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20 UNITED STATES DISTRICT COURT
21 FOR THE DISTRICT OF ARIZONA

22 THE NAVAJO NATION,

23 Plaintiff,

24 vs.

25 PEABODY COAL COMPANY,

26 a Delaware corporation,

27 Defendant.

CV 93-2342 PCT-SMM

JOINT STATEMENT OF
PROGRESS

(Hon. Stephen M. McNamee)

28 PEABODY COAL COMPANY,

Counterclaimant,

vs.

NAVAJO NATION,

Counterdefendant.

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT,

Intervenor.

1 This Joint Statement of Progress is submitted by all Parties to inform the Court of the
2 status of the Parties' settlement efforts.

3 This Court entered a stay of the above-captioned litigation on October 22, 2004, so that
4 the Parties could pursue ADR. The Parties have submitted Joint Statements of Progress on
5 their ADR efforts to the Court on February 17, 2006, July 21, 2006, August 23, 2006, and
6 September 15, 2007. In the most recent report, the Parties reported that they were engaged in
7 discussions concerning the above captioned litigation and a series of other issues relating to
8 possible continued operation of the Mohave Generating Station ("MGS").

9 The operation of MGS after December 2005 depended on a negotiated resolution of a
10 number of outstanding disputes or issues among the Parties to this case and other interested
11 Parties including the Hopi Tribe and Southern California Edison ("SCE"), including the
12 resolution of an alternative water supply and a continued coal supply for MGS. Moreover, a
13 1999 consent decree entered by the federal court in Nevada in separate litigation required
14 MGS to cease operating after December 31, 2005, if the MGS owners did not install certain
15 additional pollution control equipment by that date. The MGS owners concluded that they
16 could not make the substantial investment associated with this additional pollution control
17 equipment until the resolution of the outstanding coal and water supply issues for MGS.
18 Accordingly pursuant to the terms of that consent decree, MGS ceased operations on
19 December 31, 2005.

20 Since the fall of 2004, the Parties to this litigation, along with SCE and the Hopi Tribe,
21 have actively and consistently engaged in intense negotiations concerning resolution of a
22 variety of disputes including this lawsuit, a lawsuit pending in the United States District Court
23 for The District of Columbia (captioned *Navajo Nation v. Peabody Coal Company*, No. CA-
24 99-0469-EGS), and a broad range of business related matters, all of which were focused on
25 continued operation of the MGS as a coal-fired power plant utilizing tribal coal. The extensive
26 negotiations were conducted pursuant to a Mediation Agreement that included a
27 confidentiality clause prohibiting disclosure of the substance of the negotiations. Eric Van
28

1 Loon, a professional third party neutral, facilitated all stages of the mediation process. Mr.
2 Van Loon has previously submitted letters to this Court and the District of Columbia court
3 verifying that the Parties have expended considerable time and money, in a diligent, good-faith
4 effort to reach settlement.

5 During the course of the mediation, SCE was required to report to the California Public
6 Utilities Commission ("CPUC") on a monthly basis any progress made in negotiations relating
7 to the post-2005 operation of MGS. SCE has filed monthly reports, disclosing in these public
8 filings the status of the ongoing coal and water supply negotiations.

9 In June 2006, SCE first reported that it had discontinued its efforts to return MGS to
10 operation as an asset of SCE. Two of the other MGS co-owners, Los Angeles Department of
11 Water & Power and Nevada Power Company, made similar announcements at the same time.
12 Following those announcements, the fourth MGS co-owner, Salt River Project ("SRP"),
13 undertook independent efforts to assemble a new ownership group to purchase the interests of
14 the withdrawing MGS co-owners and continue operation of MGS. These efforts were
15 discontinued in February 2007, when SRP determined that it would not continue its efforts to
16 purchase the interests of the other co-owners. In parallel with the SRP effort, and continuing
17 after the February 2007 SRP announcement, SCE explored the possibility of selling MGS to
18 completely new owners who would seek to restart the plant.

19 As of May 15, 2007, SCE discontinued its efforts to sell MGS to a third party for
20 operation as a coal-fired plant. In a status report, dated May 22, 2007 SCE advised the CPUC
21 on the status of negotiations as of that date. In that submission, SCE reported that it was not
22 able to secure a firm offer to purchase on terms and conditions that were acceptable to SCE
23 and its co-owners. SCE further reported to the CPUC that it was not aware of any intention on
24 the part of any other MGS co-owner to pursue any additional efforts towards a MGS restart,
25 and that accordingly, SCE was focusing on a reuse or disposition of the MGS plant site for
26 some use other than as a coal-fired, electric generating facility.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 13, 2007, copies of foregoing Joint Statement of
3 Progress were served by ECF as follows:

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