

**TESTIMONY BY DAVID MARTIN
ON BEHALF OF THE
ARIZONA COALITION FOR WATER, ENERGY AND JOBS**

“CONGRESSIONAL FIELD HEARING – THE I.R.S. AND THE E.P.A. –
BUREAUCRATS OUT OF CONTROL?”

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INTRODUCTION

Chairman Gosar and distinguished members of the panel: My name is David Martin, and I am the president of the Arizona Chapter of the Associated General Contractors. I am a third generation Arizonan, and I care deeply about our people, our economy and our future. Arizona has a long and proud tradition of being independent and standing up for itself and the values of its people. And, our political leaders have been farsighted and have represented Arizona with courage and determination.

I am here today representing the Arizona Coalition for Water, Energy and Jobs, a broad and growing alliance of business leaders, agricultural leaders, developers and chambers of commerce. Our coalition is dedicated to protecting Arizona’s quality of life by preserving our state’s access to affordable water and electricity – two vital assets that face great risk due to onerous and unnecessary regulations proposed by the U.S. Environmental Protection Agency (“EPA”).

I want to thank Congressman Gosar and the other distinguished members of this panel for giving our Coalition the opportunity to address the EPA’s proposed plan that would require operators of the Navajo Generating Station (“NGS”) to install up to \$1.1 billion in additional controls to reduce nitrogen oxide (NO_x) emissions in the very near term yet would deliver no perceptible visibility benefit at the Grand Canyon based on the government’s own study.

My remarks today will focus on several key points.

First, the Navajo Generating Station was authorized and created by Congress after years of effort by Arizona's Congressional delegation, governor and legislature. It is an essential part of the Central Arizona Project ("CAP") which was publicly debated in Congress for over a decade. Creating NGS as a coal power plant was itself an environmental compromise to avoid building additional hydroelectric dams on the Colorado River.

One-fourth of the plant, and the energy it produces, is held for the sole benefit of the people of Arizona for two purposes: first, to provide the electricity necessary to pump Arizona's share of Colorado River water through the CAP canal into central and southern Arizona and, second, to enable Arizona to repay the Federal Government for the cost of constructing the CAP.

Second, the Environmental Protection Agency ("EPA") and extreme anti-carbon activist groups are using the Federal Haze Rules as pretext to further a one-sided political agenda.

Third, neither the EPA Rule, nor the recently announced working group alternative, will reduce the haze – which is not visible to the human eye – alleged to be present at the Grand Canyon or the other allegedly-affected parks.

Fourth, the working group proposal seeks early shut down of a unit and advances carbon policy that is outside the scope of this rulemaking.

Fifth, because NGS was created by Congress as a part of the CAP for the benefit of the people of Arizona, we are entitled to a voice in its future and to be represented in determining the conditions under which it operates.

Sixth, if the EPA forces its agenda, energy and water costs will go up unnecessarily, Arizona ratepayers will bear the burden of these additional costs, the state's economy will suffer and our full allocation of Colorado River water could well be in jeopardy.

If Arizona's farmers and other large water users are forced to return to pumping groundwater because of the EPA's demands and over-draft our existing groundwater table, it will disrupt Arizona's carefully crafted water management mechanisms. We will suffer real and irreparable environmental damage.

The title of today's hearing is: "The IRS and the EPA – Bureaucrats Out of Control." I would suggest that this entire rule-making process demonstrates an abuse of the law by out-of-control bureaucrats at a federal administrative agency seeking to further a one-sided political agenda.

Let me address each of these points in more detail.

I. NGS WAS CREATED BY CONGRESS AFTER DECADES OF WORK BY THE ARIZONA CONGRESSIONAL DELEGATION, GOVERNOR AND LEGISLATURE. IT IS AN ESSENTIAL PART OF THE CENTRAL ARIZONA PROJECT, AND ONE-FOURTH OF IT IS HELD SOLELY FOR THE BENEFIT OF THE PEOPLE OF ARIZONA.

