

THE NEEDS OF DZILJIIN RESIDENTS IN PEABODY LEASEHOLD AREA EXECUTIVE SUMMARY

HISTORY

Resource development on the Navajo Nation began with an oil boom in the 1920s and flourished in the 1950's as the Navajo Tribal Council decided to explore systematic development of the Navajo Nation's mineral resources. Among the proposed projects was Peabody Black Mesa Mine, a coal mining operation. With growing needs in the face of declining oil revenues in the early 1960s, the Navajo Nation supported the proposed mining plan. Prospecting agreements were initially signed in 1961 with support from the U.S. Department of the Interior and the Navajo Area Bureau of Indian Affairs (BIA), followed by a lease agreement. Peabody negotiated the lease with the Navajo Nation for 25,000 acres on the Navajo Nation's land in 1964 and in 1966 an agreement with the Navajo and Hopi tribes added 40,000 acres of the Joint Use Area. Two separate mines were subsequently installed: the Black Mesa and Kayenta. The Black Mesa Mine produced coal that was mixed with water and slurried through the Black Mesa Pipeline Company's pipeline to Mohave Power Plant in Laughlin, Nevada. The Kayenta Mine delivers coal by rail to the Navajo Generating Station in Page, Arizona. Recently, the Black Mesa Mine ceased production in December 2005.

CONSENT BY THE RESIDENTS

There is no documentation that the residents within the Peabody Leasehold areas approved the mining that was to occur on their ancestral land. Personal accounts reveal that an individual by the name of Ned Benally came to Black Mesa with two white men requesting to meet with a few Navajo men living on Black Mesa including but not limited to James Cody, Cecil Yazzie, Nephi Cody, and Ned Yazzie. The meeting was not representative of all Black Mesa landowners because there were no women, who were landowners, at the meeting. Ned Benally requested from these Navajo men to give up their lands to these two white men for mining purposes. They were informed that if they consented (they and their children) would be the first to obtain jobs with Peabody Coal Company and they would eventually become leaders at the mine. At the time, there were no jobs, not even enough work for one day. These white men put a sweet deal before them. These men had no formal education and they were not educated about contracts, mining, energy, engineering, etc. and they were not prepared to make these decisions. Peabody stated when the residents faced hardships; they were promised that there would be assistance. To this day, these men stated that they feel they have been cheated and lied to. Ned Yazzie says he remembers these early events from his heart and there are no documents to prove these events. Any papers that existed were taken by Ned Benally that day. He does not understand why these papers are hidden from the community and the public.

DEMOGRAPHICS

There are 68 residences located within the leasehold area, with 63 on the Navajo Nation and five on the Hopi Reservation. The number of residents on the leasehold area is estimated to be approximately 175 persons and 307 family units (JJ Clacs Study, 2005), however, based on transient livelihoods (i.e. residents moving temporarily for jobs), the estimated population is estimated to be more than 700 persons. Based on a limited JJ Clacs survey (2005), the majority (48.4%) are 20 years and older.

CHAPTER AFFILIATION

Residents are affiliated with Chilchinbeto, Forest Lake, Kayenta, and Shonto. The percentage breakdown among chapters is unclear. A survey conducted by JJ Clacs represented by 64.0% in Forest Lake Chapter and 34.0% in Greasewood Springs Chapter revealed that among those surveyed, 65.0% of the families live in construction-built homes, 17.7% in hogans, 8.4% in mobile homes, and 7.9% in other.

CHAPTERS INABILITY TO ADDRESS NEEDS

The surrounding Chapters do not have the staff, time or the funds necessary to carry on the work the BMRB is working on. If the Chapters take over the ongoing BMRB projects they may never be completed. These projects will most likely be no longer high priority. Any funds that may be allocated for these projects may be directed to other Chapter high priority projects.

