

Joseph Manuel
Lieutenant Governor
Gila River Indian Community

Testimony Before the U.S. House of Representatives
Subcommittee on Water and Power
and
Subcommittee on Indian and Alaskan Native Affairs

Joint Subcommittee Oversight Hearing On:
“Protecting Long-Term Tribal Energy Jobs and Keeping Arizona Water and Power Costs
Affordable: The Current and Future Role of the Navajo Generating Station”

May 24, 2011

My name is Joseph Manuel and I am the Lieutenant Governor of the Gila River Indian Community, which is an Indian Nation located south of Phoenix, Arizona, encompassing 372,000 acres and approximately 20,000 tribal members. The Community also happens to be the largest single customer of Central Arizona Project (CAP) water. On behalf of the Community, I want to thank both Subcommittees for their continued interest in this issue that could have a very profound effect on all water users in the State of Arizona. In particular, I want to thank the members of the Arizona delegation for their support and efforts to have Congress take an active oversight role to ensure that the detrimental effects of the proposed environmental measures for the Navajo Generating Station (NGS) are taken into account by the EPA before it seeks to implement them.

As the largest customer of CAP water in the State of Arizona, the Community has a significant interest in the outcome of the EPA’s NGS rulemaking. From our perspective, the EPA’s decision must be consistent with the legal rights that the Community specifically bargained for and that Congress specifically granted under the Arizona Water Settlements Act of 2004 (AWSA). The United States, including the EPA, must uphold its trust obligation to ensure the Community’s access to affordable annual deliveries of CAP water because the Community agreed to settle its water rights claims based upon the promise that affordable CAP water would be available to the Community on a long term basis.

The Community does not object to any pragmatic solution EPA may propose to ensure visibility in our national parks and wilderness areas. In fact, the Community is a leader in Indian country in developing its own air quality plan. In January 2011 the EPA approved the Community’s Tribal Implementation Plan which was lauded by the Agency as “a blueprint of how to achieve improved air quality on the Community’s lands which will serve as a model for other tribes.” The Community is committed to protecting natural resources and has a 12 year history with EPA in developing and implementing a Tribal Implementation Plan to protect air quality on its land.

However, the Community is very concerned about the potentially catastrophic consequences for Arizona Indian tribes, especially for the Community, that could occur if EPA requires Selective

Catalytic Reduction (SCR) as the Best Available Retrofit Technology (BART) for NGS. EPA's BART determination for NGS has the potential – unlike any other Clean Air Act determination that we are aware of – to profoundly affect the economy and culture of the Community and all other similarly situated Arizona tribes with water rights settlements, the United States' trust responsibility to these tribes, and rights specifically bargained for and granted in Federal legislation. Given that the EPA's BART determination presents such grave consequences for the Community and other tribes, the Community is also troubled that EPA has not undertaken any formal consultation with the Community and other affected tribes. Instead the contacts with the Community have been limited to low level discussions between EPA and the Community and can hardly be considered consultation of the kind that should take place when the EPA is considering determinations that could have catastrophic implications for tribes in Arizona. To rectify this failure, the Community has formally requested that the EPA initiate such consultations immediately with all affected tribes in Arizona pursuant to the May 4, 2011 EPA *Policy on Consultation and Coordination with Indian Tribes*.

The Community believes EPA should acknowledge that NGS is unlike any other electrical generating facility in the Southwest. In addition to providing power to customers in Arizona, California and Nevada, NGS has two unique missions. First, NGS is critical to the economies of the Navajo Nation and the Hopi Tribe. The concerns of these two Tribes are best told by their leaders and I leave it to them to tell their story.

Second, and critical to the Community's economy and culture, NGS plays an integral role in delivering Colorado River water to Central and Southern Arizona through the CAP, and in meeting federal trust responsibilities under the AWSA and other Arizona Indian water rights settlements. Should the cost of emissions controls at NGS render CAP water unaffordable, the Community's water rights would be significantly diminished and the Community would suffer significant economic hardship. It would be comparable to the original wrongs done to the Community when non-Indian farmers upstream on the Gila River illegally diverted the flows of the River to the point that it stopped running. The uniqueness of NGS should give EPA pause if it is considering any rulemaking that will undermine the economies of Arizona tribes, especially without first undertaking intensive consultation with these tribes.

