

Report of Black Mesa Review Board to Office of the Speaker, 2nd Quarter - Reclamation post-coal mining “Significant Permit Revision”

Resolution BMRB 10 12 2025 A was passed November 8, 2025: Adopting a Position by Black Mesa Review Board (BMRB) in Regards to Peabody Western Coal Company’s Permit Renewal Application, Filed with the Office of Surface Mining Reclamation and Enforcement (OSMRE), for Renewal of Permit AZ-0001F; OSMRE Must Exercise its Authority under Federal Mining Laws to Designate any Changes or Renewals to Permits for the Now – Closed Coal Mine as “Significant” Revisions; and BMRB Requests Navajo Nation hold OSMRE and Peabody Western Coal Company (PWC) Accountable for Reclamation of Lands and Waters Affected by Coal Mining Operations.

The following is the background and justification for the resolution 10 12 2025 A: Navajo and Hopi tribal communities are **deeply** concerned about the current status and future plans for reclamation of tribal lands currently occupied by Peabody’s sprawling Kayenta and Black Mesa surface coal mines. Despite the fact that Peabody permanently ceased coal production at Kayenta in August of 2019, Federal regulators have **never** provided our tribes or tribal communities the opportunity to have a meaningful voice in the end of Peabody’s coal production and the planning for reclamation and timely return of mined lands and waters to our people in their pre-mine condition.

Previous Navajo Nation President Nez and Vice-President Lizer recently told Congress, “[w]ithout proper remediation, the land devastated by the Black Mesa and Kayenta mines may never fully recover. On that point, we believe OSMRE has been negligent in duties to hold Peabody accountable for the damage they have done to our land and our people. Peabody did not hold to their end of the bargain in our lease, and they should be denied the opportunity to renew leases or obtain new permits until a plan is put in place to begin the remediation process now. We have already waited more than 2 years since all operations in the area ceased. We shouldn’t have to wait any longer.”¹ Numerous Navajo Nation local governments have passed resolutions expressing similar concerns.²

¹ See Exhibit 1.

² *Id.*

We believe the previous Biden Administration had the opportunity to correct a historic wrong, put its environmental justice commitments into practice, and meaningfully engage our communities on how best to restore our lands and return them to Native people after more than 50 years of strip mining.

Also under the Biden leadership, Interior asserted that it is “playing a central role in how the United States...increases environmental protections, pursues environmental justice and honors our nation-to-nation relationship with Tribes.”³ And it claimed that “the President knows that the intersecting health, economic, racial justice and climate crises disproportionately impact American Indians and Alaska Natives, **which is why he has directed the entire federal workforce to take a whole-of-government approach to supporting Indian Country.**”⁴

Similarly, President Biden ordered “that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality” and that the administration is advancing “a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.”⁵ Further, “[i]n carrying out this order, agencies shall consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs.”

However, the Interior was not able to finally engage tribal communities on Black Mesa, to listen to community concerns, openly discuss the process of reclaiming and returning our lands and water and ensure our tribal communities have a meaningful voice in this

³ <https://www.doi.gov/blog/meeting-moment-interiors-bold-action-preserve-public-lands-and-waters-invest-clean-energy>.

⁴ <https://www.doi.gov/blog/enduring-partnership-interiors-commitment-honoring-our-nation-nation-relationship-tribes>

⁵ See *Order Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (January 20, 2021) <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

process. We had hoped that these goals could be accomplished through regular public meetings with the communities most directly impacted by the mines, and with the existing regulatory framework under Federal surface mining laws and the “significant permit revision” process that can provide substantive protections for our lands and waters as well as opportunities for public engagement. Although we have received a letter from OSMRE indicating it intends to hold a virtual public hearing on Peabody’s requested bond release on October 21, 2021, initiating a process to return millions of dollars in reclamation bonds to Peabody *before* holding discussions with the affected community of Navajo and Hopi people about the restoration and return of our lands and waters is not appropriate. That puts the cart squarely before the horse and tells us that OSMRE values Peabody’s bottom line more than it respects the input of Navajo and Hopi communities that are directly impacted by decades of Peabody’s pollution.

