



**United States
Department of Energy**

**WESTERN AREA
POWER ADMINISTRATION
Desert Southwest
Regional Office**

AGREEMENT

AGREEMENT NO. 12-DSR-12238

BETWEEN

**UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION**

AND

CERTAIN NAVAJO GENERATING STATION CUSTOMERS

FOR

**ENABLING AGREEMENT FOR THE
SALE OF NAVAJO GENERATING STATION ENERGY**

AGREEMENT NO. 12-DSR-12238

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**UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Customer Service Region**

AND

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1. **PREAMBLE:** This AGREEMENT is made this ____ day of _____, 2012, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); August 4, 1939 (53 Stat. 1187); August 4, 1977 (91 Stat. 565); September 13, 1982 (96 Stat. 877); October 24, 1992 (106 Stat. 2776), and Acts amendatory or supplementary to the foregoing Acts; between the United States of America, Department of Energy, acting by and through the Administrator, WESTERN AREA POWER ADMINISTRATION (Western), represented by the officer executing this Agreement or a duly appointed successor; and those OTHER ENTITIES THAT ARE PARTY TO THIS CONTRACT (Purchaser(s)), their successors and assigns; sometimes individually called Party and collectively called Parties.

2. **EXPLANATORY RECITALS:**

- 2.1 The United States Bureau of Reclamation (Reclamation) has a 24.3% interest in the Navajo Generating Station to provide power for the Central Arizona Project (CAP).
- 2.2 Navajo Surplus energy (Navajo Surplus) is that portion of the U.S. entitlement of energy associated with the Navajo Entitlement that is in excess of the pumping requirements of the CAP and any needs for desalting and protective pumping facilities under Section 101(b)(2)(B) of the Colorado Basin Salinity Control Act of 1974, Pub. L. 93-320, as amended.
- 2.3 Western entered into Contract No. 11-DSR-12296 with Reclamation and the Central Arizona Water Conservation District for the administration of the U.S. entitlement in the Navajo Project, including providing power marketing services to Reclamation for the sale of Navajo Surplus.
- 2.4 Western is selling the Navajo Surplus specified in this Agreement on behalf of Reclamation.

3. **AGREEMENT:** The Parties agree to the terms and conditions set forth herein.

4. **TERM OF AGREEMENT:**

- 4.1 This Agreement shall become effective upon execution by a Purchaser as the buyer of Navajo Surplus and Western as the seller. This Agreement shall remain in effect until December 31, 2022, except as otherwise provided for in this Section. This Agreement shall automatically renew for successive commitment periods of five (5) years thereafter unless terminated by Western under the terms

of this Agreement; provided, that this Agreement shall terminate no later than December 31, 2032.

- 4.2 Any Purchaser may withdraw from this Agreement by providing thirty (30) days advance written notice to Western; provided, that no such withdrawal will become effective until the final termination date of all such Purchaser's trade confirmation(s) executed under this Agreement (Confirmation).
- 4.3 Western may terminate this Agreement with any or all Purchasers by providing thirty (30) days advance written notice to all applicable Purchasers; provided, that no such termination will become effective until the final termination date of all applicable Confirmations.

5. **SALE OF ENERGY:**

- 5.1 Western and Purchaser(s) agree that Navajo Surplus is a unit contingent resource without reserves. While Navajo Surplus is intended to have assured availability, scheduled deliveries may be interrupted or curtailed by Western due to: (i) a loss or reduction of Navajo generation; (ii) a loss or reduction of transmission capacity; or (iii) a reliability emergency, provided that Western has exercised prudent operating alternatives prior to the interruption or curtailment. Therefore, it is not a default by Western if delivery is prevented due to a generator or transmission outage, or a reliability curtailment.
- 5.2 All other terms and conditions not specified in this Agreement or the applicable Confirmation shall be in accordance with applicable provisions of the Western Systems Power Pool Agreement (WSPP Agreement) dated October 21, 2011, which are hereby incorporated by reference and included as if fully set forth

herein. However, if the provisions of the WSPP Agreement are in conflict with this Agreement and the applicable Confirmation, then the terms of this Agreement and the applicable Confirmation shall control. If the terms of this Agreement are in conflict with the terms of the Confirmation, then the terms of the Confirmation shall control.