Chapters are providing or suppose to be addressing those services. We understand the residents of Black Mesa who are adversely affected by coal mining activities have needs and priorities that the chapters do not always recognize. The chapters have their own priorities that do not include the residents of Black Mesa, PWCC lease area. The chapters believe that PWCC takes care of the people of Black Mesa. They think Black Mesa people have everything and do not need assistance. So the Board steps in to advocate, support and provide the services the chapters will not provide. The people of Black Mesa need running water, electrical services, phone and cell phone services, roads, housing and internet services. The people of Black Mesa need wood hauling permits and regulations, rangers, police protection, land fills and transfer stations. The people need enforcement to deal with illegal trash dumping, dumping of unwanted dogs and cats, control of cutting green trees, etc. The people of Black Mesa need schools, emergency services, etc.

JOBS PROVIDED BY THE MINE

The Black Mesa Mining complex has had a significant impact on the lives of local Navajo people. The coal mining operation was one of the few on reservation industries that hired many people. The jobs it provided pay well, particularly by the standards of the area. By the early 1980s, some of the jobs at the mine paid in the \$20 per hour range. The employment at the mines enabled many local people to achieve a standard of living previously unavailable in the region. Although the mine has provided jobs to the Navajo Nation, it is unclear the percentage employed through the years, were residents living within the Peabody Leasehold.

RELOCATION

Those that were required to move, as specified in the leases, were relocated within or adjacent to the leasehold in order to remain as close as possible, and new homes were provided for those that were relocated. With the exception of the ongoing mining operations, the land use in the region has seen minimal historical change. Some were unequally compensated for relocation and there are few accounts of equitable compensation (verbal communication: Kee T. Yazzie).

LAND

The predominant land uses in the area are livestock grazing, scattered residences and undeveloped areas of open spaces that serve as wildlife habitat, grazing and limited agriculture, gathering of plant materials, outdoor recreation, hunting, and some commercial trapping.

Grazing, including sheep, goats, cattle and horses is a year round activity in the area. Grazing also occurs, to some degree, within the leasehold in areas that have either been reclaimed or are designated "coal reserve areas" for potential future mining activity. The Black Mesa and Kayenta Mines leasehold boundaries include over 59,000 acres of the Navajo Nation. The leasehold area on the Hopi Reservation accounts for just over 6,000 acres. **RECLAIMED LANDS**
Approximately 13,000 acres of all the Navajo and Hopi land within the leasehold area have been reclaimed, with over 4,000 acres that have been used by livestock under a managed grazing program. All reclaimed areas are managed to return a stable, productive and sustainable resource on reclaimed lands that meet postmine land use goals of grazing, wildlife habitat, and restoration of plants that have cultural, medicinal, and ceremonial significance to the Navajo Nation and Hopi Tribe. Peabody is responsible by regulation (Surface Mining Control and Reclamation Act of 1977, SMCRA 1977) and lease commitments for reclaiming lands disturbed by mining to a condition compatible with and capable of supporting the post-mining land uses. Peabody's reclamation procedures address how the post-mining land uses will be achieved by describing those activities that will be conducted following the extraction of coal, and continuing until the land is returned to the appropriate tribal and land management agency. About 1,145 acres of reclaimed lands in the N1/N2 area were successfully returned in 2004. Any changes that may be made to the existing post mine land uses of grazing, wildlife habitat and cultural plant restoration will need to be submitted by Peabody, approved by the Navajo Nation Resources Committee (at a minimum), and approved by the U. S. Office of Surface Mining through SMCRA.

NO ELECTRICITY OR RUNNING WATER

Based on a limited JJ Clacs survey, nearly half of the homes are less than twenty years old, and many homes lack basic amenities. Only 19.8% have running water and only 43.6% have electricity; however, some do have solar power. Less than 20% of the homes have running water and the remaining 80% without running water must travel more than 5 miles to two public water stands within the leasehold area that provide potable water. Most families rely on propane and wood/coal heating. Significantly less than half of the homes ave septic systems (JJ Clacs Study, 2005).

PLANS TO MAINTAIN AND DEVELOP N41, TURQUOISE TRAIL

The Board submitted an application to Navajo Department of Transportation requesting funds from the Navajo Nation Road Funds Management Plan for N41 for a Feasibility Study. The Ad-hoc committee has completed review of the proposals and now is waiting decision by the Division of Finance. There are issues with state taxes that need to be resolved before the projects are forwarded to TCDC for approval. The proposed N41 project begins at the junction of US 160 and N41 and extends east up Black Mesa to the Western Navajo Agency boundary line.