Our tribes and communities across Black Mesa have been living with the social and environmental impacts from Peabody’s coal mining operations for a half century. We deserve a plan from Peabody that meaningfully addresses **when** our land and water will be returned to us, explains **how** Peabody will reclaim our land and water for return to our people and community to its pre-mining condition, and adequately analyzes **how much it will cost** Peabody and other entities to do the necessary reclamation work so that our communities can be confident that Peabody’s clean-up operations adequately bonded. And we deserve **a transparent and public process** that will ensure the people who live on Black Mesa and continue to be directly affected by Peabody’s mine operations can understand and meaningfully participate in efforts to reclaim and restore our lands and water as they are returned our people.

As explained in greater detail below, we believe that means treating Peabody’s permanent cessation of active coal mining operations in August of 2019 as a “significant permit revision” under the Surface Mining Control and Reclamation Act (“SMCRA”) and that Interior and OSMRE begin that process *now*.

Background

The Kayenta Mine sits on top of Black Mesa, located above the Navajo Aquifer, and has disproportionately impacted our families, our communities, and our lands and waters for a half-century. Most of us have lived on Black Mesa for the majority of our lives. We all know families, including some of our own relatives, that were relocated in the

early 1970's to make way for the coal mine, and we want to ensure that our families and communities can return to these lands after Peabody leaves and find more than a scarred, barren, waterless landscape.

In October of 2017 when OSMRE approved yet another in a long line of 5-year permit renewals for the Kayenta Mine dating back to 1990, the agency told our communities and the public that permanent closure of Kayenta was “uncertain at this time” “and therefore does not necessitate the submission of an application for revision of the mine permit at this time.”⁶ In assuming no changes to Peabody’s mine operation for purposes of “renewal” of Peabody’s operating permit at maximum coal production, OSMRE circumvented permitting procedures for addressing permanent cessation of coal production and intentionally limited the scope of its environmental assessment to “mining and reclamation operations during the [renewal] period of July 6, 2015 through July 5, 2020.”⁷

By contrast, OSMRE’s sister agencies within the U.S. Department of Interior (“DOI”) the Bureau of Reclamation (“BOR”) and Bureau of Indian Affairs (“BIA”) prepared an environmental assessment in 2017 that analyzed *in toto* permanent retirement and remediation of the Navajo Generating Station (“NGS”) to begin in 2020 and end in 2025 (“NGS Retirement EA”).⁸ OSMRE excused itself from this process, and did not serve as a cooperating agency on the NGS Retirement EA. The plan governing retirement of NGS was finalized on November 27, 2017 and, unlike Peabody’s Kayenta mine, NGS is now on a glidepath to timely completing remediation of the facility.

⁶ Additionally, OSMRE told the public that “[t]he proposed Renewal application does not include any revisions to the mining and operations plan or the addition of any new mining areas and is therefore under 30 CFR 774.15(b)(2)(4) is not subject to processing as a permit revision. For the proposed Renewal period, coal-mining operations would be assumed to continue at the recent historical pace of approximately 8 mtpy and existing facilities would be used for ongoing operations.” See OSMRE Kayenta Mine SMCRA Permit Renewal Environmental Assessment (August 17, 2017) at Appendix H page 5, ¶17 (emphasis supplied) (Exhibit 2).

⁷ See OSMRE Kayenta Mine SMCRA Permit Renewal Environmental Assessment (August 17, 2017) at 1-1. The environmental assessment and underlying permit documents are no longer publicly available on OSMRE’s website.

⁸ Unlike OSMRE, BIA and BOR had the prescience to recognize that “[w]hen NGS operations cease on or before December 22, 2019, it is assumed that closure and reclamation of the [Kayenta Mine] also would occur because the NGS is the sole commercial customer of coal produced at the [Kayenta Mine]”). NGS Retirement EA at 13. The NGS Retirement EA can be found here: <https://www.usbr.gov/lc/phoenix/reports/NGS/nepa.html>

Since mine closure, Peabody has exacerbated public confusion around permanent closure of the Kayenta Mine by seeking yet another 5-year permit renewal from OSMRE for continued coal production.⁹ Additionally, since mine closure in August of 2019, Peabody appears to have submitted numerous “revisions” to its operating permit addressing mine reclamation for which OSMRE has provided no public participation opportunities or environmental analysis.¹⁰ More recently, Peabody has now demanded \$25 million in bond release while offering negligible public participation and oversight opportunities and no environmental analysis.¹¹

Based on our review of documents received from OSMRE under the Freedom of Information Act, it is not clear to us whether Peabody has ever meaningfully notified OSMRE that it permanently stopped mining at Kayenta.¹²

We do not expect reclamation will be easy, but at a minimum it must be transparent and involve the public and impacted community. The Kayenta mine area is roughly 44,000 acres and once housed livable Native communities – it is a city-sized coal mine.¹³ The mine opened in 1973, and now half-century later, Peabody has made little progress to restoring mined lands on Black Mesa to a pre-mine condition.

