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BEFORE THE ARIZONA CORPORATION COMMISSION Arizona Corporation Commission

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MAY 8 2017

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Docket No. E-00000C-17-0039

IN THE MATTER OF THE ARIZONA
CORPORATION COMMISSION
INVESTIGATION CONCERNING THE
FUTURE OF THE NAVAJO GENERATING
STATION.

**DINÉ C.A.R.E. ET AL.
COMMENTS ON THE
PROPOSED "SETTLEMENT" TO
KEEP NGS OPEN BEYOND 2019**

Arizona's three largest electric utilities—Arizona Public Service Company ("APS"), Salt River Project ("SRP"), and Tucson Electric Power Company ("TEP")—recently voted to close the Navajo Generating Station ("NGS") by 2019.¹ Each of these Arizona utilities has concluded it is uneconomical to generate electricity from the outdated coal plant. Moreover, SRP, which operates the plant, announced it has no intention of purchasing electricity from NGS in the future, even if the Federal government were to subsidize NGS's continued operation.² Arizona's utilities thus wish to promptly close the antiquated coal plant and replace the electricity NGS generates with cheaper resources.

Closing NGS as the utilities wish will result in cheaper electricity rates for Arizona ratepayers, along with cheaper water rates for Central Arizona Project

¹ See, e.g., Ryan Randazzo, *Utilities vote to close Navajo coal plant at end of 2019*, Ariz. Republic (Feb. 13, 2017), <https://goo.gl/mJsiHa>.

² See, e.g., Ryan Randazzo, *Navajo Nation officials want President Donald Trump to subsidize Kayenta Mine, power plant*, Ariz. Republic (Mar. 30, 2017), <https://goo.gl/AlQYQm> ("SRP spokesman Scott Harelson said the utility is supportive of efforts to keep the plant open after 2019, but SRP will not, under any circumstances, remain an owner of the plant after that date, meaning a new owner would have to step in even if the subsidies were provided by the federal government.").

1 (“CAP”) water.³ In addition, closing NGS will result in cleaner air for Arizonans to
2 breathe, particularly nearby Navajo and Hopi Tribal members who have long bore the
3 brunt of NGS’s pollution. Closing NGS will also result in less air pollution at the
4 nearby Grand Canyon, where the renowned scenic views draw over five millions
5 visitors from around the world to Arizona each year.

6 Despite the numerous economic, public health, and environmental benefits of
7 promptly closing NGS, Commissioner Tobin has expressed concerns with the closure.
8 On April 27, 2017, Commissioner Tobin sent a letter to Interior Secretary Ryan Zinke
9 that summarized those concerns and included a proposal for a “settlement” that would
10 keep NGS open past 2019. On that same day, the letter was docketed in this
11 proceeding. Commissioner Tobin also added an agenda item to discuss the letter at
12 the April 28, 2017 Staff Meeting, which occurred the following day. At the Staff
13 Meeting, Chairman Forese stated he was prepared to vote in support of the proposed
14 “settlement,” and that he would like the Commission to vote on the matter soon.⁴

15 The Commission should not vote in support of the proposed NGS “settlement”
16 for three primary reasons. First, it would be premature for the Commission to vote on
17 the proposal before it hears from all stakeholders on this important issue. To date, the
18 Commission has largely heard from Peabody Energy, which wants to keep NGS open
19 indefinitely because it operates the Kayenta Mine that supplies NGS with coal. The
20 Commission should provide a similar opportunity for input from stakeholders that
21 support the prompt closure of NGS, including nearby Navajo and Hopi Tribal members
22 who would be most directly impacted by the Commission’s decision.

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25 ³ See, e.g., Ryan Randazzo, *Officials: Arizona water users better off without Navajo*
Generating Station coal plant, Ariz. Republic (Feb. 16, 2017), <https://goo.gl/Apm3mU>.

26 ⁴ Webcast of April 28, 2017 Staff Open Meeting at 13:27–14:20, available at
http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=2736.