NGS was not created by private entities coming together, seeing a market, raising capital and building the plant like the Palo Verde Nuclear Generating Station or most other electric generation facilities. From its conception, during the debate in Congress over the CAP, through its operation as we speak today, NGS was and is an essential component of the CAP. Without

the electric power it generates to lift our share of Colorado River water 3,000 feet into Phoenix and Tucson, the CAP could not function.

As part and parcel of the federal legislation which created the CAP, about one-fourth of the plant – 24.3% – was to be held by the federal government. This position, as well as the power it generates, was created as an integral part of the CAP. It is held solely to make the CAP work for the people of Arizona.

Arizona's leaders fought hard for our share of Colorado River water. They initiated the landmark case of *Arizona v. California*, which went to the United States Supreme Court two times, and as a result of which, the people of Arizona are entitled to 2.8 million acre feet of Colorado River water per year.

United States Senators Ernest McFarland, Carl Haden, Barry Goldwater and Paul Fannin, Congressmen Stewart Udall, Morris Udall and John Rhodes, and Governors Sam Goddard and Jack Williams, as well as State legislative leaders and untold community leaders, envisioned the CAP to move Colorado River water into central Arizona for the benefit of all Arizonans, including the Native American Tribes who have surrendered their claims to surface and groundwater in exchange for guaranteed allocations of CAP water.

NGS itself was a compromise, proposed by environmental groups who opposed building additional dams on the Colorado River. It was agreed to by the Arizona Congressional delegation and then-Secretary of Interior Stewart Udall, and is a public asset just like all of the other components of the CAP.

The people of Arizona, our elected leaders, including the Members of Congress present today, the remainder of Arizona's Congressional delegation, the Governor and the legislature

should not accept any NGS plan strong-armed by the EPA without asking what it will cost and how it will impact the people of Arizona and our economy.

II. EPA AND ENVIRONMENTAL GROUPS ARE USING THE FEDERAL HAZE RULES AS A PRETEXT TO FURTHER A ONE-SIDED POLITICAL CARBON AGENDA.

The Clean Air Act (“CAA”) and the Federal Haze Rules were never intended by Congress to enable the EPA to force states to abandon their existing cost-effective energy resources and switch to so-called “clean,” “renewable,” “low carbon or low-emitting” fuels, currently favored by the Administration and the EPA. Congress has not given the EPA the authority to coerce Arizona into abandoning its existing energy resources and switch to expensive, less efficient, solar, wind, biomass or other fuels. And, neither the proposed rule nor the working group alternative cite any such legal authority

Yet, that is exactly what the EPA and its allies seek to do here.

The reality is SRP has worked very hard to keep the NGS on line and is well recognized for its decades of service to the Valley along with its history of responsible stewardship. Notably, SRP and the plant owners voluntarily installed the most effective NO_x control equipment available at NGS more than three years ago at a cost of \$45 million. These controls are called Low NO_x Burners with Surface Over Fire Air. This technology reduced NO_x emissions at the plant by 40%. Yet, the EPA and its radical allies were not satisfied and saw an opportunity to force more agenda-driven changes. They now insist that Selective Catalytic Reduction (“SCR”) be installed at an additional capital cost of more than \$500 million, and this could rise to more than \$1.1 billion if baghouses are required, which is highly likely.

In earlier filings, both SRP and the Central Arizona Water Conservation District (“CAWCD”) argued that the controls SRP has already voluntarily installed meet the maximum legal standard EPA can demand. In fact, CAWCD argued in a 2009 filing that “the installation and operation of SCRs actually have the potential for *degrading* visibility.” (Emphasis in original.) The Coalition agrees that EPA should accept the plant’s current NO_x controls as BART.

But visibility isn’t the goal of the EPA’s rule or this rulemaking procedure.

