

# The Navajo Generating Station Closure creates New Legislation called The Replacement Lease

For the past several months, you have been reading and hearing about the proposed closure of the Navajo Generating Station near Page, Arizona. The owners of Navajo Generating Station (NGS) announced in February that they voted to close the plant by December 2017 – unless an agreement could be reached between them and the Navajo Nation. Such an agreement would mean that NGS generation operations would continue until 2019. In 2016, the President had assembled a Task Force called Naanish doo' lina (meaning Work & Survival), to address the overall economic health of the Navajo Nation.

In anticipation of a closure prior to the February announcement, the Naanish doo' lina Task Force was also given an assignment – to find a workable solution to help maintain the economic livelihood of the region. In response to the closure announcement, the Navajo Nation Council joined forces with the Task Force to take a look at the overall situation and what it may mean to the entire Navajo Nation.

Early information concluded that a NGS closure in 2017 would have a far-reaching negative impact. Together, the Naanish doo' lina Task Force with the Navajo Nation Council went to work, carefully examining various alternatives and focusing on developing an overall Navajo Nation strategic plan. A central part of the strategic plan is the creation of a Replacement Lease that would serve as a guide path for the NGS Owners proposed shutdown of NGS in December 2019. Legislation for this Replacement Lease has been introduced to Navajo Nation Council for consideration. If approved, it will go to the President for final consideration.



## The Replacement Lease establishes a True Path to Economic Sovereignty

This Replacement Lease would serve as a guide path by providing additional time to create plans to diversify our economy

The Replacement Lease legislation will serve the Navajo Nation by securing benefits that include water infrastructure, transmission rights, railroad lines, economic development funding, as well as buildings that will support economic development. This legislation includes water infrastructure which helps Navajo in state negotiations to acquire rights up to 50,000 acre feet of water annually.

*“Our main focus has been centered both on the replacement of jobs for those workers of NGS as well as the Kayenta Mine and the replacement of revenue to the Navajo Nation. There are over 3,000 direct and indirect jobs that could be saved. Diversifying our economy is key for the future health and growth of the Navajo Nation. We plan on investing heavily into renewable energy power to generate both jobs and income as part of the long term plan for the Navajo Nation in addition to ensuring continued operations through December 2019,” -- Naanish doo' lina Task Force.*

## Common Questions and Answers

### • What is a Replacement Lease?

The Replacement Lease is necessary to ensure that the NGS Owners continue to operate the plant through December 2019. It is an agreement defining the terms and conditions for the decommissioning and monitoring of NGS facilities and the NGS Site, should NGS shutdown in December 2019. The Replacement Lease also includes the Navajo Nation's retention of certain assets currently at the NGS site. Other benefits and terms of the Replacement Lease are discussed throughout this document and the entire lease can be found on-line on the Navajo Nation Council's website.

### • What does it take to get approval of the Replacement Lease?

The Replacement Lease Legislation will require two-thirds of Council's approval, or sixteen (16) supporting votes for it to pass. It then will require the signature of Navajo Nation President Russell Begaye for it to become effective. NGS owners have asked the Nation to issue a final decision on the Replacement Lease Legislation by July 1, 2017 to allow sufficient time to finalize the Replacement Lease documents with the NGS Owners and the Federal Government.

### • How does this affect jobs? At NGS and Kayenta Mine?

Currently, there are 436 jobs at NGS. The Kayenta Peabody Mine had 519 employees at year end 2014. With the closure of NGS, it is anticipated that all jobs at the power plant and mine will be eliminated. This estimate of direct job losses is conservative in that it does not include more than 3,000 indirect jobs plus additional job losses related to the multiplier effect. This means the local area such as Page and other local areas will decrease in services as people relocate, etc. After NGS closes, it's most likely that a small job force will help with salvage, decommissioning, demolition, reclamation, and compliance of remaining switchyard and transmission facilities.