1 Second, the proposed “settlement” is substantively flawed so the Commission
2 should not endorse the proposal. Essentially, the proposal attempts to prolong NGS’s
3 operations to provide more time to find a third party to purchase NGS and keep it
4 running indefinitely. But this would require taxpayers to subsidize an outdated and
5 uneconomical coal plant, which is not in the public interest. Moreover, if a third party
6 willing to purchase a costly and uncompetitive coal plant does not materialize at this
7 time, it is unlikely they will do so in a year or two from now.

8 Third, Commissioner Tobin’s concerns about how NGS’s closure could impact
9 fuel security and price volatility in Arizona are better addressed through the long-term
10 Resource Planning and Procurement proceeding (Docket No. E-00000V-15-0094). That
11 proceeding is specifically designed to address these broader resource planning
12 concerns, and it contains the very latest data from APS and TEP, which filed their new
13 Integrated Resource Plans in that docket last month.

14 For these reasons, the following organizations (collectively the “Coalition
15 members”) respectfully request that the Commission not vote in support of the
16 proposed “settlement” to keep NGS open beyond 2019: Diné Citizens Against Ruining
17 Our Environment (“Diné C.A.R.E.”), Tó Nizhóní Aní, Center for Biological Diversity,
18 National Parks Conservation Association, and Sierra Club. The Coalition members
19 represent Navajo Tribal members who live near NGS and support closure of the
20 outdated and uneconomical coal plant, along with thousands of other Arizonans who
21 support the prompt shut down of NGS.

22 **I. The Commission Should Provide an Opportunity for All Stakeholders**
23 **to Submit Comments and Analysis on NGS’s Future Before Any Vote.**

24 The decision on NGS’s future will have far-reaching implications for Arizona
25 ratepayers, the Arizona economy, Navajo and Hopi Tribal members, and the millions
26 of people who visit the Grand Canyon and Arizona’s other iconic natural areas each

1 year. Before taking any vote on such an important matter, the Commission should
2 hear from all stakeholders who wish to provide comment and analysis on NGS's future.
3 So far, the Commission as a whole has heard just one side of the story. On April 6,
4 2017, the Commission held a Workshop on Coal Markets that consisted of Peabody
5 Energy and its consultants presenting their analysis in support of keeping NGS open.
6 Peabody Energy of course has a vested interest in keeping NGS open, as it operates
7 the Kayenta Mine that supplies coal to NGS. Not surprisingly, there are serious flaws
8 with the analysis of Peabody's consultants and the conclusion that NGS is economical.⁵
9 In fact, Synapse Energy Economics recently found that Peabody's analysis contains
10 several fundamental errors that collectively skew the results by nearly \$2 billion.⁶

11 While it has heard from Peabody Energy, the Commission has not yet heard the
12 many other sides of the NGS story. As a result, the Commission should provide other
13 stakeholders with a similar opportunity to inform the Commission of the numerous
14 benefits that will result if NGS promptly closes. Importantly, many Navajo and Hopi
15 Tribal members support NGS's closure, and before it takes any action on NGS the
16 Commission should hear from these individuals. Tribal member concerns range from
17 the immediate impacts to their health and welfare from NGS, to far-reaching impacts
18 such as the use and future of the Navajo Nation's water rights. The Commission
19 should also hear how closing NGS should result in lower electric rates for ARS, SRP,
20 and TEP customers. In addition, the Commission should hear from public health and
21 conservation groups about how closing NGS will improve Arizonans' health and benefit
22 Arizona's environment and recreation economy.

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25 ⁵ See, e.g., Nancy LaPlaca, Energy & Policy Inst., *Peabody Uses Flawed Study to Push for Navajo Generating Station Lifeboat*, <http://www.energyandpolicy.org/peabody-uses-flawed-study-push-navajo-generating-station/>.

26 ⁶ Jeremy Fisher, Synapse Energy Econ., *Chasing the Elusive Benefits of Navajo Generating Station* (2017) (the Synapse report will be separately filed in this docket).

