

Peabody Coal Council Resolution Passes

PROPOSED RESOLUTION OF THE NAVAJO TRIBAL COUNCIL

Granting of Exploration Permit and Mining Lease WHEREAS:

1. The Advisory Committee of the Navajo Tribal Council on May 8, 1961 (ACMY-65-61), acting pursuant to authority then delegated to the Advisory Committee by the Navajo Tribal Council, granted to the Sentry Royalty Company, a wholly-owned subsidiary of the Peabody Coal Company of St. Louis, Missouri, a Drilling and Exploration Permit and right to lease which since then has matured into a lease to said company (No. 14-20-0602-8580) of 24,858 acres in the Black Mesa area of the Navajo Reservation north of and adjoining the north boundary of the area described in the Executive Order of December 16, 1882.

2. Subsequently, the respective interests of the Navajo and Hopi Tribes in and to the Executive Order Area of December 16, 1882, were adjudicated in the opinion of a three-judge federal court in the case of HEALING v. JONES on September 28, 1962, which confirmed title in the Hopi Tribe to the area known as "Land Management District 6" as defined on April 24, 1943, providing that in the balance of the area (hereinafter referred to as the "controversed area") the Hopi and Navajo Tribes have "joint, undivided and equal rights," but nevertheless holding in Findings of Fact and Conclusions of Law in respect to said "controversed area" that: (a) By approval of the H. G. Hageman report on February 7, 1934, the Secretary of the Interior settled in the 1882 Reservation "all Navajos then residing in that Reservation;" (b) Between February 7, 1934, and July 22, 1958, all Navajos entering the area outside of Land Management District 6, for purposes of permanent residence, were settled there by authority of the Secretary, and all Navajos residing there on the date of the Act of July 22, 1958 (Public Law 85-547), "were accordingly settled there pursuant to the Executive Order of December 16, 1882;" (c) Beginning on June 2, 1937, with approval of the Navajo Grazing Regulations by the Secretary of the Interior, the Nav-

ajo Indian Tribe was settled there "pursuant to the valid exercise of authority conferred in the Secretary by the Executive Order of December 16, 1882."

3. A conference was held at Scottsdale, Arizona, on August 6 and 7, 1963, called by the Commissioner of Indian Affairs, between delegations of Hopis and Navajos with their respective attorneys, at which "partition" of the controversed area was urged by John Boyden, attorney for the Hopis, and Commissioner of Indian Affairs Philleo Nash, supported by the statement of Raymond Nakai, Chairman of the Navajo Tribal Council, that "partition" would be considered. Thereafter, the Navajo Tribal Council, recognizing that "partition would cause removal of 5,000 to 6,000 Navajo families, on August 29, 1963 reaffirmed the Council's "authority to deal with Tribal lands" and declared "that it will not recognize any commitments or concessions concerning "partition" of the 1882 area which may be made by any individuals or groups other than this Council itself," (CAU-50-63)

4. Notwithstanding lack of any authority whatsoever to do so, the former Advisory Committee of the Navajo Tribal Council, purporting to act on behalf of the Navajo Tribe, attempted to adopt "jointly" with the Hopi Tribe a resolution of May 7, 1964 (ACMY-77-64), purporting to grant to the Sentry Royalty Company a second Drilling and Exploration Permit and right to lease embracing approximately 53,270 acres in the said controversed area abutting on and adjoining the first above-mentioned lease area.

5. The terms of said Advisory Committee resolution of May 7, 1964 (ACMY-77-64), with the form of the Drilling and Exploration Permit and form of Lease attached thereto, were negotiated between April 1963 and May 7, 1964, by Chairman Nakai and his assistants, Leo Denetsone and C. V. Collins, together with John Boyden, attorney for the Hopi Tribe, in collaboration with, and the support of, Secretary of the Interior Udall and his representatives, all without knowledge of the Navajo Tribal Council and in deliberate avoidance of the General Counsel of the Navajo Tribe, thereby seeking to undermine and impair the legal rights of the Navajo Tribe and thousands of Navajo families residing in the controversed area by seeming to approve on behalf of the Navajo Tribe the joint character of the Navajo and Hopi interests in said area.