As of April 20, 2017, and of the more than 17,000 acres of tribal homelands disturbed by mining and regulated under the OSMRE’s Permanent Regulatory Program, no lands whatsoever had been permanently reclaimed to a pre-mine condition (*i.e.* achieved Phase III bond release). Further, and of the 5,400 acres of mined lands at Kayenta

⁹ Peabody’s demand for an additional 5-year permit renewal and continued coal production which was submitted to OSMRE on February 20, 2020 is not publicly available on OSMRE’s website.

¹⁰ None of Peabody’s permit revisions are available on OSMRE’s website.

¹¹ <https://www.wrcc.OSMRE.gov/initiatives/kayentaBlackMesa.shtm>

¹² Notably, Peabody failed to notify the Bureau of Land Management (“BLM”) of the cessation of coal production until January 31, 2020 – four months **after** mine closure. Exhibit 3. Peabody’s notification was triggered by a December 19, 2019 letter from the BLM requesting that Peabody “submit a modification to its current coal Resource Recovery and Protection Plan (R2P2) for the Kayenta mine, last approved in 2016.” *Id.* Upon information and belief, OSMRE has **never** sent a similar request to Peabody.

¹³ 44,000 acres is approximately 68 square miles; for reference, the city of San Francisco, California is only about 47 square miles.

regulated under OSMRE's antiquated initial regulatory program, only 2,400 acres, or less than half, have seen OSMRE "terminate jurisdiction" over Peabody's operation.¹⁴

With regard to water resources, and in particular Peabody's drawdown of the Navajo Aquifer over the last half-century which has led to dried up springs and surface land subsidence in our communities, there simply is no timeframe or estimate of when or how (if at all) Peabody can and will restore our critical tribal water resources to their pre-mine condition as required by law.

Peabody's track record is shameful. Peabody has not been a good neighbor. Most of us can barely remember a time without mine pollution. We cannot remember a time without the heavy equipment or the dust and chemicals from blasting. But in our dried-up wells, in the daily commutes to get adequate water for our livestock and homes, and in the health of our children, we see daily reminders of what Peabody has taken from our land and what it has left behind.

Challenges:

Going forward, we have several specific concerns that we want to bring to your attention.

First, and because Peabody failed to notify OSMRE of permanent cessation of mine operations when OSMRE authorized a five (5) year Permit Renewal for the Kayenta Mine on October 3, 2017, the environmental impacts of mine closure have **never** been analyzed and Peabody was **not** required to complete an updated reclamation plan governing mine closure. Specifically, Peabody was not required to provide a "detailed timetable" for the completion of each major step in the reclamation process post-closure in August of 2019 including:

- (1) Backfilling;
- (2) Grading;
- (3) Establishment of the surface drainage pattern and stream-channel configuration;

¹⁴ See Exhibits 4 and 5. The situation at Peabody's Black Mesa Mine, where active mining ceased in 2005, is no different. Of the 5,780 acres of mined lands at Black Mesa regulated under OSMRE's initial regulatory program and after nearly 15 years of alleged reclamation operations by Peabody, only 1,600 acres, or 27%, have seen OSMRE "terminate jurisdiction" over Peabody's mine operation. Exhibit 6.

- (4) Soil redistribution;
- (5) Planting of all vegetation;
- (6) Demonstration of revegetation success;
- (7) Demonstration of restoration of the ecological function of all reconstructed perennial and intermittent stream segments; and,
- (8) Application for each phase of bond release.

See 30 C.F.R. § 780.18(b). As it currently stands, there is no timetable (enforceable or otherwise) for Peabody to achieve permanent reclamation of mined land and water to a pre-mine condition. The reclamation schedule in Peabody's operating permit was last revised in October 2012 and only runs through 2019.¹⁵ Importantly, the schedule does **not** provide precise specification of the timing or area for each reclamation phase in each mining area, which OSMRE asserts "is not possible" due to ongoing coal production by Peabody.