1. The Community's Water Settlement

From the beginning of time, the Pima Indians' entire lives and identities involved the Gila River. We drank from the river, irrigated our farms, fished for food and depended on the River for many spiritual ceremonies. At the beginning of the 1900's, farmers upstream of the Gila River Indian Reservation (Reservation) diverted nearly all the water from the Gila River, depriving the Community of water to support the Community's agricultural economy, and causing dramatic and detrimental changes to our diet, lifestyle, economy, culture and spiritual well-being.

The Community began fighting for its water rights in the early 1930's, and finally in 2004 Congress approved the Community's settlement of its claims to water. This settlement was at the time the largest Indian water rights settlement in United States history. The Community's settlement was enacted as law in the AWSA. In the settlement approved in the AWSA, the Community agreed to waive its claims to additional water from the Gila River in exchange for

the promise of long-term affordable CAP water. The use of CAP water to fulfill the entitlements of the Community to Gila River water is an essential component its settlement because there is no meaningful way to take back the Gila River water that was rightfully theirs.

The Community's settlement allocates 311,800 acre feet of CAP water to the Community each year, making the Community the single largest CAP contractor. The Community's settlement, through the AWSA, also provides funds to subsidize the costs of delivering CAP water to the Community, and to construct, operate and maintain the facilities necessary to allow the Community to fully utilize our allocated water. The AWSA's funding mechanism is a fund, entitled the Lower Colorado River Basin Development Fund (Development Fund), which pays "annually the fixed operation, maintenance, and replacement charges associated with the delivery of [CAP] water held under long-term contracts for use by Arizona Indian tribes." One of the sources of revenue for the Development Fund to pay these costs for CAP settling tribes is the sale of surplus power generated from NGS.

NGS supplies approximately 95% of the power to deliver the CAP water to the Community and other CAP customers. Requiring NGS to install and operate SCR technology as BART will both significantly increase the cost of CAP water and decrease the future revenue generated for the Development Fund. These two impacts will substantially undermine the benefits that the Community specifically bargained for and relied upon in agreeing to settle our water claims and claims against the United States.

a. Increased Cost of CAP Water

As the largest CAP contractor the Community will be impacted by the increased cost of CAP water more than any other entity in the State. Under the AWSA, the Community is entitled to a water budget from all sources of water of 653,500 acre feet per year. Of that 653,500 acre feet, 311,800 acre feet is CAP water.

If SCR retrofit technology is required as BART, it could possibly increase NGS's capital and O&M costs to the point of either closing the power plant or at least substantially increasing power costs, and thus the cost of CAP water for the Community. SCR would cost over 15 times more than LNB/SOFA-- \$660 million in capital costs, plus \$13 million in annual operation and maintenance costs, according to estimates prepared by the Salt River Project. This increase translates to a very substantial additional cost for CAP water. Such increased costs for CAP water could cripple the Community's ability to use this water, depriving us of the most significant single source of water confirmed by our water settlement.

Assuming all the capital and O&M costs are passed through to the CAP customers on a proportional basis, the Community will bear the burden of paying between 20 and 25 percent of all the additional costs borne by CAP customers in the State. Imposing this kind of burden on a tribe that settled its claims for water on the promise of affordable CAP water would be akin to a second taking of the Community's water supply, and the Community will not be able to sit idly by without taking every action available to it to fight such a breach of promise and trust.

b. The Revenue to the Lower Colorado River Basin Development Fund will be Substantially Reduced by the Increased Cost of SCR

Revenue from the sale of excess NGS power is to be used to supplement the Development Fund. A determination by EPA to impose SCR as the BART would substantially increase the cost of excess NGS power, essentially eating away any potential profit from such sales, thereby substantially eroding the revenues that the Community and other CAP settling tribes counted on to enable the Development Fund to subsidize CAP water delivery on a long term basis. Not only does this impact the Community's settlement, the loss of the revenue from the sale of excess NGS power threatens the continued viability of all current Indian water rights settlements in Arizona, and jeopardizes the ability of the United States to settle with other Tribes in on-going water rights settlement negotiations.

It has been estimated that "the installation and operation of SCRs would reduce revenues to the Development Fund from the sale of surplus NGS power by about \$9 million per year, or about \$175 million, not including interest, between the assumed date of their completion in 2016, and 2036, the end of the assumed 20-year amortization period. The operation of SCRs would reduce Development Fund revenues by about \$1.2 million per year thereafter" (Letter from David V. Modeer, General Manager, Central Arizona Project, to Colleen McKaughan, Associate Director, Air Division Region IX, Environmental Protection Agency, (December 18, 2009), page 8).