The Board has ongoing meetings with Navajo County to address N41. The County is interested in connecting an all weather road from Forest Lake to Black Mesa Mine. The County has determined this project to be a high priority project. The County wants to work on completing the Turquoise Trail which starts at Second Mesa and extends north to US 160. There are sections of the Turquoise Trail that go into the Hopi Reservation. These sections have issues and agreements that need to be worked out between the Hopi and the Navajo Nation. The Turquoise Trail is also a top priority for Hopi and the Hopi Tribe have received funding for planning and design of a four miles section where Turquoise Trail crosses Denebeto Wash. The County wants

to combine the BMRB project: “Jct. US 160 – Western Navajo Agency Boundary Line” and “Forest Lake - Black Mesa Mine” projects into one project for Feasibility Study.

The status of N41: PWCC believes that N41 belongs to the Navajo Nation and therefore does not have right-of-way to N41. PWCC is also not willing to upgrade N41, but they can consider matching funds with the Navajo Nation to upgrade N41. In a meeting with the BIA, the BIA also said that N41 is not a BIA system road and therefore do not have right-of-way to N41. According to the BIA, N41 belongs to PWCC. They BIA can not spend funds on a road that belongs to PWCC. As long as N41 is on PWCC lease area the BIA will not maintain the roadway and they will not do any improvements on it. The road will have to be transferred to the BIA before they can work on it.

The County is also interested in developing a Partnership with the Navajo Nation, PWCC and Apache County to repair dirt roads on Black Mesa. Navajo County requests contribution from the Navajo Nation by having them waive the royalty fees for gravel (Red Dog) and the charges for water, to do road repairs. PWCC is in agreement with providing gravel at no charge to the County. Navajo County wants to workout an agreement with Apache County to use their crusher to reduce the size of rock from PWCC to ¾” size for road repair and plating of dirt roads. The County is in the process of gathering support from the Chapters, Hopi Tribe and TCDC for this project.

Location

The N41 project begins at the Western Navajo Agency Boundary and extends west for approximately 10.2 miles to the junction of US 160 and N41. Approximately 3.5 miles of N41 is located outside the Peabody Western Coal Company (PWCC) Lease boundary on the west side and the rest is located within the PWCC Leasehold area. N41 provides as the access road to PWCC mining operations and is a major road for the community of Black Mesa.

Project Description/ Scope of work

The N41 project will be completed in stages depending on funding for the project and when they become available. The project will consist of a Feasibility Study, Right-of-Way Survey, Land Withdrawal, Environmental Clearances, Design, and Construction. The first phase of the project will be to complete a Feasibility Study.

The Feasibility Study will establish a preliminary centerline alignment that will follow the existing N41 alignment except in areas where the roadway needs to be reconstructed or realigned to meet the latest Federal design standards. The study will evaluate the land needed for new Right-of-Way; prepare a design control criteria report, a drainage report, an existing pavement evaluation, an investigation of the conditions of existing structures and culverts. A scoping report will be completed and submitted to identify issues, constraints, and opportunities. The Feasibility study will also include a Corridor Implementation Plan, an Environmental Overview, a Geotechnical Investigation, a Traffic Analysis, and identify all existing utilities. Finally the Feasibility Study will prepare a cost estimate for Right-of-Way surveys, Environmental Assessment, Archaeological Clearances, Design and Construction. With these estimates in hand the Board will be able to apply for grants or identify funding sources to complete the project through construction.

The Black Mesa Review Board submitted an application for funding in the amount of \$500,000.00 to complete a Feasibility Study through the Navajo Department of Transportation. The Ed Hock Committee has completed review of the applications. At this time the project is pending approval of the projects by the Transportation and Community Development Committee.

Purpose of project

N41 was constructed as an access road for PWCC and its employees. The road is 24 feet wide with no shoulders. The road is cracking due to aging. The road was designed using Mining Haul Road Design Standards and does not meet the current American Association of State Highway and Transportation Officials (AASHTO) Design Standards. The existing road has some sharp vertical and horizontal curves that do not meet current AASHTO Standards for sight distance. There are steep grades that need Climbing Lanes and Pullouts for slow moving vehicles. The shoulders need to be widened and intersections need to be improved for safety. The existing pavement is reaching its design life and needs to be overlaid or reconstructed. Signs, guardrails, pavement markings, fencing, gates, and cattle guards need to be upgraded, repaired or replaced.