Second, and although Peabody prepared a "final reclamation cost valuation" for the Kayenta Mine in early 2017, that cost valuation was not provided to OSMRE during the 2017 renewal permitting process and has never been made public.¹⁶ As it currently stands, we have no way of assessing whether Peabody's behind closed doors cost estimate adequately reflects Peabody's full reclamation costs at the Kayenta Mine – costs which we believe to be significant and necessarily include hydrologic reclamation of our people's water resources to a pre-mine condition.

Third, while Peabody's bond will presumably cover land disturbances, we have no indication that Peabody's reclamation bond is sufficient to restore the quality and quantity of Black Mesa's water resources, and in particular the N-Aquifer that our communities depend on, to a pre-mine condition. We need assurances from OSMRE, Peabody, and the owners of NGS that our lands and water will be fully, and timely, reclaimed to their pre-mining condition.

¹⁵ *See* Exhibit 7.

¹⁶ *See* Chris Walker, Peabody Letter to Navajo Generating Station Owners at 1 (April 17, 2017), Exhibit 8. The final reclamation cost valuation referenced in the letter have never been made publicly available, analyzed in any impact statement, or incorporated into Peabody's operating permit.

These are serious concerns that directly affect the communities who live on Black Mesa and are compounded by Peabody's own statements that the mine company's reclamation bond was "underfunded."¹⁷

Fourth, on February 27, 2020, PWCC submitted a permit renewal application to OSMRE. On June 25, 2020, OSMRE "administratively delayed" noticing the application for public review and comment, and ultimate decision. OSMRE delayed action on the permit renewal application for the entirety of the five-year renewal period.



Navajo Nation members ask for clarification, of Navajo Nations standard for reclamation.

¹⁷ At a May 16, 2017 meeting in Chandler, Arizona on the long-term future of NGS, Peabody representative Chris Walker told officials from the Department of Interior, Bureau of Reclamation, and other entities that the Peabody's reclamation bond was at that time "underfunded," and that the owners of NGS were contractually responsible for 70 percent of final reclamation costs and 100 percent of employer health care costs at the Kayenta mine. Peabody made similar statements in an April 4, 2017 letter signed by Mr. Walker to the owners of NGS. The letter asserts that based on a reclamation cost study prepared by Golder and Associates – which has never been made available to the public – that the owners of NGS were responsible for \$137 million of the \$191 million in expected reclamation costs. See Chris Walker, Peabody Letter to Navajo Generating Station Owners at 1 (April 17, 2017), Exhibit 8.

In the interim, the operator and OSMRE used the administrative delay on the previous permit renewal application to submit and authorize numerous piecemeal permit revision applications addressing mine operation and reclamation activities – activities which individually and collectively warrant a significant permit revision process. Instead of treating PWCC's permanent cessation of coal production as a whole and undertaking a meaningful significant permit revision process, OSMRE has instead approved PWCC's numerous permit revisions addressing different aspects of mine closure with no meaningful public participation opportunities.

Specifically, since PWCC stopped producing coal at the Kayenta Mine in August of 2019, which in and of itself constitutes a significant permit revision that has never been addressed in an OSMRE permitting process, PWCC has submitted at least **nine** separate permit revisions to your office addressing various aspects of mine closure. These include, but are not limited to:

1. 5-year Reclamation Schedule Permit Revision;
2. N-9 Pit Estimated Postmining Topography (PMT) Map Permit Revision;
3. N9-B Pond Permit Revision;
4. J-19 Postmining Topography (PMT) Permit Revision;
5. J19-D Temporary Sedimentation Impoundment Permit Revision;
6. J-21 Postmining Topography (PMT) Permit Revision;
7. J21-G and H Temporary Sedimentation Structure Permit Revisions;
8. Sediment Control Plans Permit Revision, and;
9. Blasting Permit Revision.



L. 2023 Mine Site tour with community, Peabody, OSMRE and the Navajo Nation, R. Reseeding mined lands with one type of non-native grass.

None of these revision applications and OSMRE's subsequent decisions on the applications have been subject to public notice and comment procedures and NEPA analytical requirements. Any changes to coal mine operations must be processed as a permit revision. 30 C.F.R. § 774.15(b)(4).