1 The current filings in this docket illustrate that the Commission does not have
2 balanced and thorough information before it at this time. Prior to the filing of
3 Commissioner Tobin's proposal on April 27, the filings in this docket largely consisted
4 of a handful of intervention motions and cursory comments. In fact, the only
5 substantive data or analysis in this docket until now is a copy of Peabody Energy's
6 presentation at the April 6th Coal Markets Workshop. Conspicuously absent from the
7 docket is any substantive data or analysis on the ratepayer benefits, public health
8 benefits, environmental benefits, and other benefits of closing the uneconomical NGS
9 plant. It would be premature and arbitrary for the Commission to vote on a proposal
10 to keep NGS open without this information. Accordingly, the Commission should
11 provide an opportunity for all stakeholders to present data and analysis on NGS's
12 future before it votes on Commissioner Tobin's proposal.

13 The proposed "settlement" would extend NGS's operations until at least 2022, in
14 part to provide the Navajo Nation, Hopi Tribe, and the State of Arizona more time to
15 "transition." However, in order for this transition to be equitable for all, it is
16 imperative that all stakeholders have the opportunity to provide input on the
17 numerous benefits of promptly closing NGS.

18 **II. The Proposed "Settlement" Is Flawed and the Commission Should Not**
19 **Endorse the Proposal.**

20 Commissioner Tobin's letter states the proposed "settlement" contains five "key
21 provisions" that would allow NGS to remain open past 2019.⁷ Each provision alone is
22 seriously flawed. Moreover, the proposal as a whole is problematic because its purpose
23 is to keep NGS open until at least 2022, so the Federal government and others can
24 attempt to find a third party willing to purchase an outdated and uneconomic coal

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26 ⁷ Letter from Andy Tobin, Comm'r, Ariz. Corp. Comm'n, to Ryan Zinke, Sec'y of Interior,
Dep't of Interior 4 (Apr. 27, 2017).

1 plant. This would require taxpayers to subsidize NGS's costly operations, while the
2 Federal government would simultaneously attempt to relax NGS's pollution reduction
3 obligations. This result would not be in the public interest. The proposal would harm
4 Arizonans and all federal taxpayers, and unnecessarily subsidize an uneconomic
5 generation resource that Arizona's three largest utilities have concluded should be
6 promptly closed.

7 **A. Provision 1: Five-year commitment to keep NGS in operation.**

8 The first "key provision" of the proposed settlement is a commitment between
9 SRP and the Navajo Nation to keep NGS in operation for a minimum of five years (i.e.,
10 until 2022). This commitment is essentially a stall tactic to keep the uneconomical
11 plant open despite SRP's and the other Arizona utilities' wishes to promptly close
12 NGS. It is not in the public interest to keep an uneconomical coal plant running,
13 particularly when the three largest Arizona utilities have all determined it is in their
14 best interests and their customers' best interests to close the plant. In addition, it is
15 not in the public interest to prolong NGS's heavily-polluting operations when doing so
16 would unnecessarily harm the health of nearby Navajo and Hopi Tribal members, and
17 Arizonans. It is also not in the public interest to prolong NGS's operations because it
18 is unclear who would purchase NGS's expensive electricity after 2019, as SRP, CAP,
19 and multiple other utilities have stated they no longer wish to generate or purchase
20 power from NGS. In contrast, what is in the public interest is to close NGS by 2019, as
21 the utilities, many stakeholders, and many members of the public all support.

22 Commissioner Tobin's letter claims extending NGS's operations until 2022
23 would provide a more gradual transition for the Navajo and Hopi Tribes, and the
24 Arizona electric system more generally. But this just unnecessarily delays the
25 inevitable. As recent experience has repeatedly shown across the United States,
26 antiquated and heavily-polluting coal plants are often no longer an economical

1 generation resource compared to low-cost solar, wind, and natural gas. There is
2 nothing unique about NGS in this regard. In fact, several other Arizona coal plants,
3 including Cholla Power Plant and Apache Generating Station, have recently stopped
4 burning coal or announced plans to do so.⁸ Moreover, CAP has also concluded it is
5 more economical to purchase power elsewhere than to continue generating power from
6 NGS. Delaying NGS's closure will come with a real cost, in the form of subsidies for an
7 uneconomic resource and increased pollution. These costs far outweigh any
8 speculative benefits that might result from delaying NGS's closure until 2022.

