

# Peabody Coal Leases

## What's Wrong with this Picture?



**“Changing the Way We Do Business”**

# Shortcomings of Peabody Coal Leases

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- ▶ Since the beginning of Peabody Coal Leases (mid-1960's), Peabody has not paid Hopi and Navajo at Fair Market Value for coal and water
- ▶ No appraisal or valuation is made of coal and water that will be leased before leases are signed
- ▶ Coal leases are measured by surface acres – not by tons of coal deposits and gallons of water (N-Aquifer)
- ▶ This results in tribes not receiving compensation for fair market value of the resources

# Shortcomings of Peabody Coal Leases

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- ▶ Coal leases do not provide for inflation factor – locks in the present value of coal and water although price of a resource like coal & water are highly volatile
- ▶ Coal leases give Peabody Coal full subsurface rights to minerals (except oil and gas) for which it pays nothing
- ▶ Coal leases “lock in” the coal and water for the duration of the leases
- ▶ This keeps the tribes from opportunities to market coal (and other mineral) resources and diversify their economy

# Shortcomings of Peabody Coal Leases

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- ▶ Coal leases do not provide for tribal taxation (value taxes)
- ▶ Peabody pays minimal annual fixed bonuses and scholarships
- ▶ Peabody has not complied with the conditions of leases
  - Finding alternative sources of water
  - Treat and release water used for mining
  - Many other lease violations

# Leases Give Peabody Big Advantage

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- ▶ Commodities, like coal and water, have a value determined by the “futures market” (supply-demand) but Peabody leases: are different. The leases:
  - Give Peabody incredible leverage it can use in the market because they receive subsurface rights to all minerals and “kindred products”, except oil and gas.
    - Coal, Water, Copper, Uranium, Silver, Gold
  - Significantly builds Peabody’s company portfolio without Peabody paying anything for coal and water

# Leases Give Peabody Big Advantage

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- ▶ Peabody Leases (continued):
  - Gives Peabody one buyer (NGS) which reduces Peabody's risk
  - Gives Peabody a lock on the market – creates a Monopoly
  - Gives Peabody and its holding companies huge control over tribal resources and profits from use of these resources
  - Takes away tribal control of their resources

# So What is Value Chain?

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- ▶ Most products change hands many times before they reach the final consumer
- ▶ Input suppliers, producers, processors, wholesalers and retailers produce, transform, store, transfer or market the product, adding to its value at each step in the process (“Value Chain”)
- ▶ Value Chain refers to this range of activities that brings a product or a service from its conception to its end use in a particular industry

# Value Chain Process

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- ▶ Production of electricity is no different:
  - Supplier of Coal & Water (Hopi & Navajo)
  - Producer of Mined Coal (Peabody Coal)
  - Manufacturer of Electricity (Navajo Generating Station)
  - Marketer /Distributor of Electricity (Navajo Generating Station – Public Utilities – Bureau of Reclamation)
  - Customers (Cities in Arizona, Nevada & Southern California, Central Arizona Project, Industry, Southern Arizona Tribes, Households)
  
- ▶ Owners of Navajo Generating Station (Manufacturers) are also “Customers” of Navajo Generating Station