At the same time, and in the absence of a permitting process necessary to address permanent mine closure, OSMRE has been proceeding with approval of PWCC's bond release applications, including, most recently, PWCC's Phase III, J19 and J21 Coal Resource Area ("CRA") Bond Release Application, N9 Phase I and II N9 CRA Bond Release Application, and Phase III N14 and J16 CRA Bond Release Application. In treating each of these actions separately without a comprehensive evaluation, OSMRE has failed to comply with the requirements of the National Environmental Policy Act requiring that the agency analyze the impacts of bond releases and the renewal permit together in an Environmental Assessment and/or Environmental Impact Statement.

As a result of OSMRE's unlawful and piecemeal approach, the tribal communities most affected by the mine have never been provided a meaningful voice in the end of PWCC's coal production and the planning for reclamation and timely return of mined lands and waters to the people in their pre-mine condition, as required.

Multiple Navajo Nation Chapters representing the communities closest to the mine have passed resolutions calling for meaningful public participation in the long-term reclamation plan for the mines (attached).

In September of 2022, OSMRE held its first public meeting on the Kayenta Mine in nearly two decades, only to then ignore the calls from the public for an in-depth review of the reclamation plan.



2025, Hearing of the Resources and Development Committee on Trump's proposal to revive coal-mining. Forest Lake, Az.

Overall, OSMRE must stop excluding the public and avoiding a comprehensive review of permanent reclamation of mined lands and waters at Kayenta. Our tribes and communities across Black Mesa have been living with the social and environmental

impacts from Peabody's coal mining operations for a half century. We deserve a plan from Peabody and OSMRE that meaningfully addresses **when** our land and water will be returned to us, explains **how** Peabody will reclaim our land and water for return to our people and community to its pre-mining condition, and adequately analyzes **how much it will cost** Peabody and other entities to do the necessary reclamation work so that our communities can be confident that Peabody's clean-up operations adequately bonded. And we deserve **a transparent and public process** that will ensure the people who live on Black Mesa and continue to be directly affected by Peabody's mine operations can understand and meaningfully participate in efforts to reclaim and restore our lands and water as they are returned our people.

We believe that means treating Peabody's permanent cessation of active coal mining operations in August of 2019 as a "*significant* permit revision" under the SMCRA or, at a minimum, conducting a comprehensive and public environmental review under NEPA that adequately addresses the communities' ongoing concerns with PWCC's efforts to permanently reclaim the Kayenta Mine. PWCC's permanent cessation of coal mining and transition to reclamation has **never** been permitted or analyzed in a NEPA document. Peabody's cessation of operations merits treatment as a significant permit revision under SMCRA and its implementing regulations. *See* 30 C.F.R. §§ 774.13, 750.12; *see also* 30 C.F.R. § 746.18.

Our requests to the Navajo Nation:

Peabody's permanent cessation of coal production in August of 2019 must be treated by OSMRE as a *significant* permit revision.¹⁸ Treating Peabody's permanent closure of the Kayenta Mine as a *significant* permit revision is critical for three reasons:

1. Peabody must "affirmatively demonstrate" and OSMRE find "in writing" "that reclamation as required by the Surface Mining Control and Reclamation

¹⁸ In determining whether a permit revision is "significant," OSMRE "**shall consider**" the following factors:

- (1) Changes in production or recoverability of the coal resource;
- (2) the environmental effects;
- (3) the public interest in the operation, or likely interest in the proposed revision; and,
- (4) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles or cultural resources.

See 30 C.F.R. § 750.12(c)(3)(ii)(B) ("OSMRE **shall determine** if the application for revision is complete and **if the proposed revision is significant.**") (emphasis supplied).

- Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.¹⁹
2. OSMRE is required to “[d]etermine[] that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.”²⁰
 3. OSMRE is required “to determine if the findings which were made in issuing the original permit are still valid.”²¹

After more than fifty years of mining at Kayenta and Black Mesa, we hold firm that it is time to repair the land, restore the Navajo Aquifer vital for the continued prosperity of our tribal communities, and return Peabody’s mined land and waters to the people of Navajo and Hopi in their pre-mining condition. Six years ago then-Interior Secretary Sally Jewell promised the American people “an open and honest conversation” about the federal coal program. The Hopi and Navajo communities on Black Mesa deserve an open and honest conversation about how to reclaim our lands and waters and return them to displaced communities.