The Development Fund established in the AWSA was one of the main points on which the Community based its willingness to agree to a resolution of its water rights claims, claims that were the largest in the State at the time. The importance of this funding source cannot be overstated. During Congress' deliberations on the AWSA, the Community's Governor was asked to testify on the importance of the legislation to the Community. In response to a question from Senator Bingaman as to the importance of the Development Fund in the framework of the Community's settlement, Governor Narcia testified:

The specific process for funding this settlement is absolutely, absolutely fundamental to our settlement. Without it, our settlement simply will not work . . . [T]he funding mechanism of this bill is the strongest possible affirmation that the Federal Government is serious about reaching a fair and binding settlement with every Arizona Indian Tribe that is willing to negotiate in good faith. For the first time, the United States will be able to negotiate with Indian Tribes in Arizona knowing that if they are able to reach a settlement they will have the revenue, a certain quantity of CAP water, and the resources to guarantee that the operations, maintenance, and the replacement costs associated with that water can be paid for both for this generation and the next generation to come.

Members of Congress expressly recognized this as well. Congressman Grijalva testified:

In Indian Country today, one of the most difficult hurdles to tribes utilizing their water rights is the high cost of water project development. While the federal government over the years has helped facilitate and pay for non-Indian water projects, Indian Tribes have been left without such assistance. This legislation,

however, provides a reliable funding source which will help pay the operation, maintenance and replacement costs associated with each acre foot of water.

The guarantee of a dependable and affordable water supply and the funding for delivery infrastructure were key considerations for the Community in deciding to settle the Community's water rights claims and its claims against the United States. As Governor Narcia testified to Congress at a Joint Hearing before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources and the Committee on Indian Affairs in the Senate on September 30, 2003: "While our Community and each party to this agreement will make sacrifices to fulfill this settlement, we will do so in exchange for dependable supplies of renewable water and a more certain economic future." Congressman Hayworth similarly recognized this, testifying in support of the AWSA that the legislation "is not a handout. It includes bargained for exchanges between all of the parties to the settlement."

2. EPA's Trust Obligation

The federal government has an express trust responsibility to protect the water rights that the AWSA provides to the Community. Section 204(a)(2) of the AWSA states: "the water rights and resources described in the Gila River Agreement shall be held in trust by the United States on behalf of the Community . . ." EPA, as an agency of the Federal government, cannot make a BART determination that limits, suppresses or otherwise undermines the Community's right to receive and use its CAP water allocation guaranteed by the AWSA. Like all federal agencies and departments, EPA has a trust responsibility to ensure that the Community's water rights, and the other guarantees and benefits provided in the AWSA, are preserved and can be implemented.

EPA cannot, consistent with its trust responsibilities, impose a BART requirement that limits the Community's ability to receive and use CAP water. Imposing SCR, however, would do just that, because it would inhibit and possibly eliminate the Community's right to receive and utilize its allocation of CAP water guaranteed by the AWSA. Imposing SCR would make it extremely difficult, if not impossible, to pay for CAP water and would eviscerate the Development Fund revenue stream that subsidizes CAP water costs and pays for operation, maintenance, and replacement charges associated with the delivery of CAP water. Even more, imposing SCR would limit the Community's ability to farm its reservation lands and its future economic development opportunities, and would negatively impact the livelihood and health of Community members. The implications of imposing SCR simply cannot be squared with EPA's fiduciary obligations to the Community.

3. EPA's Obligation to Conduct Government-to-Government Consultation with the Community

The EPA has not conducted government-to-government consultations under Executive Order 13175, a process that the EPA must engage in fully with the Community and other affected tribes. As of today, there was an initial meeting with EPA in February 2010 and another informal discussion with EPA in April 2011. Both meetings were limited in scope and are best characterized as information sharing. Moreover, the meetings lacked the participation of the Community's elected leadership such as the Governor and Council.

These meetings cannot be construed as consultation under Executive Order 13175, because they did not amount to “meaningful and timely government-to-government dialogue with elected duly-appointed officials of tribal governments.” Pursuant to EPA’s May 4, 2011 Policy on Consultation and Coordination with Indian Tribes, created pursuant to the President’s November 5, 2009 memorandum directing federal agencies to implement Executive Order 13175, we have formally requested that the EPA undertake government-to-government consultation with affected Arizona tribes in order to discuss the implications to the Community in an appropriate forum. A copy of our letter to the EPA requesting this consultation is attached to our testimony.