EPA’s goal, the Administration’s goal, and the goal of extreme activist groups is to force Arizona to stop using the coal resources that we are currently relying on and have ample supplies of here in Arizona. They want to compel Arizona to move to low carbon fuels “to achieve CO₂ emission reductions.” And, they are making this demand even though CO₂ has zero relationship to visibility. Simply put, their goal is to advance an anti-carbon agenda using the Haze Rules as a pretext.

This goal, however, is not authorized by the Regional Haze Rules or the CAA, and the policy underlying it has never been enacted by Congress. In fact, Congress has specifically rejected the administration’s proposed anti-carbon policies.

III. NEITHER THE PROPOSED EPA RULE NOR THE WORKING GROUP ALTERNATIVE WILL REDUCE THE HAZE ALLEGED TO EXIST AT THE GRAND CANYON OR OTHER PARKS.

The EPA's justification for demanding expensive additional controls is to reduce “Haze” and “Improve Visibility.” Yet a study requested by the EPA itself and conducted by the National Renewable Energy Laboratory (NREL), which is a part of the U.S. Department of Energy,

concluded that there will be no visibility improvement at the Grand Canyon as a result of additional controls on the plant:

“The body of research to date is inconclusive as to whether removing approximately two-thirds of the current NO_x emissions [by installing additional controls at the plant] would lead to any perceptible improvement in visibility at the Grand Canyon or other areas of concern.”

NREL Study, March 2012.

If there were any doubt about whether visibility will improve based on scientific studies of what will happen if the EPA proceeds as planned, that doubt is eliminated by what has already actually happened. We have been here before. Just seven years ago, the EPA and the same environmental groups involved now succeeded in closing Mohave Generating Station. Mohave was located near Laughlin, Nevada, just across the River from Bullhead City.

Like NGS, it was a coal-fueled power plant, and those who wanted it closed argued that it caused haze and reduced visibility at the Grand Canyon.

Unlike NGS, however, it was upwind of the Grand Canyon, not downwind. So its emissions would have been carried over the Grand Canyon by the prevailing winds. At the insistence of the EPA and activists, the plant is now closed and gone. Yet, a study by two professors at San Francisco State University, conducted after the plant was closed and released three years ago, concluded that closing the plant resulted in “no significant improvement in visibility.” The region lost 600 skilled jobs, and the Navajo and the Hopi have lost hundreds of millions of dollars in economic benefits since the plant closed.

Arizona State Representative Brenda Barton expressed this point best in her statement opposing the EPA's rule for NGS:

“[N]o matter what measures are taken [at NGS], the haze now existing (which cannot be seen by the human eye), will continue to exist.

Bottom line: There has been zero change in air quality or haze over the [Grand Canyon and surrounding parks] since the closure and subsequent demolition of the Mohave Generating Station . . .

Navajo Generating Station [is] a prime example of a federal agency that has lost its mission and is being used for a political agenda.”

IV. THE WORKING GROUP PROPOSAL WOULD NEEDLESSLY FORCE AN EARLY UNIT SHUT DOWN AND ADVANCE AN ANTI-CARBON POLITICAL AGENDA LED BY ACTIVISTS THAT IS OUTSIDE THE SCOPE OF THIS RULEMAKING.

As for the working group process, there is no doubt that SRP has worked tirelessly to achieve the best alternative agreement they could, considering an illegal and unjustified bulls eye has been painted squarely on the back of the Navajo Generating Station by the EPA. The situation is exacerbated by well-funded activists that are lining up and threatening what can only be viewed as costly, meritless and endless litigation intended to close the plant for good.

SRP has done the best it could in extremely complex and difficult circumstances. The working group proposal calls for early shut down of one unit or the equivalent reduction in NO_x emissions by 2020 regardless of ownership status. This will result in the loss of more than 200 mine and power plant jobs and presumably billions of dollars of lost economic benefits. Yet we have no scientific evidence that concludes early shut down will lead to any visibility improvement at the Grand Canyon or other areas. The indirect impacts to jobs and economic losses resulting from an early shut down also remain in question, along with many other important issues.

