



To: House Committee on Natural Resources Republican Members
From: Subcommittee on Energy and Mineral Resources; Ashley Nichols (Ashley.Nichols@mail.house.gov) (251-656-8498) and Rebecca Konolige (Rebecca.Konolige@mail.house.gov) (914-217-8728)
Date: June 14, 2021
Subject: Oversight Hearing titled “Environmental Justice for Coal Country: Supporting Communities Through the Energy Transition”

The Subcommittee on Energy and Mineral Resources will hold an oversight hearing titled “Environmental Justice for Coal Country: Supporting Communities Through the Energy Transition” on **Tuesday, June 15, 2021, at 10:00 a.m. EDT** via Cisco WebEx.

Member offices are requested to notify Ashley Nichols **no later than Monday, June 14, 2021, at 12:00 p.m. EDT**, if their Member intends to participate in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- The closure of the Navajo Generating Station resulted in thousands of layoffs, and the Navajo and Hopi communities nearby continue to struggle to replace these jobs. The “keep it in the ground” strategy of extremist environmental groups will only continue this cycle of premature plant and mine closures, resulting in unemployment challenges that persist for years in affected communities. Tribes should be allowed to develop their resources as they see fit, without being handicapped by overly burdensome federal mandates.
- The Kayenta Mine is an example of responsible continuous reclamation. In fact, over 80% of all disturbance resulting from mining activities have already been reclaimed at the mine site.
- Under the Surface Mining Control and Reclamation Act (Public Law 95-87, SMCRA), primary authority for regulation of surface mining activities and reclamation is



delegated to states with approved regulatory programs.¹ States are in the best position to regulate coal mining activities within their borders and states should maintain authority over bonding policies to ensure reclamation responsibilities are fulfilled.

II. WITNESSES

- **Kyle Wendtland**, Administrator of the Land Quality Division of the Wyoming Department of Environmental Quality [*Republican witness*]
- **Rickie Nez**, Chairman of the Resources and Development Committee of the 24th Navajo Nation Council [*Republican witness*]
- **Joe Pizarchik**, Former Director (2009-2017), Office of Surface Mining Reclamation and Enforcement
- **Mary Cromer**, Deputy Director, Appalachian Citizens Law Center
- **Nicole Horseherder**, Executive Director of To' Nizhoni Ani'
- **Ben Nuvamsa**, President of KIVA Institute & Former Chairman of the Hopi Tribe

III. BACKGROUND

Existing Regulations and State Discretion for Self-Bonding

Under SMCRA, before an operator acquires a coal mining permit, they must first post a bond to ensure there are adequate funds to reclaim a mine site if the operator cannot complete the reclamation plan under their permit.² These bonds are usually corporate surety bonds, collateral bonds, or self-bonds (which guarantee the costs of mine reclamation on the basis of an operator's own finances). Recent bankruptcies in the coal industry have drawn attention to the issue of financial assurance in coal mine reclamation. Environmental groups have sued individual states claiming that state reclamation funds will not be sufficient to cover outstanding liability³ and have also sued the Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) for failing to provide enough oversight of state-level financial backing requirements.⁴

Despite past allegations made by Committee Democrats, to the contrary, coal mining is a heavily regulated industry in all respects, and bond requirements are no exception. To be qualified for a self-bond, operators must have a tangible net worth of \$10 million or more, fixed assets of at least \$20 million in the United States, and either have an "A" or higher bond rating or meet other specific financial ratios.⁵ Of the total financial assurances held by OSMRE and state authorities for coal mining reclamation in 2018, only 12% were held in

¹ <https://www.osmre.gov/programs/RCM.shtm>

² U.S. Office of Surface Mining Reclamation and Enforcement. "Reclamation Bonds." <https://www.osmre.gov/resources/bonds.shtm>

³ Marshall, James. "W.Va. auditor: Mine cleanup fund in peril." E&E News. June 9, 2021. https://www.eenews.net/greenwire/2021/06/09/stories/1063734551?utm_campaign=edition&utm_medium=email&utm_source=eenews%3Agreenwire

⁴ Marshall, James. "Greens sue Interior, say W.Va. mine cleanup fund inadequate." E&E News. May 18, 2021. <https://www.eenews.net/greenwire/stories/1063732875/search?keyword=west+virginia>

⁵ U.S. Office of Surface Mining Reclamation and Enforcement. "Reclamation Bonds." <https://www.osmre.gov/resources/bonds.shtm>

self-bonds across eight states.⁶ Coal mining states have discretion to offer or prohibit self-bonding under SMCRA and are in the best position to evaluate whether or not self-bonding would be an appropriate option for their local operators and financial circumstances.

In 2016, OSMRE accepted comments on a petition for rulemaking to amend federal requirements for self-bonding.⁷ On September 7, 2016, the agency notified the public of its intention to publish a proposed rule to revise federal self-bonding, but has not proceeded with this rulemaking.

Navajo Generating Station (NGS) and Kayenta Mine

Two of the four Democrat-invited witnesses are Navajo and Hopi tribal members who will discuss the recent closure of the NGS and the associated Kayenta Mine, as well as the status of reclamation of the affected lands. Established in 1974, the NGS was a coal-fired power plant built to power the congressionally authorized Central Arizona Project (CAP).⁸ Once the largest coal-fired power plant in the West, NGS and its associated coal resource, Kayenta Mine, were owned and operated by the Peabody Western Coal Company. Per SMCRA requirements, contemporaneous reclamation was performed by Peabody throughout the lifespan of both operations.