4. Threat to the Community’s Culture and Way of Life

It is the vision of the Community to return to a traditional lifestyle of farming. One of the primary uses of CAP water is for Community agriculture. Governor Narcia testified to Congress on this issue during AWSA deliberations before a Joint Hearing before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources and the Committee on Indian Affairs on September 30, 2003:

Together, the Settlement water and distribution infrastructure will enable our community members to farm tribal and allotted lands as well as provide them an opportunity to escape poverty and to participate meaningfully in the economy of the region. While there is little chance that we can recapture the prosperity of our ancestors, the settlement agreement will enable more tribal members to participate in our ancestors’ way of life.

Farming the Community’s land is of great importance for cultural, economic and health reasons. In reliance on the availability of affordable and dependable CAP water, the Community is projecting to bring 146,330 acres of the Community’s land back into agricultural production. Currently, 40,000 acres are being cultivated. The Community Farms, corporate farms and individual Indian farmers currently cultivate fruits, vegetables, small grains, potatoes, cotton and alfalfa. Community members engage in more than 60% of all agribusiness activities. The practical impacts of increased costs of water could render the Community’s efforts to reestablish our agrarian lifestyle unattainable.

In preparation for the increased farming and the water that is necessary for it, the Community is developing an expansive 2,400-mile irrigation canal system under the Pima-Maricopa Irrigation Project (P-MIP) to deliver water throughout the Community. P-MIP will not only sustain the agricultural economy but also meet the needs of the Community’s municipal and industrial water users and the establishment of riparian and recreational areas. In developing P-MIP, the Community has reasonably relied upon the delivery of affordable CAP water that was a central aspect of the Community’s bargain in settling its water claims.

Finally, the CAP water is important for re-establishing riparian areas, where sacred plants can be grown for medicinal and cultural uses. Riparian areas will include plants such as cattails, devil’s claw and arrow-weed, which are used to create the famous and culturally-significant Akimel O’otham baskets and Pee Posh pottery.

5. Interference with Water Conservation Efforts in Arizona and Agreements Among AWSA Settling Parties

In its efforts to protect air quality in Northern Arizona, EPA could inadvertently negatively impact efforts to reduce groundwater pumping and conserve water in Central and Southern Arizona. The introduction of CAP water as a renewable water supply to Central Arizona has benefited the State of Arizona by assisting agricultural users in meeting regulatory objectives to reduce groundwater use, and has thus far facilitated the long term availability of groundwater resources as a resource for future drought conditions. Being located in Central Arizona the Community is a strong supporter of efforts to conserve groundwater resources. If the use of CAP water becomes too expensive, this renewable resource will become unusable and farmers will be forced to use finite groundwater resources. Such an outcome would be unsustainable and would lead to degradation of groundwater resources and possibly renew old disputes between the Community and its neighbors.

The AWSA was the culmination of many years of tough negotiations among the United States, the Community, cities and irrigation districts. It ultimately provided a pragmatic solution for all parties involved, but one which relied heavily on affordable CAP water. If CAP water becomes unaffordable because the EPA chooses SCR as the BART or otherwise issues a rule that shuts down NGS or makes CAP water cost prohibitive, the carefully woven water settlement that is the AWSA will quickly unravel.

That the cause of this concern comes from an agency of the United States, its trustee and partner in so many successful programs, is not only frustrating to the Community but raises the specter of past broken promises that the AWSA was intended to remedy. On behalf of the Community, I urge the House Water and Power and Indian and Alaskan Native Affairs subcommittees to work to prevent the economic and cultural damage the EPA's actions will have to my Community and other Arizona tribes, as well as the harm to the United States that would result from once again breaking its promise and breaching its trust responsibility to the tribes it is supposed to support and protect.

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

William R. Rhodes
Governor



Joseph Manuel
Lieutenant Governor

May 20, 2011

Environmental Protection Agency
Ariel Rios Building
Attention Lisa Jackson, Administrator
1200 Pennsylvania Avenue, N.W. Mail Code 1101A
Washington, DC 20460

Re: Proposed letter to EPA requesting Consultation on NGS Under New Agency Consultation Policy.