5.3 Sales made under this Agreement using a Confirmation are considered distinct transactions between a specific Purchaser and Western. Each transaction forms a contractual obligation between Purchaser and Western and is not intended to be shared with, or signed by, any other Party, except as mutually agreed or as provided for in the WSPP Agreement and by law.

6. **TAXES:** Purchaser shall be liable for and shall pay, or cause to be paid, all taxes applicable to the transaction.

7. **INVOICES AND PAYMENTS:**

7.1 All invoices and payments due under this Agreement shall be made in accordance with the provisions of the WSPP Agreement. Net billing is not available under this Agreement.

7.2 Upon request of Western after execution of this Agreement with each Purchaser, the Purchaser will supply Western with all applicable Points of Contact (POC) information, including, but not limited to, billing and scheduling information.

8. **EXHIBITS:** No initial exhibit to this Agreement is attached, however, exhibits may be added or revised in the future, as required, and shall be made a part of this Agreement by mutual written agreement duly executed by all the Parties; provided, that any new or revised exhibit shall not apply to any Confirmation executed before the effective date of

such exhibit. Any new or revised exhibit shall apply only to new Confirmations executed on or after the effective date of such exhibit.

9. **AMENDMENTS AND MODIFICATIONS:** This Agreement may be amended or modified by mutual written agreement duly executed by all the Parties; provided, that any such amendment or modification shall not apply to any Confirmation executed before the effective date of such amendment or modification. Any amendment or modification shall apply only to new Confirmations executed on or after the effective date of such amendment or modification.
10. **GENERAL POWER CONTRACT PROVISIONS:** Western's General Power Contract Provisions (GPCP), effective September 1, 2007, are included hereto, and are hereby made a part of this Agreement the same as if they had been expressly set forth herein; provided, that only provisions 1.1, 2, 31, 35.2 and 38 through 45 shall apply; and further provided, that if these applicable provisions in the GPCP are in conflict with this Agreement and a Confirmation, the terms of this Agreement and the Confirmation shall control. If the terms of this Agreement are in conflict with the terms of the Confirmation, then the terms of the Confirmation shall control.
11. **EXECUTION BY COUNTERPARTS:** This Agreement may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached by any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto, by having attached to it one or more signature pages.

12. **AUTHORITY TO EXECUTE**: Each individual signing this Agreement certifies that the Party represented has duly authorized such individual to execute this Agreement that binds and obligates the Party.

The Party listed below has caused this Agreement No. 12-DSR-12238 to be executed the date first written above.

DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION

By NOT EXECUTABLE - TEMPLATE ONLY

Penny D. Casey

Title Manager, Energy Management and
Marketing Office

Address Desert Southwest Regional Office

P.O. Box 6457

Phoenix, AZ 85005-6457

[To be used if a Party signs when this Agreement is first executed.] The Party listed below has caused this Contract No. 12-DSR-12238 to be executed the date first written above.

[PURCHASER NAME]

Attest:

By NOT EXECUTABLE - TEMPLATE ONLY

Title _____

Address _____

Title

[To be used when a future Party is added.] The Parties listed below have caused this

Purchaser to be made a part of Agreement No. 12-DSR-12238 on this _____ day of _____,
2012.

DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION

By NOT EXECUTABLE - TEMPLATE ONLY

Penny D. Casey

Title Manager, Energy Management and
Marketing Office

Address Desert Southwest Regional Office

P.O. Box 6457

Phoenix, AZ 85005-6457

[PURCHASER NAME]

Attest:

By NOT EXECUTABLE - TEMPLATE ONLY

Title _____

Address _____

Title