The ultimate goal is to upgrade the roadway to where the Bureau (BIA) or Navajo Department of Transportation (Navajo DOT) will accept the roadway into their system of roads for future maintenance. The BIA will not accept the roadway into their system of roads unless it is upgraded to the latest AASHTO Standards. The objectives are to complete a Feasibility Study to do a Right-of-Way survey, upgrade N41 to the latest AASHTO Standards, acquire Right-of-Way or Right-of-Way lease and transfer Right-of-Way or to the BIA or to Navajo DOT, or to develop a Right-of-Way lease agreement for future maintenance and construction of N41.

Benefits Derived From the Project

The Feasibility Study will identify the N41 roadway centerline and the land needed for Right-of-Way in preparation for the road to be upgraded and transferred/ develop agreement to an entity who can maintain it in the future. The study will identify deficiencies of the roadway and devise a schedule of projects to improve N41 as funds become available. The study will set a precedent whereby other road projects within the PWCC Leasehold area can follow as roads become permanent roads for use by the general public.

The Many Mules Water Line Project will most likely follow the same alignment as the N41 road alignment. The Water Line project needs new Right-of-Way. Acquisition of Right-of-Way for both these projects at the same time following the same alignment will result in cost savings to both projects.

It takes many years to acquire Right-of-Way for a road project so it will be wise to start working on the project now and not wait until the land is returned to the Nation. By implementing a good plan the Navajo Nation will avoid years of road maintenance where no one will be maintaining N41.

The people living on Black Mesa will benefit from this project. N41 is the main transportation system for the PWCC employees, the residents of Black Mesa, governmental entities, etc to get

to work, schools, hospitals, clinics, shopping places, business, recreation, etc. The Navajo Nation benefits from the natural resources available on Black Mesa and from the coal royalties from the coal mining operations. People living in the surrounding communities depend on the resources available on Black Mesa, they come from miles around to Black Mesa for wood, coal, water, work, and to gather medicine and other plants for ceremonial purposes. N41 is essential for the development of lands on Black Mesa, to bring in service providers, businesses, schools, clinics, and other services needed by the community. N41 is necessary for the community of Black Mesa to become a self sustaining community, able to foster its own growth and economic development.

NEGATIVE IMPACT OF LOCAL TRAFFIC DUE TO N41

People from the surrounding area have overrun the residents living within the Mining area because a paved road was constructed from US 160 to the two Mines for the employees. Haul Roads were constructed for Mining equipment. The general public and heavy Mining equipment are now sharing these Haul Roads. This is unsafe. The roads to be used by the general public need to be constructed to resolve this safety issue. The construction of the paved road to PWCC also opened all of Black Mesa to all people, Navajo Nation wide. This provided free access to all resources that exist on Black Mesa. People from all around, dump their trash, dogs, cats, and many unwanted things in return for taking what they need from Black Mesa. The BMRB is working on developing land to build infrastructure, roads, and utilities where offices for law enforcement, rangers, clinic, schools, and other service providers can be established to serve the residents of Black Mesa.

HISTORY OF BMRB:

The Black Mesa Review Board (BMRB) was established by the Navajo Tribal Resolution (CN-101-72) to serve the needs of residents living within or around the PWCC leasehold area and who have been adversely affected by coal mining operations. In 1978 the advisory Committee Resolution (ACMA-32-78) extended the existence of the BMRB until PWCC operations were ended. However, the Navajo Nation Council Resolution (CMY-45-80) repealed (CN101-72), created an Energy Impact Mitigation Commission, and abolished the BMRB. The Energy Impact Commission was never operational. As a result, the BMRB was re-established by Advisory Committee Resolution (ACN-143-82) with a Plan of Operation codified as 2.N.T.C. 3671-3679. No funding was approved to implement (ACN-143-82), leaving residents in the mining area of Black Mesa without a channel to address their needs and grievances. Recognizing the importance of the BMRB, the Navajo Nation Council amended Title 2 N.T.C. Section 3671-3679 to reflect the revised Plan of Operation. 2.N.N.C. and &901 – 910, Title II, Chapter 3, Section 902, certified the BMRB to exercise governance and decision making authority.