Overall, it is Navajo Nation duty and responsibility to ensure that OSMRE fulfill its duty under section 7(a)(1), which “imposes a specific obligation upon all federal agencies to carry out programs to conserve each endangered and threatened species.” *Fla. Key Deer v. Paulison*, 522 F.3d 1133, 1146 (11th Cir. 2008) (citing *Sierra Club v. Glickman*, 156 F.3d 606, 616 (5th Cir. 1998) (“Given the plain language of the statute and its legislative history, we conclude that Congress intended to impose an affirmative duty on each federal agency to conserve each of the species listed pursuant to [16 U.S.C.] § 1533. In order to achieve this objective, the agencies must consult with [the] FWS as to each of the listed species, not just undertake a generalized consultation.”). While OSMRE has some discretion to determine how it will meet section 7(a)(1)’s affirmative duty, “[t]otal inaction is not allowed.” *Id.* At the very least, section 7(a)(1) requires OSMRE to consult with FWS to ensure that its effects analysis is adequate for

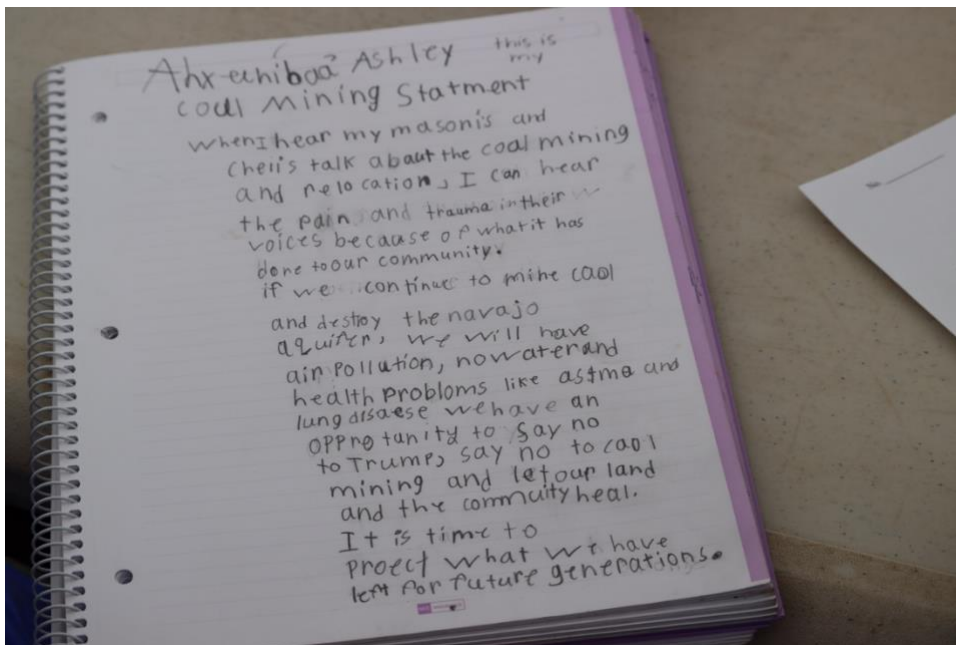
¹⁹ 30 C.F.R. § 773.15(b) (emphasis supplied).

²⁰ 30 C.F.R. § 773.15(e) (emphasis supplied).

²¹ 30 C.F.R. § 750.12(c)(3)(ii)(C) (emphasis supplied).

this purpose, up-to- date, will significantly contribute to the recovery as well as the survival of listed species, and that nothing more will be required to conserve listed species affected by all activities contemplated by the renewal permit. *Pyramid Lake Paiute Tribe of Indians v. U.S. Dep't of Navy*, 898 F.2d 1410, 1417 (9th Cir. Nev. 1990) (in exercising their duty to conserve, non-Interior Department agencies must do so in consultation with the Secretary”).

It is important for the Navajo Nation to continue to pursue “Significant Permit Revision” of this issue are at least a process in which the appropriate reclamation of Navajo lands and water is address. Ultimately the goal is to ensure that the land leased for mining is returned in as “good condition as received” and that does mean that the water has to be returned (reclaimed) also.



Ahxeni'baa' Ashley writes a letter for her Navajo speaking grandmother, submitted to the office of the Navajo Nation Speaker.