Now, some have suggested that we don't need the third unit or its power given two owners may exit the project. But the reality is Arizona is a developing, high -growth region, and our growth depends on the availability of affordable electricity and water. The Navajo Generating Station is the state's lowest cost energy producer among coal and gas plants and can help continue to drive our enormous growth ahead.

Arizona's population is forecast to more than double by 2050. Based on historic energy use patterns, this means that by 2050, Arizona would need additional electricity equivalent to the power produced by 10 Navajo Generating Stations. Even if owners exit the plant, the power is needed and should be used.

In addition to calling for a unit shut down, the agreement outlines a number of requirements to reduce CO₂ that are outside of the scope of this rulemaking. Under the Agreement, the U.S. Department of the Interior "commit[s] to reduce or offset CO₂ emissions by 3 percent per year associated with the electric energy consumed by its CAP pumping load . . . reduc[ing] CO₂ emissions by approximately 11.3 million Metric Tons"

It further states: “*This commitment [to reduce CO₂ emissions] is to accomplish two aims: reduce CO₂ emissions and demonstrate the workability of a credit-based system to achieve CO₂ emission reductions.” (Emphasis added.) So, NGS is to become a demonstration project for a version of “cap and trade,” a policy specifically rejected by Congress.*

As authority for the CO₂ reduction “commitments” the Department of the Interior makes in the Agreement, the Department does not cite any statutory authority given to it by Congress. Rather, it cites two anti-carbon speeches given by the President: “the President’s 2013 ‘Climate Action Plan’ and 2011 ‘Blueprint for a Secure Energy Future.’”

While these policies may reflect the agenda of the Administration, they have never been enacted by Congress and are not currently the law of the land, much less legal authority for the EPA to force Arizona to move to the energy sources the Administration and its allies favor.

Although the goal here is supposed to be reducing haze and improving visibility, the Department of the Interior commits to “facilitate the development of approximately 26,975,000 MWh of Clean Energy [defined in the Agreement] . . . to provide Interior a reasonable path to achieve 80 percent Clean Energy for the U.S. share of NGS by 2035.”

Nowhere in the CAA or the Federal Haze Rules is the Department of Interior granted the authority to “facilitate the development” of Clean Energy. The cost of replacing 80% of the current electricity from NGS to pump CAP water into central Arizona by 2035 with “Clean Energy,” could result in stunningly higher rates for CAP water. And, higher rates will unquestionably damage Arizona’s economy.

V. THE PEOPLE OF ARIZONA HAVE A VOICE IN DETERMINING THE FUTURE OF NGS AND SHOULD PUSH BACK ON AN AGENCY THAT IS OUT OF CONTROL.

The CAP was envisioned, sought and lobbied for by Arizona's elected leaders and created by Congress so the people of Arizona could put their share of Colorado River water to work for all of the people of the state.

The CAP, and the 24.3% of NGS committed by the United States to pumping CAP water and repay the Federal government for the construction of the CAP, exist for the people of Arizona. We have a say in its future and in whether the EPA and its allies can force SRP as the plant's Operating Agent to spend hundreds of millions of dollars for control equipment that is not needed and won't achieve any improvement in visibility or to shut down one-third of the plant's capacity for no benefit.

Neither of these options is required under the CAA or the Haze Rules. And, they will unnecessarily increase both the cost of water and the cost of electricity and damage our economy. Before any proposed rule is sanctioned by EPA, the people for whom the CAP was created have a right to be heard.

VI. UNLESS STOPPED, THE EPA WILL FORCE A RULE THAT WILL DRIVE UP OUR ENERGY AND WATER COSTS, SEVERELY DAMAGE OUR ECONOMY AND JEOPARDIZE OUR ALLOCATION OF COLORADO RIVER WATER.