Dear Mrs. Jackson,

As a tribe that will be dramatically affected, and on behalf of all other similarly situated Federally-recognized Indian tribes, the Community hereby requests that consultation be initiated pursuant to the May 2, 2011 *EPA Policy on Consultation and Coordination with Indian Tribes* in connection with EPA's upcoming Navajo Generating Station (NGS) Best Available Retrofit Technology (BART) rulemaking. Government-to government consultation is appropriate and necessary prior to EPA taking any further action to advance the rulemaking, given the grave implications that EPA's determination could have on the economies and cultures of tribes, the continued viability of Congressionally-approved water rights settlements, and EPA's federal trust obligations. The gravity of tribal concerns, in our view, necessitates that this consultation take place with tribal leadership of all affected tribes and be undertaken through a series of face to face meetings with the most senior EPA officials. EPA's Consultation Policy supports the need for this level of consultation as well.

On August 28, 2009, EPA published its Advanced Notice of Proposed Rulemaking (ANPR) titled *Assessment of Anticipated Visibility Improvements at Surrounding Class I Areas and Cost Effectiveness of Best Available Retrofit Technology for Four Corners Power Plant and Navajo Generating Station*. The ANPR was an initial step in determining the BART for NGS. In early 2010, EPA contacted a small number of potentially affected tribes to elicit limited comments on the ANPR. For example, the contacts with the Community were limited to very low level preliminary discussions between EPA staff and the Community, hardly a consultation, and certainly not the kind of consultation that should take place when the EPA is considering determinations that could have catastrophic implications for tribes in Arizona.

Since then, the owners of NGS retained EN3 Professionals, LLC (Bill Auberle) to convene a deliberation process among NGS stakeholders and affected interests, which has generated significant new information regarding the potential implications of EPA's BART determination.

EPA's Consultation Policy expressly recognizes that consultation is required with affected tribes.¹ The limited contacts to date between EPA and tribes on NGS occurred before much was known about the potential impacts of EPA's BART determination. The new information from the deliberation process, combined with the scope and magnitude of the EPA decision at hand, confirms that a high level, face to face, and intensive consultation is necessary to satisfy EPA's obligations under its Consultation Policy.

EPA's BART determination presents such grave implications for tribes, and thus triggers the need for additional consultation, because of the very unique circumstances surrounding NGS – there is no other electrical generating facility in the Nation with such strong and vital ties to tribal economies and ways of life, to tribes' legal rights guaranteed by Federal legislation, and to EPA's fiduciary obligations to protect trust resources and responsibilities. NGS is located on the Navajo Indian Reservation, and is fueled by coal jointly owned by the Navajo Nation and Hopi Tribe from the Kayenta Coal mine, which is also located on the Navajo Reservation. NGS provides approximately 545 full-time jobs, almost 80 percent of which are held by Native Americans. Hundreds of Native Americans are also employed at NGS on a part-time basis during maintenance activities. The Kayenta Coal Mine provides 415 jobs, 90 percent of which are held by Native Americans.

The Navajo Nation and the Hopi Tribe also receive significant revenues from coal royalties, taxes, permits, lease fees, and scholarships from NGS and the Kayenta Coal Mine. In 2009, NGS and the mine contributed approximately \$140 million in revenue and wages to the Navajo Nation and its tribal members. Payments to the Hopi Tribe totaled \$14 million in 2009, representing eighty-eight percent of the Hopi annual budget that funds the Tribe's governmental and social programs.

NGS also provides the majority of the power for the Central Arizona Project (CAP), which pumps Colorado River water to Central and Southern Arizona. The implementation of eight Congressionally-approved Indian water rights settlements, where tribes relinquished their long-held Federal Indian reserved water rights, rely upon the continued availability and delivery of affordable CAP water.² The significant increases in NGS energy costs that could occur due to a decision by EPA to impose SCR as the BART, could make delivery of the very water that the tribes are to receive under their water rights settlements unaffordable, effectively depriving tribes of the benefit of their bargain.

Even worse, it has become apparent that, in certain circumstances, imposing SCR as BART could force NGS to shut down, and thus deprive the tribes of their CAP water allocations. In addition, NGS power not needed for CAP pumping is sold pursuant to federal law and policy to help repay the construction costs of the CAP and fund water delivery costs pursuant to the Indian water rights settlements. Thus, EPA's BART determination presents a very real threat to the

¹ Consultation Policy at 5. The Consultation Policy similarly states that "as proposals and options are developed, consultation and coordination should be continued." Consultation Policy at 7.

