

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

July 21, 2020

Mr. Lanny E. Erdos
Acting Director
Office of Surface Mining Reclamation and Enforcement
1849 C Street, NW
Washington, DC 20240

Dear Acting Director Erdos:

I am writing to inquire about the status of the Office of Surface Mining Reclamation and Enforcement's (OSMRE's) permitting approval process for permanent reclamation of all areas affected by Peabody Western Coal Company's (Peabody's) Kayenta Mine on the Navajo Nation in northeastern Arizona. As you are aware, Peabody permanently ceased coal mining operations at Kayenta Mine in August 2019, and I have concerns about the timing and planning of Peabody's permanent reclamation of the tens-of-thousands of acres of tribal lands and waters impacted by a half-century of coal mining.

It is my understanding that OSMRE has so far conducted no public permitting process to address Peabody's permanent mine closure, as OSMRE took the position that that permanent cessation of coal production was "uncertain" as of the most recent renewal of Peabody's operating permit in October 2017. As a result, there have been no public participation opportunities focused on Peabody's permanent mine closure and reclamation. At the same time, permit revisions submitted in November and December of last year, which proposed major modifications to the reclamation schedule, were deemed to be not significant by OSMRE, foreclosing public participation in the review of these revisions. I have also been informed that OSMRE review of these proposed revisions is being held up by Peabody's lack of responses to deficiency letters the agency sent on and before February 19, 2020.

In short, it appears that no reclamation at Kayenta Mine has occurred for the nearly one full year since mining operations permanently ceased, Peabody is seeking to conduct reclamation more slowly, and the public has been nearly shut out of the process. This is an untenable situation, an apparent violation of OSMRE's contemporaneous reclamation requirements, and an additional burden on the members of the Navajo Nation and Hopi Tribe, who live on or use the mine area and are being forced to suffer with the environmental degradation of the lands and waters of the site for an extended period of time.

An additional concern is the relative inaccessibility of documents related to the permit revisions and a recently submitted permit renewal application, which are not made accessible to the public online. There is simply no excuse in this day and age—and even less excuse during a public health emergency—for public documents to only be accessible in hard copy, particularly when the Freedom of Information Act require such documents to be available in electronic format if requested three or more times.¹ The Department of the Interior’s Office of Congressional Affairs offered to provide my staff with a disk containing the complete electronic version of the currently approved Kayenta reclamation plan; there is no reason why that plan, and any proposed revisions to or renewal applications for that plan, cannot be placed on a website for all interested parties to view.

I also encourage OSMRE to designate the Kayenta Mine permit revisions, including any revisions that address permanent cessation of mining, as significant, as allowed under 30 C.F.R. 750.12(c)(3)(ii)(B) for applications where there is “public interest in the operation, or likely interest in the proposed revision.” Given the significant public and community interest and environmental effects of a half-century of coal mining, Peabody’s permanent cessation of coal production and implementation of permanent reclamation activities at the Kayenta Mine warrants treatment by OSMRE as a significant permit revision, and it should be processed as if it was a new application and reviewed by OSMRE to determine if the findings made in issuing the original operating permit are still valid

Because of the overwhelming community interest and the need for timely reclamation of the Kayenta Mine to a pre-mine condition, and in keeping with the oversight responsibilities of the House Natural Resources Committee, I would appreciate answers to the following questions by Friday, July 31:

1. What applications, notifications, or other correspondence have been submitted by Peabody related to its permanent cessation of surface mining activities at the Kayenta Mine?
2. What decisions or actions has OSMRE taken related to Peabody’s permanent cessation of surface mining activities at the Kayenta Mine?
3. What public processes has OSMRE undertaken related to the permits, decisions, and actions relevant to Peabody’s permanent cessation of surface mining activities at the Kayenta Mine?
4. What are the measures the agency intends to undertake over the next six months, related to Peabody’s permanent cessation of surface mining activities at the Kayenta Mine, including associated public processes and environmental analysis, and what is the anticipated schedule for OSMRE to take those measures?
5. When will Peabody recommence reclamation work at Kayenta Mine?
6. What reclamation schedule is currently in effect under the Kayenta Mine permit? Please provide the current, approved reclamation plan and schedule in the 2015-2020 permit.

¹ 5 U.S.C. 552(a)(2)

7. Did Peabody meet its contemporaneous reclamation obligations under 30 CFR 817.100 for 2019, that is, reclamation of the same or greater number of acres as reported in other permit years, given the cessation of mining and reclamation in August 2019? Please provide Peabody's 2019 Reclamation Status and Monitoring Report for Kayenta and Black Mesa Mines. If the report is not available, when it is scheduled to be submitted?
8. Are there any specific reasons why reclamation work on the Kayenta Mine cannot occur during the current public health emergency? If so, are there other locations in the country where coal mine reclamation is currently occurring, and what distinguishes those locations from Kayenta?
9. What is the process and timeline for OSMRE to review Peabody's proposed revisions to the Kayenta Mine 2015-2020 permit? What actions has OSMRE taken related to Peabody's proposed revised reclamation schedule, submitted December 19, 2019?
10. Has Peabody responded to OSMRE's February 19, 2020 comments on its proposed revised reclamation schedule?
11. What actions has OSMRE taken with respect to expiration of the Kayenta 2015-2020 permit on July 6, 2020?
12. What are the reasons why OSMRE does not make the relevant documents available online? Are there any technological or resource constraints that make you unable to do that?

Thank you for your attention to this request. If you have any questions, please contact Steve Feldgus on the House Natural Resources Committee staff at steve.feldgus@mail.house.gov.

Sincerely,



Raúl M. Grijalva
Chair
House Natural Resources Committee