6. The reorganized Advisory Committee of the Navajo Tribal Council, by resolution of December 2, 1964, declared that the

foresaid action of the former Advisory Committee was illegal and invalid and in conflict with the instructions and authority of the Navajo Tribal Council as stated in the aforesaid Tribal Council resolution of August 29, 1963. Notwithstanding the foregoing, Area Director Haverland, an authorized representative of the Interior, issued an opinion on December 14, 1964, seeking to sustain, support and validate such illegal action by the former Advisory Committee on May 7, 1964.

7. The Sentry Royalty Company, through the President and General Counsel of the Peabody Coal Company, were duly notified by the General Counsel of the Navajo Tribe of the invalidity of the aforesaid Drilling and Exploration Permit, and in lieu of the said permit, the company has submitted a new application to the Navajo Tribe for a Drilling and Exploration Permit and right to lease in the same area, without prejudice to existing rights, if any, and it is in the best interests of the Navajo Tribe to grant said application in order to encourage and assure the exploration and development of coal resources upon terms and conditions deemed to be in the best interests of the Navajo Tribe.

8. The Southern California Edison Company, as a proposed purchaser of Black Mesa coal for operation of a new generating plant to be constructed by said company at Mohave, Nevada, would not purchase the coal at the present high rates which Sentry Royalty Company would have to charge on the basis of present high freight rates and the required cost of constructing a railroad from the Black Mesa area for the vicinity of Flagstaff, Arizona, and it is therefore in the best interests of the Navajo Tribe to grant to the Sentry Royalty Company the right to construct a slurry pipeline in lieu and instead of a railroad, and to authorize the use of water (which has already been discovered in deep drilling by said company in the said leased area of the Navajo Reservation) and sale thereof to the Sentry Royalty Company in an estimated amount of 2,500 to 3,000 acre-feet annually.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby declares the Advisory Committee Resolution of May 7, 1964 (ACMY-77-64), and the Drilling and Exploration Permit with right to lease attached thereto, to be null and void and of no effect whatsoever, and, in the alternative, should any claim of right be based thereon, the Council hereby revokes and rescinds said resolution with said Exploration Permit and form of Lease attached thereto, to the Sentry Royalty Company.

2. The Navajo Tribal Council hereby grants to the Sentry Royalty Company a Drilling and Exploration Permit and right to lease

in the area described on Exhibit "A" attached hereto and by this reference made a part hereof, being located south of the north line of the Executive Order Area of December 16, 1882, and abutting and adjoining on the prior lease to the said company from the Navajo Tribe (Contract No. 14-20-0602-8580), dated February 1, 1964, PROVIDED, HOWEVER, that the terms and conditions of said Permit and Lease shall be subject to the approval of the Advisory Committee.

3. The Navajo Tribal Council hereby grants to the Sentry Royalty Company the right to drill for water below 1,000 feet in the area leased to the company within the Navajo Reservation (Lease No. 14-20-0602-8580) and the area described in Exhibit "A" attached hereto, and to use said water for mining purposes and for operation of a slurry pipeline for conveying coal from the Navajo Reservation and the area described in Exhibit "A" attached hereto to the generating plant to be constructed by the Southern California Edison Company at Mohave, Nevada, PROVIDED, HOWEVER, that water used for the operation of a slurry pipeline shall be metered and the company shall pay the Tribe therefor in an amount approximating 2,500 to 3,000 acre-feet, at a rate per acre-foot annually, to be agreed upon with the Advisory Committee.

4. The Navajo Tribal Council hereby grants to the Sentry Royalty Company such right of way or rights of way as may be determined to be necessary for the transportation of coal across the lands embraced in the prior lease to the company, the area described in Exhibit "A", the controversed area, and the Navajo Reservation, PROVIDED, HOWEVER, that the terms, conditions and location of such right of way or rights of way shall be subject to approval of the Land Investigation Department and the Advisory Committee.