9 The letter also states delaying NGS's closure will provide additional time to find
10 a third party willing to purchase and continue operating NGS. This additional time is
11 unnecessary. It is very unlikely that a third party will materialize who wishes to
12 purchase an outdated coal plant that SRP, CAP, APS, TEP, and other utilities have all
13 concluded is uneconomical. At the April 6th Coal Markets Workshop, one of Peabody
14 Energy's consultants conceded that finding such a purchaser is unlikely and there is
15 very little precedent elsewhere of third parties purchasing archaic coal plants.⁹
16 Moreover, if there were a third party interested in purchasing NGS, now is the time
17 for them to come forward. If no third party materializes at this time, despite the
18 extensive and highly-publicized efforts of some parties to find a purchaser to keep NGS
19 open, it is unlikely a third party will suddenly come forward a year or two from now.
20 As a result, NGS's operations should not be extended until 2022 based on the slim
21 chance that a third party will come forward to purchase NGS after this summer.

22 In sum, prolonging NGS's operations until 2022 would not facilitate a just
23 transition. Instead, this provision opens the door for NGS to find ways to remain
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25 ⁸ See, e.g., 82 Fed. Reg. 15,139 (Mar. 27, 2017) (Cholla); 80 Fed. Reg. 19,220 (Apr. 10,
2015) (Apache).

26 ⁹ Webcast of April 6, 2017 Workshop on Coal Markets at 57:00–58:00, *available at*
http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=2697.

1 operational, which is not in the best interests of local and tribal citizen groups, the
2 utilities, or the citizens of Arizona. Indeed, as the remaining “settlement” provisions
3 demonstrate, the primary purpose of continuing operations until 2022 is apparently to
4 find an avenue to keep NGS open indefinitely, in spite of the immediate citizen and
5 economic concerns with doing so. This provision should be rejected.

6 **B. Provision 2: Waiver of the Navajo Nation’s right to regulate NGS**
7 **decommissioning.**

8 The second “key provision” is a waiver of the Navajo Nation’s right to regulate
9 the decommissioning of NGS. This attempt to wrest authority from the Navajo Nation
10 is extremely problematic, especially given the fact that the Commission has no
11 authority to make decisions on behalf of the Navajo Nation, or to speak for individual
12 Tribal members. While the Coalition members submitting these comments do not
13 purport to speak on behalf of the Navajo Nation, they do support tribal sovereignty
14 and the ability of the Nation to regulate any decommissioning, restoration,
15 remediation, and other activities that would benefit Tribal members’ health and
16 welfare.

17 The Coalition members who represent Tribal members strongly object to this
18 attempt to usurp Tribal authority. This provision would directly impact them and the
19 health and welfare of Tribal members and their descendants, yet it would do so
20 without their input or consent. NGS is located on the Navajo Nation’s lands, yet the
21 proposal would preclude the Navajo Nation’s authority to regulate the
22 decommissioning of NGS, or to decide when NGS should be decommissioned. Indeed,
23 if the Commission truly wishes to extend NGS’s operations to facilitate a just
24 transition for the benefit of the Tribes, it would be axiomatic that the Navajo Nation
25 and other citizens in the vicinity be able to regulate the process. The provision
26 appears to go so far as to prevent the Navajo Nation from determining how restoration

1 and remediation will occur. This is an untenable position because the Navajo
2 community surrounding NGS will have to live near, in, and around NGS and its waste
3 long after the plant has closed.

4 As of this filing, the Navajo Nation has not determined its official and final
5 position on NGS's future, but this proposal would deprive the Nation of meaningful
6 input. This proposal also presupposes the Navajo Nation will agree to such an
7 enormous limitation on its authority to regulate a massive coal plant on its lands. This
8 assumption is especially problematic because the Navajo Nation has actively pursued
9 other avenues directly with the owners of NGS, and without the Commission's
10 involvement.¹⁰ In fact, SRP recently suggested this settlement proposal is an
11 unhelpful "distraction" that may interfere with its negotiations with the Nation.¹¹

12 The Commission should not approve or endorse a settlement agreement that
13 has profound implications on the Navajo Nation's authority and the lives of its
14 members, but that does not have the open and express consent of Tribal nations.