In 2005 the Black Mesa Mine and Mohave Generating Station were shut down. As a result, the Black Mesa Pipeline Inc. also shut down and there was effort made by PWCC to find alternatives to keep the mine operational. An Environmental Impact Statement (EIS) was produced regarding the Black Mesa Mine Facilities. The reclamation process for the facilities now lay in the hands of the Navajo Nation and awaiting recommendation to the future purpose. The EIS was finalized in 2009 and the Life of Mine permit was approved by the Office of Surface Mining (OSM) to combine the two leases into one lease. Alternative B was approved from the EIS. This will allow PWCC to mine the existing coal from Black Mesa Mine. When

Black Mesa Mine shut down the royalty payments to the Nation ceased due to the lack of resources being mined. This created shortage in revenues to the Nation from PWCC and services to the community.

The original lease agreement was signed by a hand full of residents on Black Mesa in 1960s. It promised people that they will have jobs including the next generation, that they will have good roads, running water and electric power. Yet after 40 years of mining the residents of Black Mesa still do not have these basic services. To date the number of homes located in the mining area having no electrical service is less then the Navajo Nation average. About 60% of the residents do not have telephone services, and none of the homes have running water. Presently those services that were promised to the people have not been met therefore the purpose of the Board still exists. That is to advocate on behalf of Navajo families according to 2 N.N.C. & 902 of the Board Manual. The ongoing projects and list of accomplishments reflects how the Board is carrying out its duties per their approved plan of operation and proposed plan of operation.

Location

The Many Mules Waterline Project, Phase 1 is located within the Peabody Western Coal Company (PWCC) Leasehold area. The project begins about one mile west of the PWCC Lease boundary and one mile north of N41 at the northeast corner of the PWCC Leasehold area and extends in a southeasterly direction following the N41 road alignment to Black Mesa Mine. From the Black Mesa Mine facilities the waterline extends for about 2.4 miles in a southeasterly direction to just west of Sagebrush Wash.

Description of Project

Phase 1 of the proposed project will include construction of 128,976 feet of waterline, installation of one 150,000 gallon water tank, construction of one mile of Power line and drilling of one well to serve 80 residents. The project team has developed a conditional partnership between PWCC and Navajo Department of Water Resources to gather needed information that will give a better estimate for design and construction. The partnership will also investigate the feasibility of using or sharing a PWCC water well(s) and water system(s). If PWCC donates a well, then a new well will not be necessary as well as the power line.

Phase 1 of the project includes the development of the project which includes archaeological clearance, environmental assessment, Right-of-Way acquisition, design and construction.

Construction of and the costs associated with bathroom additions, and installation of plumbing is the responsibility of the Chapters or the home owners. The BMRB took the lead in bringing the Chapters and Navajo County together to apply for AML grant to get homes project ready for Phase 1 of the Many Mules Waterline project. The Board was awarded the grant in the amount of \$300,000.00. The bathroom additions and plumbing work will begin in January. CDBG will administer the project.

Phase 2, 3 and 4 is a continuation of the Waterline Project. These projects will be feasible to construct after Phase 1 of the waterline project is 100% funded by the Navajo Nation or from other sources of funding. When Phase 1 of the project is completed Phase 2, 3 and 4 will be economically feasible for funding by the federal government (Indian Health Services). Phase 2, 3

and 4 of the project will include construction of 562.636 feet of waterline, seven miles of power line, installation of one 100,000 gallon water tank, and installation of one booster station, to serve 142 residents.

Phase 2, 3 and 4 projects will complete construction of waterlines to all residents living within the PWCC Leasehold area and extend the waterline to residents outside the PWCC Leasehold area. When the four phases of the project is completed it will make it economically feasible to extend waterlines to other communities far beyond the PWCC Leasehold area.