5. The Advisory Committee of the Navajo Tribal Council is hereby authorized, empowered, and directed to approve terms and conditions of a Drilling and Exploration Permit hereby granted to the Sentry Royalty Company, together with terms and conditions of a lease attached thereto, in the area described in Exhibit "A" attached hereto. Such Drilling and Exploration Permit and form of Lease approved by the Advisory Committee, together with the existing lease, shall provide among other things, for the following:

a. Payment by the company to the Tribe of 100% of royalties and rentals payable from the area leased within the Navajo Reservation pursuant to Lease No. 14-20-0602-8580.

b. The company will be authorized to utilize water to be secured by it from its lease on the Navajo Reservation and the area described in Exhibit "A" attached hereto, (through drilling below 1,000 feet) for operation of a slurry pipeline to convey coal from all of the company's operations in the Black Mesa area.

c. The price to be paid for

water used for a slurry pipeline shall be approved by the Advisory Committee. 100% of the royalties payable for coal mined in the controversed area described in Exhibit "A" attached hereto shall be paid as follows: 50% of said royalties shall be paid to the Navajo Tribe, and 50% shall be deposited in escrow in a bank approved by the Advisory Committee, bearing interest, pending determination of the right, title, and interest of the Navajo Tribe, by adjudication, legislation, or settlement within seven years, the company will not be obligated to pay further sums into escrow after seven years from the date hereof.

The escrowed fund shall be paid to the Tribe if the title and interest of the Tribe is adjudicated in its favor and otherwise said escrow funds shall be released to the company after such final adjudication or settlement.

6. Upon approval of said Drilling and Exploration Permit and form of Lease by the Advisory Committee, the Chairman of the Navajo Tribal Council be, and he hereby is authorized, instructed, and directed to execute and sign such Drilling and Exploration Permit with right to lease on behalf of the Tribe, PROVIDED, HOWEVER, that in the event of failure of the Chairman or Vice Chairman to sign said permit within five days after approval by the Advisory Committee, then, and in that event, any one of the following are hereby, respectively, authorized, directed, empowered, and instructed to sign said Drilling and Exploration Permit with right to lease to the same effect or purpose as if the Chairman had done so:

Director of the Administration Division
Director of the Public Services Division
Director of the Resources Division

This paragraph shall also apply to any lease authorized by said permit.

7. Copies of all communications from the company to the Tribe shall be sent to the General Counsel and the Legal Department of the Navajo Tribe.

8. The officers of the Tribe be and they hereby are authorized, empowered, and directed to do any and all things necessary, advisable or incidental to carrying out the purposes of this resolution.

9. In the event of failure of the Chairman or Vice Chairman to sign this resolution, then and in such event, the Legislative Secretary be and he hereby is authorized, instructed and directed to sign the resolution to the same effect and purpose as if the Chairman or Vice Chairman had signed it.

Presiding Chairman

EXHIBIT "A"

All of Sections 1 through 36, Township 35 North, Range 18 East; all of Sections 1 through 36, Township 33 North, Range 19 East; all of Sections 31, 32, 33, 34, 35, 36 and that portion of Sections 25, 26, 27, 28, 29 and 30 South of the 36 degree 30' parallel, Township 36 North, Range 18 East; all of Sections 31, 32, 33, 34, 35 and 36 and that portion of Sections 25, 26, 27, 28, 29 and 30 South of the 36 degree 30' parallel, Township 36 North, Range 19 East; Gila and Salt River Meridian, Navajo County, Arizona, containing 53,270 acres more or less.

Description obtained from the official Protraction of Surveys by the Bureau of Land Management, United States Department of the Interior.

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1 PANEL TRUCK; 6 DUMP TRUCKS 1 1/2 Ton, 2 1/2 Ton;
1 STAKE TRUCK; 4 TRUCK TRACTORS 3 Ton, 5 Ton; 1 LOW BOY TRAILER; 4 TRUCK TRACTORS 6 x 6; 1 WRACKER 6 X 6; 1 CAB AND CHASSIS W/WATER TANK 6 X 6; 1 PICKUP 4 X 4; 1 WILLYS WAGON 4 X 4.

73 Additional Vehicles to be sold Wednesday, March 9, at Manueltto Hall, West Highway 66, Gallup, New Mexico. Inspect now at GSA Interagency Motor Pool, 500 East Coal Ave., Gallup, New Mexico.

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