15 **C. Provision 3: 50/50 cost sharing between the NGS owners and the**
16 **Federal government for repair and maintenance expenses.**

17 The third "key provision" consists of a 50/50 cost share between the NGS owners
18 and the Federal government for repair and maintenance expenses. While this
19 provision attempts to offset the economic costs of continuing to operate an
20 uneconomical coal plant, it only further emphasizes that the focus of this proposed
21 "settlement" is apparently not to provide a just transition away from NGS. There are
22 a number of other economic options that the Federal government can invest in that
23 would create lasting positive change in the areas surrounding NGS. Rather than

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25 ¹⁰ See, e.g., Press Release, Office of the Navajo Nation, Owners of The Navajo Generating
Station and the Navajo Nation Report Progress in Discussion to Keep Plant Open Through
2019 (May 1, 2017), available at <https://goo.gl/JxLWmU>.

26 ¹¹ Ryan Randazzo, *Arizona utility regulator seeks federal support for embattled coal plant*,
Ariz. Republic (May 2, 2017), available at <https://goo.gl/1lA6fl>.

1 subsidizing an outdated and heavily-polluting coal plant that SRP, CAP, APS, TEP,
2 and other utilities no longer believe makes economic sense, this money could be better
3 spent on initiatives to create jobs or develop clean energy projects on Navajo and Hopi
4 lands. Before voting in support of this NGS subsidy, the Commission should consider
5 the possibility of more beneficial investment options for the Navajo and Hopi tribes,
6 and for the Arizona electricity system.

7 **D. Provision 4: Federal government must make a good faith effort to**
8 **secure relief from environmental regulations.**

9 The fourth “key provision” states the Federal government must make a good
10 faith effort to secure relief from environmental regulations affecting NGS. If NGS is to
11 remain open until 2022, the Federal government should not excuse the coal plant from
12 complying with its pollution reduction obligations. The Commission serves and
13 protects the public, and it is contrary to this mission to support a proposal that would
14 allow NGS to evade its federal environmental obligations and thereby continue to emit
15 large amounts of pollution. This provision is particularly untenable for the Navajo
16 Nation and people living near the plant and on the reservation.

17 This provision is also contrary to existing federal law. NGS must, as must all
18 coal-fired power plants in the nation, comply with Clean Air Act requirements,
19 including the NGS regional haze Federal Implementation Plan.¹² That Federal plan
20 was negotiated and supported by SRP, the Navajo Nation, and other owners and
21 interested parties as recently as 2015. The Ninth Circuit Court of Appeals has upheld
22 the plan, which calls for the shut down of at least one unit and control of nitrogen
23 oxide pollution at other units on a schedule, whether through a combination of reduced
24 operation and installation of selective catalytic reduction technology.¹³ These controls
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26 ¹² 79 Fed. Reg. 46,513 (Aug. 8, 2014).

¹³ *Yazzie v. EPA*, 851 F.3d 960 (9th Cir. 2017).

1 are a significant investment to ensure NGS meets basic legal requirements and
2 protects the health of Tribal members and others living near the plant.

3 Further, it is unclear if this vague suggestion regarding NGS's pollution
4 obligations would extend to NGS's coal waste. NGS has generated, and will continue
5 to generate, significant amounts of coal ash and coal combustion wastes. NGS must
6 begin to address its obligations to protect ground and surface water resources, as well
7 as public health, from the impact caused by dumping these wastes on Navajo lands for
8 the life of the plant. The Commission should reject any suggestion that any owner or
9 operator of NGS can walk away from or be excused, even in part, from ensuring that
10 public health and Arizona's waters are not fully protected and cleaned up if necessary.
11 Further, saddling the Navajo Nation with any such obligation going forward would
12 show a blatant disregard for environmental, economic, and social justice.

13 **E. Provision 5: Commitment to sell NGS to a third party.**

14 The fifth and final "key provision" requires a commitment by NGS's current
15 owners to work with a third party to sell NGS to a new owner. This provision begs the
16 question whether the ultimate goal of this proposal is to find a way to keep NGS open
17 indefinitely, or to provide additional time for a just transition. Instead of establishing
18 a framework that would consider decommissioning NGS after 2022, this provision
19 facilitates the sale of the plant to a third party, presumably for continued operation.
20 The Commission should reject any provision that is not clear and does not provide
21 stakeholders or the public with a reasonable indication of when closure will occur.