Make no mistake, if the people of Arizona and their elected representatives, the Legislature, the Governor and the Congressional Delegation, do not demand answers and speak

out, EPA will proceed by adopting an onerous rule that will devastate the state's energy, water and economic future. We can be sure, the EPA and its activist allies won't stop with this single rulemaking. They will continue to target the plant for shut down just like they did with Mohave.

We can expect that the cost of electricity will go up. We just don't know how much. The cost of CAP water also will go up. But, again, we don't know how much. Cities, farmers and other large water users may be forced to use less CAP water because of these increased costs. If they do, they may be forced to return to pumping less-expensive groundwater. If large water users do return to pumping groundwater, it will undo the careful balance struck by our Legislature in the groundwater code and could do irreparable environmental damage.

Depending on how much the cost of CAP water increases, we may no longer be able to afford to bring water into central Arizona and water bank it in underground locations for future use as we currently do. We don't know.

We do know some things, and they are not good. If we are forced to stop water banking the portion of our CAP allocation, as we are now doing, and stop using our full allocation of Colorado River Water, California, Nevada and Mexico want that water and will go make a very public case in going after it. If we don't continue to water bank our full allocation, we will not have the water necessary to prove the 100-year supply required for future development, and the growth and vibrancy that has driven our economy and enabled our way of life will forever be impacted.

We also know that the competitive edge Arizona now enjoys over the other states in our region, including California, Nevada and Texas, because of our reasonable water and energy costs, will disappear. When it does, companies like Intel, which require large quantities of water and electricity, and large sectors of our economy like tourism, including our resorts and golf

courses, which depend on water for lush green expanses that attract visitors, will be hurt. And, the companies and the tourists may choose to go elsewhere.

Arizona also faces the risk of \$20 billion in lost economic activity and the loss of 3,400 jobs each year, according to a study by Arizona State University. The Navajo Nation alone faces the loss of as much as \$13 billion in economic activity.

Arizona does not have to settle for lost jobs, lost economic activity, higher energy and higher water costs because it is “the best we can do.” Arizona can do much better, and we should not surrender our future to out of control bureaucrats in Washington, D.C.

As we stand here today, there are no “done deals.” To be sure, the future of this historic power project is not even close to being settled. We are just beginning what is by law intended to be an open and transparent stakeholder discussion. Every one of us has a voice, and importantly, every one of us has a seat at the table.

We must carefully study and consider all the possible consequences of EPA’s unlawful demands and all the possible alternatives to the current path the EPA and its radical allies seek to impose on us. Until then, Arizona must insist that Navajo Generating Station continue to operate on coal at full capacity through 2044.

The Arizona Coalition for Water, Energy and Jobs is calling on the Congressional delegation, the governor, our legislators, business leaders, tribes and citizens to take back Arizona’s future by fighting back against EPA:

Members of Congress and the legislature must engage by writing to the President, the EPA, the Interior Department and other agencies demanding answers about why the EPA is attempting to impose a costly rule that will devastate Arizona for no environmental benefit.

Next: Members of the delegation should hold Congressional hearings on the issue and force the EPA and others to testify concerning the impacts of any proposed rule versus the benefits and costs.

Finally: All of us should submit comments to the EPA opposing its rule. The current deadline is Oct. 4.

Let's recognize SRP for staying the course to keep NGS generating and support efforts to keep the plant on line in the coming decades. And let's focus our efforts squarely on the problem: the EPA and its allies who are trying to tear apart Arizona's energy, water and economic future.

For the sake of the pioneers who fought for our share of Colorado River water, from ditch builder Jack Swilling, to Senators Ernest McFarland who envisioned the CAP and Carl Hayden who shepherded the legislation through Congress... and for the sake of our citizens, our families our tribes, our businesses and importantly, our next generation... we must embrace this rulemaking process as an opportunity for the state.

Again, thank you for allowing me to address you today on this critically important issue, and to articulate the concerns of the Arizona Coalition for Water, Energy and Jobs.

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