² The Community, for example, waived its claims to over 2 million acre feet per year of natural flow from the Gila River in exchange for, among other things, an allocation of CAP water in excess of 300,000 acre feet per year, with the promise that this CAP water would be made available at an affordable price to the Community. This made the Community the largest single user of CAP water in the State of Arizona.

continued viability of existing water rights settlements in Arizona, and jeopardizes the ability of the United States to settle with other Tribes in on-going water rights settlement negotiations.

EPA's decision also implicates its federal trust obligation to Tribes. As a federal agency, EPA has "moral obligations of the highest responsibility and trust" when dealing with tribal monies and property.³ One of the Key principals of EPA's formal Policy on working with Tribes is that the agency "will assure that tribal concerns and interests are considered whenever EPA's actions and/or decisions affect reservation environments."⁴ EPA has also stated that "[i]n keeping with the trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations."⁵ EPA must also protect trust resources in its decision-making. Here, water rights provided by the Arizona Water Settlement Act⁶ and the coal of the Hopi Tribe and Navajo Nation are trust resources.

As trustee of these water rights and mineral resources, EPA cannot make a BART determination that limits, suppresses or otherwise undermines the tribes' rights to receive and use these resources. Appropriate consultation under EPA's Consultation Policy is critical for the agency to fully understand and properly consider the impacts of and the trust-imposed boundaries on its NGS determination. EPA's trust obligation all but mandates further consultation.

To ensure the "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications,"⁷ as required by the Consultation Policy, now is the appropriate time to initiate consultation. We understand that EPA is actively considering the BART that it will require for NGS, and following the conclusion of the deliberation process, will issue a Notice of Proposed Rulemaking (NPR). EPA needs to hear directly from Tribes in considering its BART options before issuing its NPR. As the Consultation Policy states, Tribes must be given the "opportunity to provide meaningful input that can be considered *prior to* EPA deciding whether, how, or when to act"⁸ Consistent with the agency's trust obligations, impacts of EPA's decision on tribes must be a key factor in determining BART. The limited, low level discussions that have taken place to date are in no way sufficient to satisfy EPA's consultation policy. Nor will discussions with tribes following issuance of the NPR constitute sufficient or timely consultation.

Finally, given the nature of the interests at stake, the implications of EPA's BART determination, and EPA's federal trust obligations, consultation must be among senior-level EPA officials and tribal leaders. Consistent with EPA's Consultation Policy, the NGS determination is sufficiently important to require senior management attention.⁹ For the tribes, the elected

³ *Seminole Nation v. U.S.*, 316 U.S. 286, 297 (1942).

⁴ *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (Nov. 8, 1984).

⁵ *Id.*

⁶ Arizona Water Settlements Act, Public Law 108-45-Dec. 10, 2004, Sec. 204(a)(2), 118 STAT. 3494 (emphasis added). Section 204(a)(2) of the AWSA states: "the water rights and resources described in the Gila River Agreement shall be held in trust by the United States on behalf of the Community"

⁷ Consultation Policy at 2.

⁸ Consultation Policy at 7.

⁹ Consultation Policy at 7-8.

leaders that are responsible for Tribal decision-making and reporting on the NGS issue to tribal members should participate in consultation meetings and discussions.

The Community views consultation between Tribal leaders and EPA senior management as necessary and critical to EPA fully understanding the unique and disproportionate impact that EPA's action will have on Tribes, fulfilling its Federal trust obligation and complying with the agency's new Consultation Policy. To be meaningful, this consultation must occur before EPA issues it NPR. We look forward to EPA initiating this important consultation.

Sincerely,

Handwritten signature of William Rhodes in black ink, with the date "3-19-11" written below it.

William Rhodes, Governor
Gila River Indian Community

Cc: Senator Jon Kyl
Senator John McCain
Secretary Ken Salazar
Rep. Jeff Flake
Rep. Paul Gosar
Rep. Raul Grijalva
Rep. Ed Pastor
Rep. David Schweikert
Rep. Trent Franks
Rep. Ben Quayle
Rep. Gabrielle Giffords
Louis Manuel, Jr., Chairman, Ak-Chin Indian Community
Dr. Clinton M. Pattea, President, Fort McDowell Yavapai Nation
Leroy Ned Shingoitewa, Chairman, Hopi Tribe
Ben Shelly, President, Navajo Nation
Terry Rambler, Chairman, San Carlos Apache Tribe
Diane Enos, President, Salt River Pima-Maricopa Indian Community
Ned Norris, Jr., Chairman, Tohono O'odham Nation
Ronnie Lupe, Chairman, White Mountain Apache Tribe