22 **III. The Commission's Fuel Security and Price Volatility Concerns Are**
23 **More Appropriately Addressed through the Resource Planning and**
24 **Procurement Proceeding.**

25 Every Arizona electric utility that has an ownership interest in NGS has
26 concluded that it is in its best interests, and its customers' best interests, to stop
generating electricity from NGS because the outdated coal plant is not economical.

1 CAP has reached the same conclusion. Yet despite this consensus among the entities
2 with a direct stake in NGS, Commissioner Tobin hopes to keep NGS open. In his April
3 27th letter to Secretary Zinke, Commissioner Tobin expresses concern that closing
4 NGS will increase Arizona's reliance on out-of-state natural gas, and that SRP's
5 forecast of low natural gas prices in the future may prove incorrect. Commissioner
6 Tobin's concerns with potential fuel security and price volatility issues associated with
7 natural gas should be addressed in the Commission's Resource Planning and
8 Procurement proceeding (Docket No. E-00000V-15-0094).

9 The Resource Planning and Procurement proceeding is a long-term planning
10 process specifically designed to provide the Commission with the opportunity to
11 holistically examine and address concerns with the statewide fuel mix. The Resource
12 Planning and Procurement rules state the Commission must determine whether the
13 utilities' long-term resource plans are in the public interest, considering factors such as
14 "[u]ncertainty in . . . forecasts," the "reliability of power supplies, including fuel
15 diversity," the "degree to which the [utility] considered all relevant resources, risks,
16 and uncertainties," and the "best combination of expected costs and associated risks for
17 the [utility] and its customers."¹⁴ The long-term planning process requires utilities to
18 comprehensively analyze their existing generation resources, future load growth, and
19 future generation resources. This comprehensive analysis allows the Commission to
20 take a broad, systemic look at a utility's fuel mix, and the various pros and cons of each
21 type of resource. As a result, the Commission's concerns about how coal plant closures
22 may impact fuel security and price volatility in Arizona are more appropriately
23 addressed through the resource planning process, rather than an investigatory docket
24 that myopically focuses on only one specific generation resource. Moreover, the
25 Resource Planning and Procurement proceeding contains the very latest data on these

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¹⁴ A.A.C. R14-2-704(B)(4), (B)(5), (B)(8), (B)(10).

1 issues, as APS and TEP filed their new Integrated Resource Plans in that docket last
2 month.

3 Commissioner Tobin's letter highlights the shortcomings inherent in attempting
4 to shoehorn these broad fuel mix concerns into this NGS-specific docket. The letter
5 frames the concerns related to fuel security and price volatility as an issue of coal
6 generation versus natural gas generation. But that is a false choice and an
7 unreasonably narrow view of Arizona's diverse mix of generation resources. If NGS
8 closes, the electricity formerly produced by NGS will likely be replaced by natural gas,
9 along with solar and wind. Thus, if clean renewable energy resources replace part of
10 NGS's production, closing NGS may actually provide fuel security and price volatility
11 benefits to Arizona. But tellingly, the letter scarcely discusses solar and wind, and it
12 makes no mention of how solar and wind provide fuel security and price volatility
13 benefits (in addition to numerous other benefits). Consequently, the Commission
14 should not take any action to keep NGS open due to broader concerns about fuel
15 security and price volatility, as it will be unable to reach a fully-informed decision on
16 these issues in this docket. Instead, the Commission should address these concerns
17 through the ongoing Resource Planning and Procurement proceeding, which is
18 designed to provide a more comprehensive analysis of these issues.

19 CONCLUSION

20 For the reasons stated above, the Commission should not vote in support of
21 Commissioner Tobin's proposed "settlement" to keep NGS open beyond 2019.

1 DATED May 8, 2017.

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16 *On behalf of Diné Citizens Against Ruining
17 Our Environment, Tó Nizhóní Aní, Center for
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19 Conservation Association, and Sierra Club.*

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