### • How will closure of NGS in December 2017 impact the entire Navajo Nation?

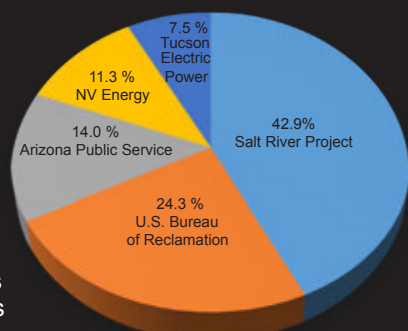
Royalties that the Navajo Nation receives from coal would stop in September 2017. SRP has projected 6.7 million tons of coal to be used in 2017. Royalties are projected at \$26.8 million per year. Such Royalties fund approximately one-fifth of the general fund. Further, approximately \$39M would be lost in 2018 and 2019 combined.

### Who owns Navajo Generating Station?

Outside entities own NGS. They signed a lease to operate on Navajo Nation. This lease ends in 2019; however, they have indicated they may exit early - specifically by December 2017. However, the owners are willing to keep NGS open until the end of 2019 if an agreement can be reached with the Navajo Nation.

#### Current Ownership:

FACTS - Navajo Generating Station (NGS)  
Size: 2250 MW (3 Units, 750 MW each)  
Located: Southeast of Page Arizona,  
East of Lechee Chapter  
Purchases coal: Peabody Western Coal  
Company – Kayenta mine



The City of Los Angeles, California retains decommissioning responsibility after it sold its interest in NGS and also retained its transmission rights.

### How does this affect me if I live in Shiprock, Crownpoint, Lupton, Many Farms, or other communities located far from NGS?

A decrease in revenue for the Navajo Nation impacts what can be budgeted for the entire Navajo Nation government, including all 110 Chapters. In addition, your electric rates may change. As a result of any NGS closure, the Navajo Tribal Utility Authority (NTUA), would lose its largest customer, the Kayenta (Peabody) mine, which sells coal exclusively to NGS. Should the Kayenta Mine shutdown, NTUA would have to make up the annual net loss of the NGS revenue, which means a potential electric rate increase for other customers. Historically, all electric customers have had a significant benefit as a result of NTUA having the Kayenta (Peabody) mine as its largest customer.

#### NGS closure impacts entire Navajo Nation

A decrease in revenue for the Navajo Nation controls what can be budgeted for the entire Navajo Nation government, including all 110 Chapters within the Eastern, Fort Defiance, Chinle, Western, and Northern Agencies.

### • What does retirement (decommissioning) mean under the Replacement Lease?

This means that once the owners stop generating electricity at the NGS facility they would have to clean up the area, including removing some plant facilities, such as the smoke stacks. In 1969, the Navajo Tribal Council indicated that when NGS shuts down, our leaders wanted the Nation to keep certain buildings to utilize for industrial economic development purposes, such as machine shops and warehouses. A document called the Retirement Guidelines outlines how the retirement will occur. If NGS shuts down, the Navajo Nation and SRP will form a joint consultation group to monitor the retirement activities.

### • How will Navajo Nation EPA be a part of the decommissioning/retirement activities?

The entire process will be subject to applicable environmental laws, regulations, policies and best industry practices. Consistent with common environmental clean-up strategies, goals, priorities, and compliance monitoring objectives, the Navajo Nation EPA and the USEPA will maintain consultation and coordination on regulated decommissioning activities at the NGS site. The EPA Policy on Consultation and Coordination with Indian Tribes establishes a consultation process for meaningful communication and coordination between USEPA and tribal governments prior to USEPA taking actions or implementing decisions that may affect tribes. The USEPA consultation process involves four phases: identification, notification, input, and follow-up. Navajo Nation EPA and USEPA compliance monitoring strategies include making decisions on compliance by: conducting monitoring visits and follow-up visits, developing or reviewing remediation plans and clean-up plans, including institutional controls, and receiving tips or complaints from the public.