# What is Wrong with this Picture?

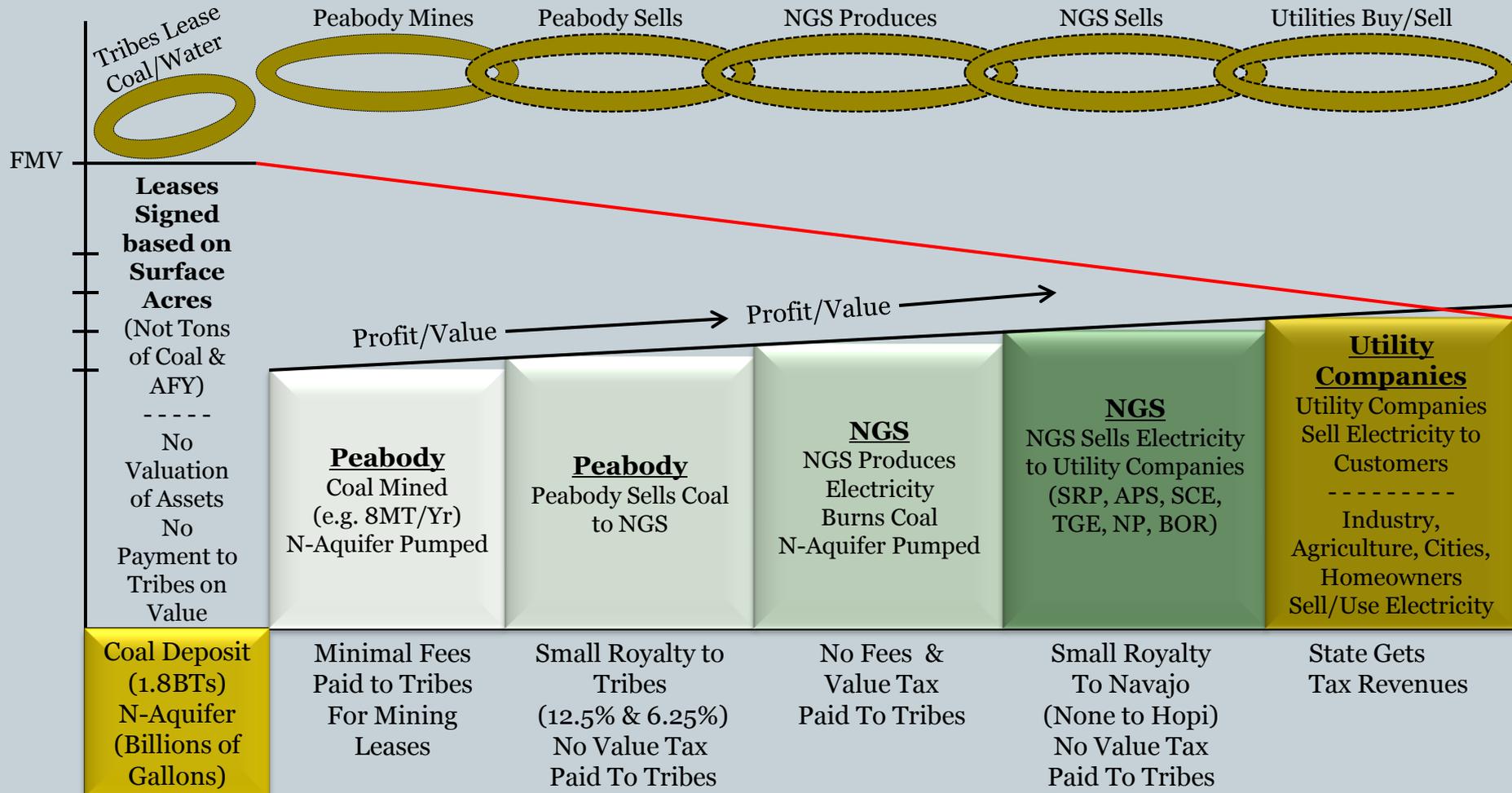
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- ▶ But, there is a big difference in how the Value Chain model is applied regarding Hopi and Navajo Coal and Water
  - ▶ Leases and processes are structured to keep tribes from receiving fair compensation and do not allow tribes to participate in the Value Chain
  - ▶ Peabody is taking advantage because tribes do not have a railroad, and do not have ability to do their own mining; and do not tax Peabody
  - ▶ NGS and customers benefit greatly from the Value Chain, e.g. SRP's 26% profit in 2011

# Value Chain Economic Model

## Mining & Marketing of Hopi & Navajo Coal & Water

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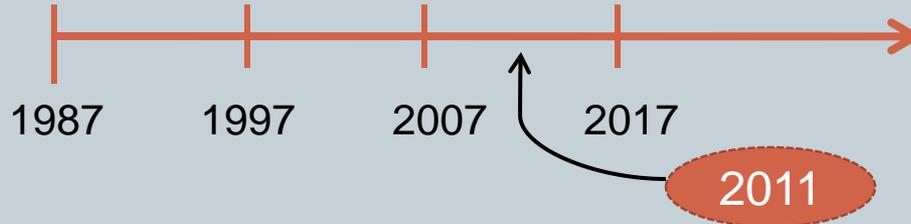


# Peabody Coal Lease “Reopener”

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## ▶ Coal Leases Require Negotiation Every Ten Years

- Lease requires a renegotiation every 10 years



## ▶ What is Gross Realization?

- Gross sales price at mining site without any deductions of overhead sales costs or any other business expense. Peabody pays 12.5% and 6.25% of monthly gross realization to Navajo and Hopi

# Where Our Coal Goes

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- ▶ Coal from Kayenta Mine goes to Navajo Generating Station via electric rail
- ▶ Coal from Black Mesa Mine went to Mohave Generating Station (now closed) via coal slurry. MGS shut down in 2005
- ▶ About 400 million tons have been mined since mid-1960's
- ▶ Millions, if not billions, of pristine N-Aquifer was withdrawn to slurry coal to MGS

# Overview – Hopi/Peabody Lease

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- ▶ Hopi Lease, No. 14-20-0450-5743 (Sentry Royalty) – Now No. 14-20-0603-9910:
  - Signed June 6, 1966
  - Royalty paid 6.25% (Shared equally with Navajo Nation)
  - 40,000 acres for \$1.00 for 10-Years
  - Peabody has Exclusive Right to prospect, mine, strip lands, develop water wells for coal and kindred products including other minerals except oil & gas
  - Water for slurry purposes from depths greater than 1,000 feet for \$1.67 per acre-foot per year
  - Peabody required to find alternative sources of water
  - Current Reopener Not Approved by Hopi

# Overview – Hopi/Peabody Lease

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## ► Initial Royalty Payments:

- 3.335% of Monthly Gross Realization (not to exceed 12.5 cents per ton) off the 1882 Executive Order Area
- 2.665% of Monthly Gross Realization (not to exceed 10.0 cents per ton) on the 1882 Executive Order Area
- \$0.50 cents per acre per year paid in advance during first 5 years
- \$1.00 dollar per acre per year paid in advance for remaining 5 years
- Peabody liable for damages
- Wanted additional 200 million tons by the end of the 10 Year Lease

# Hopi & Peabody Coal Lease

## (Alternative Source of Water Provision)

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“Should the Secretary of the Interior determine, at any time, that the operation of wells by Lessee is endangering the supply of underground water in the vicinity or so lowering the water table that other users of such water are being damaged, he may, at his option, either (1) require Lessee or Peabody Coal Company, at its sole expense, to provide water in quantity and of quality equal to that formerly available from such underground supply to such other users, by deepening the letter’s (sic) wells or otherwise, or (2) require Lessee or Peabody Coal Company, at its own sole expense, to obtain water for its mining and pipe line operations from another source, that will not significantly affect the supply of underground water in the vicinity”.

# Overview – Navajo/Peabody Leases

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- ▶ Navajo Nation entered into a Coal Lease No. 14-20-0603-8580 with Sentry Royalty (Navajo Exclusive)
  - Signed February 1, 1964
  - Amended in 1987
  - Renewed April 2011
  - Royalty Rate 12.5%
  
- ▶ Navajo Nation entered into a Coal Lease, No. 14-20-0603-9910 (Shared with Hopi)
  - Signed June 6, 1966
  - Amended in 1987
  - Renewed April 2011 by Navajo Nation
  - Shared with Hopi Tribe
  - Royalty Rates 6.25% for Each Tribe

# Navajo Leases Combined – Reopener Approved by Navajo – April 2011

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- **Lease 8580**

- Navajo Exclusive
- Royalties – 12.5%
- Scholarships - \$165,000
- Bonus - \$1,750,000

Annually

- One Time Signing Bonus -  
\$775,000

- **Lease 9910**

- Shared 50-50 with Hopi
- Royalties – 6.25%
- Scholarships - \$83,000
- Bonus - \$1,750,000

Annually

- One Time Signing Bonus -  
\$775,000

# Repeiner Comparison (Hopi-Navajo)

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- **Navajo Nation (9910)**

- Royalties – 6.25%
- Scholarships - \$83,000
- Bonus - \$1,750,000

Annually

- One Time Signing Bonus -  
\$775,000

- **Hopi Tribe (9910) - Proposed**

- Royalties – 6.25%
- Scholarships - \$85,000
- Bonus - \$1,365,000

Annually

- One Time Signing Bonus -  
\$700,000

*Note: Navajo Nation's 1999 RICO Lawsuit against Peabody Coal, Southern Cal Edison and SRP. Hopi intervened in the Navajo lawsuit in 1999. Navajo earlier filed suit against Federal government in 1993 for breach of fiduciary duty for approving the 12.5% Royalty Rate when Navajo claims the rate should have been 20.0%. Information on recent purported settlements of the RICO lawsuits by both tribes is being investigated.*

# Suggested Ways We Change the Process

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- ▶ Change basis of leases to provide for tons of coal and acre feet of water in addition to surface acres upon lease signing
- ▶ Require Peabody to pay upfront each year for coal to be mined and water to be withdrawn based on current Fair Market Value
- ▶ Provide for annual price adjustments based on market prices (“mark to market”)
  - Example: 8.0 Million Tons Mined Each Year at Current Market Price
- ▶ Prohibit pumping of N-Aquifer for mining purposes

# Suggested Ways We Change the Process

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- ▶ Increase royalties, annual bonuses, and scholarships
- ▶ Provide for tribal taxation (“value taxes”) on:
  - Coal and Water Deposits that are subject to leases
  - Mining and Withdrawal of Coal and Water
  - Sale of Coal to NGS
  - Sale of Electricity by NGS
- ▶ Notify Peabody that leases will be advertised and negotiated with highest bidder after 2017
- ▶ And/or tribes can enter the Carbon Credits market

# Change the Way We Do Business

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- ▶ Now is the time to change the way coal leases are structured
- ▶ Tribes must dictate the pricing and process – exercise “Economic Sovereignty”
- ▶ Demand upfront annual payment for coal and water at Fair Market Value
- ▶ Limit leases to coal and water only and exclude other “kindred” products

# Change the Way We Do Business

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- ▶ Prohibit use of N-Aquifer
- ▶ Require Peabody to comply with the lease and develop alternative sources of water
- ▶ It is time we start considering alternative uses of our natural resources
- ▶ Diversify use and market for coal resources
- ▶ Create a Tax Ordinance and impose appropriate taxes on Peabody

# Hold Peabody Accountable

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- ▶ It is time tribes hold Peabody accountable for damage done to resources
- ▶ Require Peabody to reclaim mine area and restore N-Aquifer
- ▶ If Peabody cannot live up to tribal demands, then advertise and open the leases to competition

# Thank you for your time

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