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Peabody, tribe mum on lawsuit settlement



(Times photo - Leigh T. Jimmie)

The Peabody Coal Mine on Black Mesa, Ariz., has been the focus of a major lawsuit filed by the Navajo Nation against the company and its partners.

Part 1

By Marley Shebala
Navajo Times

WINDOW ROCK, Aug. 18, 2011

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The settlement of the Navajo Nation's \$1.8 billion Racketeering Influenced and Corrupt Organizations Act lawsuit against coal giant Peabody Energy and its partners Salt River Project and Southern California Edison was quietly announced by Peabody in a two-page statement posted on its Web site Aug. 4.

The Navajo Nation was just as quiet in announcing the end of the largest damage suit in its history, although the settlement immediately grabbed national media attention.

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Both the tribe and the defendants said the settlement ended a \$600 million lawsuit, though the tribe had estimated total damages as high as \$1.8 billion when it first filed the suit 12 years ago.

It took the Navajo Nation Council, which recently voted not to raise the royalty rate Peabody pays on Black Mesa coal, a week to issue its own one-page press release about the historic settlement.

It was a contrast to June 17, 1999, when the tribe held a press conference and issued several press releases a day after the lawsuit was filed in federal court.

Kelsey Begaye and Edward T. Begay, then Navajo Nation president and Council speaker, respectively, expressed their outrage over what they said was a conspiracy to rob the tribe of legitimate income from coal resources on Black Mesa.

The trigger was Peabody's successful effort to prevent the Interior Department from supporting the tribe's effort to raise royalty rates to 20 percent, nearly twice what the company considered acceptable.

"This lawsuit has been filed to right a serious wrong against the Navajo Nation and its people," Begaye said. "The damage caused by Peabody's influence peddling is staggering.

"Since 1984, the Navajo Nation has suffered losses of \$600 million," he said. "While the defendants reap huge and illicit profits using Navajo coal to generate electricity for homes and businesses in Southern California, Las Vegas and Arizona, thousands of Navajo homes are still without electricity."

"We will not be cheated any longer," Begay said. "Coal represents the Navajo Nation's most valuable natural resource. This lawsuit will restore lost revenues to the Navajo Nation and place us on the road to achieve economic self-sufficiency for our people.

"We are not asking for a handout," he added. "We are demanding to be compensated equitably by American corporations and treated fairly by the United States government."

Friends again

The current leaders took a far different tone.

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Attorney General Harrison Tsosie was quoted in Peabody's Aug. 4 press release saying, "The Navajo Nation is pleased the parties were able to come together in a spirit of cooperation to settle this long-standing litigation."

In the Aug. 9 Council release, Speaker Johnny Naize (Blue Gap-Tachee/Cottonwood-Tselani/Low Mountain/Many Farms/Nazlini) likewise was conciliatory.

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"We've had our differences, but I hope this settlement will create a new harmony that will benefit everyone involved," he said.

As of press time on Wednesday, President Ben Shelly had not issued a statement about the settlement.

Details of the settlement are "confidential" and will not be released, according to press releases from Peabody and the speaker's office.

A local news report, using information attributed to an unnamed source, said the settlement would bring the tribe a one-time \$50 million cash payment plus \$1.5 million that would be divided among five chapters impacted by Peabody's mining on Black Mesa.

The chapters are Chilchinbeto, Forest Lake, Kayenta, Kįts'įįłį and Shonto. Each of the five chapters would reportedly receive \$300,000 each for the next 10 years.

There was no mention of requiring the Council to use the remaining money for long-promised improvements to the area, including water and power lines and road paving.

The \$50 million reportedly is being treated as additional tribal revenue, meaning the Council can spend the money any way it wants, once mandatory set-asides are made for the Permanent Trust Fund, Veterans Trust Fund and Land Acquisition Trust Fund.

Those set-asides are established by Navajo Nation law and total 18 percent, or \$9 million of the \$50 million.

In 2006, the administration of Joe Shirley Jr. and then Attorney General Louise Denetsosie negotiated a proposed settlement of the RICO lawsuit, though it is unknown how much the current settlement resembles it.

Rolling back reform?

The 2006 settlement would have made sweeping changes to the way water, coal and other natural resources are governed on tribal land.

It called for the U.S. Bureau of Reclamation, instead of the tribes, to have authority over Navajo and Hopi domestic water systems tapping the Coconino aquifer, which underlies Western Navajo.

BOR also would oversee the slurry line that transported coal off the mesa to a now-closed power plant in southern Nevada.

The federal agency would gain this authority from a new law, the Navajo-Hopi Coal Leasing Act, to be passed by Congress.

The act would basically remove tribal leasing authority over natural resources - water, coal, air, land, etc. - rights that federal treaties have recognized and protected and federal courts have upheld.

A copy of the draft settlement was leaked to the media but Denetsosie and Shirley refused to discuss it, so it is unknown how the proposed act would impact the Navajo Nation Environmental Protection Agency.

NNEPA was established by former President Peterson Zah to increase the tribe's control over its natural resources.

Zah's administration also laid the groundwork for the RICO suit after learning that its effort to get higher coal royalties had been thwarted by Peabody's influence on then Interior Secretary Donald Hodel.

Denetsosie and Shirley headed the 2006 negotiating team on the 1999 RICO suit. Tsoosie, the current attorney general, was Denetsosie's top deputy.

Others on the negotiating team were then delegates George Arthur (Burnham (now T'iistoh Sikaad)/Nenahnezad/San Juan/Nenahnezad), Ervin Keeswood (Hogback, now Ts, Daa K'aan), Eddie

Arthur (Hardrock/Piḥon), and Raymond Maxx (Coalmine Canyon/Tóh Nanees Dizi).

None are on the current Council.

The draft settlement negotiated by the Shirley team proposed to release Peabody and partners from a variety of damages, especially those involving use of the Navajo and Coconino aquifers underlying tribal land.

On July 20 the current Council voted 15-2 to approve a revised lease with Peabody, called the 2007 Peabody lease "reopener," keeping the royalty rate on coal at 12.5 percent, as Peabody wanted.

Then the delegates voted 8-7 to go behind closed doors to discuss settlement of the 1999 RICO lawsuit.

As part of the revised lease agreement, the tribe received a \$1.55 million signing bonus and an increase in scholarship money from Peabody.

When the Council approved the reopener, it also directed that \$6.4 million of coal royalties expected over the next 10 years be used for water projects for the communities of Black Mesa and Cameron, Ariz.

The reopener provision allows revisions to the lease every 10 years, meaning the next opportunity to raise the royalty rate will be 2017.

This story will continue in next week's edition.

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