### • Why won't the NGS site be cleaned up to residential levels instead of industrial levels?

An exit strategy was examined for the site. Since 1969, the land has been used as industrial property. There has not been any residential development within the land area leased by the NGS. Land uses for areas previously used for industrial purposes are not typically re-developed for residential use unless there is a critical shortage of land for residential development. Moreover, the existing infrastructure at the NGS site will not support residential development without major infrastructure development.



## Four Key Waivers in Replacement Lease

### 1) Waiver of Sovereign Immunity -

A waiver of sovereign immunity does not prohibit the Navajo Nation from suing the NGS Owners for any dispute having to do with NGS. The waiver of sovereign immunity allows the Navajo Nation to be sued in federal or Arizona courts for disputes related to the Replacement Lease. The Navajo Nation can do the same. The waiver of sovereign immunity is a dispute resolution mechanism and will be used as a last resort. The Parties will first try to resolve the dispute between via an informal consultation and then through mediation. If those are successful, then a lawsuit can be filed. Every five years, the Parties will discuss whether this waiver of sovereign immunity is still necessary.

### 2) Navajo Nation Agreement not to Regulate the NGS Owners -

The Navajo Nation is agreeing not to regulate the NGS Owners or activities related to NGS Site. There is already a similar provision in the current NGS lease, so the Navajo Nation will simply be maintaining the status quo. The NGS Owners will still be subject to federal laws, including federal environmental laws. The Navajo Nation and the NGS Owners developed the Retirement Guidelines for a common understanding of the NGS retirement, remediation and restoration activities that will occur. The parties also formed a Joint Consultation Group that will allow the Navajo Nation to make sure the NGS Owners are complying with the requirements of the Retirement Guidelines. Every five years, the Parties will discuss whether this agreement not to regulate the NGS Owners is still necessary.

### 3) Waiver of Claims -

The Navajo Nation is waiving certain claims, including any claims the Navajo Nation may have under the current NGS lease, any claims under tribal environmental laws or any claims related to the negotiation, execution, or adoption of the Replacement Lease. However, the Nation still retains the right to sue the NGS Owners for certain environmental claims under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) and RCRA (Resource Conservation and Recovery Act) in federal court for costs and equitable relief related to the NGS Owners' activities at the NGS Site, except for natural resource damages associated with the "closures in place" (Ash Landfill, Solid Waste Landfill, and specified retention and stormwater ponds).

### 4) Request for Bureau of Indian Affairs Waivers and Exceptions -

The Bureau of Indian Affairs (BIA) adopted recently adopted amendments to their regulations pertaining to leases and rights-of-ways issued on tribal lands. These are general requirements that apply to every tribe and any lease or right-of-way located on tribal land. The Navajo Nation's task force negotiated the NGS deal and believes this deal is in the best interests of the Navajo Nation. However, some of the terms of the deal conflict with the requirements of the BIA's general requirements, so the Navajo Nation Council will have to request waivers and exceptions to certain BIA requirements.

**View the Replacement Lease Legislation #0194-17 @ [www.navajonationcouncil.org](http://www.navajonationcouncil.org)**

## Common Questions and Answers



### • **What about the water rights?**

The water used by NGS is part of the 50,000 acre-feet allocated for use in the Upper Colorado River Basin of Arizona. In addition to water used at NGS, portions of the 50,000 acre-feet are also used at Navajo communities in the Upper Basin of Arizona, including Chinle, Many Farms, Kayenta and LeChee for domestic, municipal, livestock and irrigation purposes. The Navajo Nation currently holds a permit to use 950 acre-feet of water per year from Lake Powell of which only 80 acre-feet is currently used. Under the original lease, the State of Arizona issued water permits to the NGS owners for only power generation and related activities. Without a power generation project, the water used at NGS will return to the control of Arizona. Arizona is not a party to the Replacement Lease. Under the Replacement Lease, the Navajo Nation will acquire the NGS intake and water infrastructure for future use and SRP will cooperate with the Navajo Nation in further developing water under the current permit for 950 acre-feet. The Navajo Nation will have future talks with Arizona about the allocations of 50,000 acre-feet.