Purpose

The purpose of the project is to bring running water to the residents of Black Mesa. Black Mesa is located in a remote area of the Navajo Nation and is in much need of running water for homes and community development. The residents of Black Mesa can not develop the land without running water which is important for the community to become a self sustaining community. The residents of Black Mesa and the residents living within the PWCC Leasehold area need running water and indoor plumbing for health, general welfare and safety reasons. In addition, the entire Navajo Nation will benefit from a deep water well, a high quality and reliable water source from the N-Aquifer. This project will benefit the residents of Black Mesa by restoring trust, by bring healing and by restoring the health and well being of the residents who have been adversely affected by the mining operation.

Right-of-Way

The project will follow the N41 alignment for most of the length of the project. It may have its own Right-of-Way or it may share Right-of-Way with N41. It is important to acquire Right-of-Way for N41 first so the waterline can follow the same alignment and it will be cost effective to acquire the Right-of-Way for both projects at the same time.

Since the project is located within the PWCC Leasehold area an agreement between the Navajo Nation (NTUA) and PWCC will have to be drafted to determine who will operate and maintain the new water system and at what point the responsibilities will change to the other.

Phase 1 of the project once 100% of the funding becomes available will be, designed and constructed by Indian Health Services/ Office of Environmental Health and Engineering (OEH&E). Upon completion of the project the waterline is proposed to be transferred to Navajo Tribal Utility Authority (NTUA) for future maintenance and operation.

Community Involvement

Phase 1 of the Waterline project is located within the Kayenta, Shonto, and Forest Lake Chapters. All three Chapters support the project by passing resolutions, by working with the BMRB to work on project assessments. The Chapters have also made commitments to match funds for the AML Grant. The Council Delegates from these Chapters support the project and have actively promoted and lobbied for the project at Chapter meetings, Agency meetings and Navajo Nation Council meetings. The Western Navajo and Chinle Agency Councils have supported the project by passing resolutions.

The BMRB was awarded AML grant in the amount of \$300,000.00. These funds will be used get homes project ready for construction. These funds will be used in FY 10 to construct bathroom additions and install plumbing for 80 residents currently living within the PWCC Leasehold area. The IHS/ OEH&E, Many Farms Office completed a feasibility study and provided maps, presentations, and cost estimates. The Chapters used this information to update project assessments which include a list of names with information containing condition of homes, including bathroom additions, plumbing, septic tanks and leach fields. The Forest Lake and Shonto Chapters have completed the project assessment within their areas. The project assessment includes the establishment of a priority list, obtaining consent forms and checking and updating home site leases in advance of the AML project. The AML project will begin January 2010. During this year all preconstruction work will be completed including putting contract together and awarding the contract to a contractor. Construction will begin and in 2011 and the final acceptance of the project in 2012.

Why was the Board established? Why was it reestablished? Has the function of the Board changed? Where is the Board headed to?

The Board is only a recommending body to the standing committees. They have no authority. The Board should know all the families within the PWCC leasehold area. People should know the purpose why the Board exists. The Board should be working closely with the people who need help.

If the Board is done away with, where will the people go? Who do we point them to so they can get help?

In other mines the company liaison works directly with the Chapters and the people. So, why have a Review Board.

Why has the Board not met after Black Mesa Mine was closed?

Who pays the liaison? Who does she report to?

Is it right for PWCC to the liaison?

Develop one liaison for the NN.

With other mines the company liaison gives reports to the Chapters and Council Delegates every quarter. Why can't PWCC do this?

By having a Board are we doing what the company should be doing?

There is nothing in the plan of operation about a community liaison.

The Board is a go between the Nation and the company. Can the Chapters do the same thing?

The plan of operation is not working.

Funding issues. In 2005 the Board received \$49,594. In 2007 the Board received \$53,230. The Board was setup to fail. It has no money. They have no support.

The Board can be eliminated, but how do we help the people? Who will help them?

If the mine closes what will replace it?

Does the Board have a master plan?

Should the liaison be replaced with a planner?

Who puts the projects together?

Use a percent from the general funds to fund the Board and projects.

Should an energy Board be established?

The Black Mesa Mines are different from other mines.

How many chapters on Black Mesa?