



## THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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# Navajo President Joe Shirley, Jr., says he is ‘ecstatic’ about U.S. Appeals Court reversal of Peabody \$600 million decision

**WINDOW ROCK, Ariz.** – Navajo Nation President Joe Shirley, Jr., said Thursday that he is ecstatic at the news that the U.S. Court of Appeals in Washington, D.C., has reversed a federal claims court decision and found that the U.S. Interior Dept. breached its trust responsibility by not disclosing critical information to the Navajo Nation regarding coal royalty negotiations with the Peabody Coal Co. in 1987.

On Thursday, Sept. 13, the appeals court issued an opinion that found the Navajo Nation has a “money-mandating claim” against the federal government, and ordered the case back to the U.S. Court of Federal Claims to reconsider the Navajo Nation’s claim for \$600 million in damages.

“As President of the Navajo Nation, I’m very ecstatic for my people,” President Shirley said. “I feel like they’ve been doing an injustice to us all along, and right now we’re beginning to call their hand. I really appreciate the higher court reversing the lower court’s decision and remanding the case to the lower court to consider the monetary award due the Navajo Nation.”

Former Navajo Nation President Kelsey Begaye, whose administration filed suit against Peabody Coal Co. in 1999, said he was also pleased at the news.

“It’s very good to hear that the Nation got what it had coming all this time, being neglected and not getting what it’s supposed to get,” he said. “I’m very happy to hear this. I wish the late Dr. Taylor McKenzie could hear the news. When we were in office, we worked very hard for this lawsuit. It was worth the wait.”

The appeals court upheld the Navajo Nation’s assertion that there is a substantial network of laws and regulations to establish specific trust responsibilities. It said these regulations can be interpreted to require compensation for damages sustained as a result of a breach of those duties.

*“The government cannot assume comprehensive control of the Nation’s coal, as it did here, and disclaim liability for exercising such control.”*

– U.S. Court of Appeals for the Federal District

“We conclude that the (Navajo) Nation has alleged and, based on the undisputed factual findings of the Court of Federal Claims in ‘Navajo I,’ has demonstrated that the government violated its common law trust duties of care, candor, and loyalty,” the opinion states.

It said the federal government had a duty under the Navajo-Hopi Rehabilitation Act of 1950 “to keep the Nation informed regarding the development of its coal resources,” a duty under the Surface Mining Control and Reclamation Act of 1977 “to provide the Nation representation in a matter related to coal mining operations,” and a duty under the Indian Lands section of the SMCRA “to include and enforce terms and conditions requested by the Nation.”

The Navajo Nation began leasing land on Black Mesa to Peabody Coal and its predecessor in 1964 with approval by the U.S. Interior Dept. The lease established royalty payments at 37.5 cents per ton with a provision for a “reasonable adjustment” by the Interior secretary in 20 years – 1984. That rate was deemed an “inequitable deal,” and “substantially lower” than the 12.5 percent minimum royalty set by Congress in 1977 for coal mined on federal land.

In 1984, the Navajo Nation asked Interior Secretary William Clark to adjust the royalty payment. Approximately three months later, Navajo Area Director Donald Dodge adjusted the rate to 20 percent.

However, in July 1985, Peabody Coal Co. requested Interior Secretary Donald Hodel, who succeeded Mr. Clark, to postpone the decision on the 20 percent or rule in its favor against it.

Peabody also retained former Interior Department executive Stanley Hulett, who was a former aide and friend of Secretary Hodel's, to represent the company before him.

The court found that Mr. Hulett met with the Secretary without the Navajo Nation being present, and that shortly afterward Secretary Hodel signed a memorandum prepared by Peabody Coal that urged the company and the Nation to return to the bargaining table.

In August 1987, the Navajo Tribal Council approved a package of lease amendments that were approved by Secretary Hodel in December, raising the royalty rate to only 12.5 percent. It also added 90 million tons of coal to the 200 million tons originally leased.

In 1993, the Navajo Nation sued the federal government seeking \$600 million in damages, asserting that the federal government violated its statutory and fiduciary trust duties to the Navajo Nation by approving the lease in December 1987 when the Nation had no knowledge of the Peabody memorandum issued by Secretary Hodel.

The Nation asserted this led to an economic loss to the Navajo Nation, a diminution of the value of the trust responsibility and harm to the sovereignty of the Navajo Nation.

"This is not a case where the government had the discretion to exercise control and did not do so," the opinion states. "Rather, in this case, the government exerted actual and significant control over the determination of the increased royalty rate in the lease amendments because its approval was required by law."

It states that Secretary Hodel "effectively refused to make any permanent adjustments after meeting with Peabody's representative, whom the government conceded was 'a former aide and friend of Secretary Hodel.'"

The opinion states that the Nation sought Secretarial approval "precisely because the government exercised control over the leasing of coal resources."

Even the Court of Federal Claims had earlier found that the Nation had entered into the negotiations process "unarmed with critical knowledge" and unaware "that it no longer had a competitive edge in its bargaining while the companies were well aware of the fact."

This resulted in the Interior Secretary approving lease amendments with royalty rates "well below the rate that had been determined appropriate by those agencies responsible for monitoring the federal government's relations with Native Americans," the claims court found.

But when faced with a claim for damages by the Navajo Nation, the federal government took the opposite stance, and asserted it had no control to determine the royalty rate, the appeals court wrote.

"The law does not allow the government to have it both way," the appeal court said. "That is, the government cannot assume comprehensive control of the Nation's coal, as it did here, *and* disclaim liability for exercising such control."

President Shirley, who has long stated he did not believe the federal government was living up to its trust responsibility to Navajos and other Native people, said he would like to see federal officials recognize that this perspective is now substantiated by this federal court opinion.

"Of course, that has been my hope all along, and continues to be my hope today as President of the Navajo Nation, that they will hear the cry from Navajoland, for the Navajo Nation, about it's plight with poverty," he said.

"Now that a higher court of the U.S. government has made a decision in our favor, I hope that rings loud and clear with the bureaucracy of the U.S. government, with the Bureau of Indian Affairs, and (it) begins to really start looking at fulfilling the trust responsibility as they should."

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