### • **What are transmission rights, and how will they help the Nation?**

Transmission access could mean economic opportunity. Access would allow the Navajo Nation to sell electricity to the outside. This would be a historic first. For once the electricity produced on Navajo can be sold and the money generated would return to the Navajo Nation. Under the Replacement Lease, the Nation would obtain use – for at least 35 years - of a significant portion of NGS transmission rights currently allocated to the United States. Electric transmission connects generation sources to load centers and can be used to move power across long distances. The Navajo Nation or its assignee can use the transmission rights to have electric energy from new solar or other generation sources delivered to markets such as California, Phoenix and Las Vegas. These transmission rights are a valuable new tool that will position the Nation's movement toward a cleaner energy economy.



### • **What was contemplated under the existing lease?**

In 1969, the existing Lease would expire in December 2019. The existing Lease does not adequately define the decommissioning and remediation terms between the Navajo Nation and the NGS Owners. However, the Navajo Tribal Council during the negotiation the existing Lease did foresee the desire to maintain the NGS Site for industrial purposes.

## Results of Voting Yes or No

The Naanish doo' lina Task Force worked diligently to negotiate the Replacement Lease to serve as the foundation for decommission and shut down of Navajo Generating Station. Task Force team members took great care to examine every angle and every piece of the Replacement Lease to ensure the best outcome for the Navajo Nation. The team carefully examined the benefits, including water infrastructure, transmission rights access, and economic development opportunities. In the past few meetings with Navajo Nation officials, two predominate questions have been asked – what if the Replacement Lease passes? What if it doesn't? Below are examples of what could happen with a Yes or a No vote.

### **A Yes Vote – Replacement Lease approved:**

- Lease Rental Payments during decommissioning (starting in 2019) and monitoring would equal approximately \$110M over 35 Years.
- Immediate Asset Acquisition (NGS Buildings and Facilities). In addition to acquiring the assets, the Navajo Nation will receive a minimum payment of \$18M over 3 years. Note: Funds can be used for Economic Development Funds - over \$6m annually starting at the end of 2019.
- Payment of Loss Revenue from Coal Sales – NGS Owners will provide monetary compensation in 2018 and 2019 that replace lost coal sales up to approximately \$39M total for two years.
- 500MW of Transmission Rights on Existing NGS Transmission System provided by U.S. Bureau of Reclamation over a 35 year period. Owners would cover all Operation and Maintenance Costs for the first 10 Years.

### **A Yes Vote also means:**

- Keep 3,000 jobs for another 2 years
- Keep the breadwinners home with their families for another 2 years
- Provides time to transition our jobs and revenues to other sources
- Same level of NGS community support, including scholarships, contributions and donations
- Allows NN access to water pumps to deliver water to the local Navajo region
- Allows time for SRP and Peabody to find other positions for current workforce
- Provides funding to invest in economic ventures
- Allows NN Programs and Departments time to adjust to looming budget shortfalls
- Allows NN Chapters time to adjust to looming budget shortfalls
- A coordinated effort for the decommissioning and remediation
- Allows the opportunity for the NN to exercise its Sovereignty for the benefit of our citizens

### **A NO Vote Replacement Lease Rejected**

- Immediate: Negotiations Over. NGS Owners move to original position to close NGS in 2017

### **A No Vote also means:**

- End of 2017 – close to 1,000 jobs face elimination at NGS and Kayenta Mine combined; 2,045 additional regional jobs impacted
- No Transmission Rights Access – current Transmission Line dismantled
- No Rail Line Access – Rail Line taken apart
- Water Pumps – no longer needed
- Potential Navajo Nation Electric Rate Increase to make up for revenue loss
- Little to no funding available for economic development