tribal people and comply with the law."

NGS historically has been among the most highly utilized plants in the region, providing almost \$900 million in power cost savings to the CAP over the last 15 years and expected to deliver another \$370 million in savings through 2030 while driving down water rates, according to a 2018 study by Energy Ventures Analysis.

Based on discussions with potential investors, the stakeholders have a high confidence level that new owners can supply all of the CAP's power requirements at prices equal to or lower than the lowest prices quoted in the CAP board's recent bid process.

Potential buyers are able and willing to continue operating NGS for many years to come, but buyers will be less willing to acquire and operate the plant if CAP's board is permitted to defy federal law, according to the complaint.

"Our belief is that the CAP is obligated to take NGS power based on the statutes and agreements enacted when the plant was developed," said Kemal Williamson, Peabody President – Americas. "We are concerned that the board's actions may interfere with a successful ownership transition and have asked the court to decide the issue."

If NGS is forced into shutdown, 845 jobs at the mine and power plant are at risk along with thousands of indirect jobs, the vast majority of which are held by tribal people. The Hopi Tribe will no longer receive the substantial revenues and economic benefits from the mine and power plant that represent 85 percent of the Hopi Tribe's annual budget.

Kayenta Mine alone provides nearly \$440 million in direct and indirect economic benefits for regional economies on an annual

basis. Royalties from the operations generate funds for essential government services including school programs, health clinics and police and fire services. Every Hopi village will feel the effects of the mine and plant shutdown.

These dire consequences are contrary to the expectations that the Hopi had when they agreed to the use of their lands and energy resources. They received assurances that the mine and power plant would operate without interruption for a minimum of 70 years and that they would receive the associated benefits. The parties are asking the court to assure that the CAP board fulfills its statutory obligations so that it will not interfere with the transition of the plant to new owners.

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