NGS and Kayenta Mine provided long-term, high-paying jobs for members of the Navajo Nation and Hopi Tribe and was a major power source for the region. The NGS had about 500 employees⁹ and Kayenta Mine employed over 300 people, 99% of whom were Native American.¹⁰ The NGS provided 2,250 MW of power to Arizona and surrounding states, enough to power nearly 900 local homes.¹¹ The mine also provided nearly \$440 million in direct and indirect economic benefits on an annual basis.¹² The tribes also benefited from coal royalties, taxes, permits, lease fees, and scholarships from NGS and the Kayenta Mine. In December of 2019, the lease agreement with the Navajo Nation expired and forced the NGS and Kayenta Mine to close.¹³

⁶ U.S. Government Accountability Office. March 2018. "COAL MINE RECLAMATION: Federal and State Agencies Face Challenges in Managing Billions in Financial Assurances." <https://www.gao.gov/assets/700/690476.pdf>

⁷ Reclamation of Coal Mining Operations: Select Issues and Legislation. November 17, 2020. Congressional Research Service. <https://crsreports.congress.gov/product/pdf/R/R46610>

⁸ Public Law 90-537

⁹ Storrow, Benjamin. "The Navajo, circled by coal, see jobs vanish as CO2 falls." E&E News. January 2, 2020. <https://www.eenews.net/stories/1061970419>

¹⁰ Peabody. Fact sheet. Kayenta Mine. https://minedocs.com/17/Kayenta_Fact_sheet_2017.pdf

¹¹ Stevens, Pippa. "One of the largest coal-fired power plants in the Western US has just closed for good." CNBC. November 19, 2019. <https://www.cnbc.com/2019/11/19/one-of-the-largest-coal-fired-power-plants-in-the-western-us-has-just-closed-for-good.html>

¹² Peabody. Fact sheet. Kayenta Mine. https://minedocs.com/17/Kayenta_Fact_sheet_2017.pdf

¹³ Bureau of Reclamation. Navajo Generating Station. <https://www.usbr.gov/ngs/>

In July 2020, Chairman Grijalva sent a letter to OSMRE regarding the permitting approval process for Kayenta Mine's reclamation.¹⁴ The letter accused OSMRE of poor enforcement and insufficient public access to permit revisions and renewal applications, as well as allegations that reclamation requirements have been delayed or insufficiently met by the operator.¹⁵ These accusations are unfounded, as reclamation efforts were performed throughout the life of the mine, and today, over 80% of all disturbance has already been reclaimed.¹⁶ ¹⁷ Following the closure of the NGS and Kayenta Mine in 2019, final reclamation work was expected to begin in early 2020. However, the COVID-19 pandemic severely impacted the Navajo Nation in the spring of that year, and activities were suspended for safety reasons. The next stage of reclamation safely began on April 1, 2021, with the wide availability of the COVID vaccine.

Importance of Energy and Mineral Development on Tribal Lands

The closure of NGS and Kayenta Mine has had major economic impacts throughout the region. As predicted by witnesses and Committee Republicans at a hearing on the topic in 2018,¹⁸ the shutdown of the plant and mine directly resulted in increased unemployment in an already socio-economically depressed region, as well as a loss of affordable and reliable power.¹⁹

While valuable jobs are created during the reclamation process, these jobs are temporary. The NGS is a stark example of the importance of ongoing, responsible energy and mineral development on tribal lands. In other parts of the country, coal remains a significant and profitable component of tribal energy development. For example, a Navajo Nation owned power company, Navajo Transitional Energy Co., agreed to take over the Public Service Co. of New Mexico's share in the Four Corners power plant.²⁰ This agreement is set to execute in 2024 and will give the Navajo Nation a 13% share in one of the southwest's last remaining coal-fired power plants, creating jobs and economic opportunity for the Navajo Nation. The Navajo Nation is also investing in other forms of resource development, including critical minerals such as helium.

¹⁴ Letter from Chairman Grijalva to Acting Director Erdos, Office of Surface Mining Reclamation and Enforcement. July 21, 2020. <https://naturalresources.house.gov/imo/media/doc/Letter%20to%20OSMRE%20on%20Kayenta%20-%20Signed.pdf>

¹⁵ Letter from Chairman Grijalva to Acting Director Erdos, Office of Surface Mining Reclamation and Enforcement. July 21, 2020. <https://naturalresources.house.gov/imo/media/doc/Letter%20to%20OSMRE%20on%20Kayenta%20-%20Signed.pdf>

¹⁶ Staff briefing. Peabody. June 10, 2021.

¹⁷ Staff briefing. Office of Surface Mining Reclamation and Enforcement. June 10, 2021.

¹⁸ <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=108127>

¹⁹ Harrison Mantas. "Kayenta Mine layoffs hit, as Navajo Generating Station closure looms." Aug. 23, 2019.

<https://cronkitenews.azpbs.org/2019/08/23/kayenta-mine-layoffs-hit-as-navajo-generating-station-closure-looms/>

²⁰ Bryan, Susan Montoya. Navajo energy company to acquire shares in coal power plant. The Salt Lake Tribune. November 3, 2020. <https://www.sltrib.com/news/2020/11/03/navajo-energy-company/>