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To: Honorable Alan Lowenthal, Chairman - House Subcommittee on Energy and Mineral Resources
Honorable Rep. Diana DeGette, Member - House Subcommittee on Energy and Energy Mineral Resources
Honorable Members of the House Subcommittee on Energy and Mineral Resources

Date: June 30, 2021

Subject: Response to Follow-Up Questions from the Subcommittee's June 15, 2021 Oversight Hearing on "Environmental Justice for Coal Country: Supporting Communities Through the Energy Transition"

First, I want to thank you once again for allowing me to provide testimony earlier this month on the critical issue of "Environmental Justice for Coal Country: Supporting Communities Through the Energy Transition." I am grateful for the opportunity to bring to your attention the issues that have been plaguing the Hopi people for decades. Below, please find responses to the follow-up questions submitted by Chairman Lowenthal and Rep. DeGette.

Question 1: Can you tell us more about the importance of clean water and this aquifer to your community?

Response: We are Hopi. Water is central to our lives and our ceremonies. Everything we do, our prayers, our songs, our traditional farming, all evolve around water and rain because "Water is Life." Our spiritual beings, the Katsinam, come to us in the form of rain clouds to sustain us. When we pass on from our Mother Earth, we go into the spirit world, back to Sipapuni, the Place of our Emergence; and our spirits transform into rain clouds bringing sustaining life to Mother Earth. These are some reasons why water is sacred to us, and to the world that we live in.

Every person has a right to clean water. The springs around our communities that are fed by the Navajo Aquifer, or N-Aquifer, provided a pure source of water for our ceremonies and to sustain us each day. Without water in our sacred springs, our traditional ceremonies and our livelihood are threatened. Without our springs, our

ceremonies are in danger of ending. The primary springs surrounding our villages have dried up, interrupting our ceremonies. At my village of Shungopavi (Second Mesa), we had to bring in truckloads of water from a windmill to our spring so that our flute ceremony can continue. I personally experienced this because I participate in our flute ceremony.

Question 2: What is the status of the aquifer now? Does your community have the tools it needs to hold Peabody Coal accountable for damage to your drinking water? How can the federal government be helpful?

Response: Black Mesa is a high desert plateau with limited, if any, surface water. The rivers and creeks that once flowed, have been dammed by the white society (homesteaders, ranchers, framers, municipalities, state government, and the federal government). Surface water only comes when it rains and when rainwater percolates into the springs. But that almost never happens because rains in this region are rare.

Today, our domestic water source now contains high levels of arsenic, especially on mesas closest to the mine site (First Mesa and Second Mesa). The N-aquifer once provided clean water for our communities. It provided clean water to our sacred springs and domestic water supply. It provided drinking water for people and wildlife living in the area. The excessive pumping of the N-aquifer by Peabody Western Coal Co. has endangered the lives of our people and our sacred ceremonies, and thus our future. Mine-related depletion of the N-Aquifer has affected the entire ecology of Black Mesa, altering plant life and wildlife, which in turn affects Hopi. Many households do not have in-house plumbing and are forced into hauling from water miles and miles away because there is no water delivery infrastructure.

The only “tool” our tribes have to address this problem is to mandate that our trustee, the federal government, honor its trust responsibility and its laws and regulations by requiring Peabody to fix the damage from a half century of mining; and rehabilitate the lands and the N-Aquifer, under a “significant permit revision” issued to the Peabody Coal Company. The “significant permit revision” requires a full environmental impact statement (EIS) which will require that our tribes participate in this process to ensure the reclamation and rehabilitation work is performed timely and in accordance with established and acceptable professional standards. It would also provide for employment of our people who either lost their jobs due to the premature closure of the Kayenta Mine, or tribal members who are currently unemployed.

It should not have to take a lawsuit against the federal government to address these problems. It goes without saying that the federal government is complicit in all the wrongdoings of Peabody Coal because it has not enforced the provisions of the leases

the company has with the Hopi and the Navajo, and now, not mandating that Peabody Coal reclaim the lands and restore our water in accordance with federal law.

Question 3. Would programs like those that would be established by the DeGette bill be helpful, or have been helpful, to the workers and communities in energy-related transitions that you have observed? Please refer to specific measures of the DeGette bill, as described in Attachment A, that you believe would be helpful; more helpful with some revision; or not helpful.

Response: Peabody Coal, along with the owners of the Navajo Generating Station, including the federal government, took advantage of Hopi and Navajo, exploited the sacred resources of our tribes for their profit-motivated economic endeavors, and as soon as it became uneconomical, they immediately shut down the mines and power generating station, leaving the spoils to the tribes. Tribes had no say in the closing of the mines and the power generating station.

Now, Peabody, and seemingly the federal Office of Surface Mining, Reclamation and Enforcement, want to absolve their obligations to repair, reclaim and rehabilitate the lands and water resources they damaged. This is a direct violation of the federal government's statutory trust responsibility to our tribes. It is an outright breach of contract on the part of Peabody Coal and the owners of Navajo Generating Station to shut their operations prematurely without the formal concurrence of the Hopi Tribe and Navajo Nation who are signatories to the leases. The federal government, as our trustee and our fiduciary, has a legal and moral obligation and responsibility to reclaim the lands and aquifer that were damaged by coal mining and to facilitate tribal economic recovery.

With the federal government's assistance, Peabody Coal created a monopoly relationship with the Hopi and Navajo, locking in its role as the sole purchaser of tribal coal and prohibiting our tribes from negotiating the best price; and blocking sales to other purchasers. Peabody Coal was granted authority by the federal government to pump as much water as it needed to deliver water from the Black Mesa Mine to the Mohave Generating Station, using as much as 3 million gallons per day to create the coal slurry that was moved 273 miles by pipeline to the plant in Nevada. The leases literally forced our tribes into a coal-based economy, with Peabody acting as the coal baron.

The only revenues my tribe (Hopi) received were minimal surface lease payments and 6.25% coal royalty payments (half of the 12.5% royalty rate at Kayenta Mine; the remainder paid to the Navajo Nation). Neither Peabody Coal nor the owners of Navajo Generating Station paid any taxes to the Hopi Tribe from the beginning of coal mining

until the last mine, Kayenta Mine, shut down in 2019. Peabody was not required to pay any possessory taxes on subsurface unmined coal deposits that the federal government gave them.

The abrupt departure of Peabody Coal and premature shutdown of NGS did not permit sufficient time for our tribes to develop alternative sources of revenues. Not only were direct revenues to tribes interrupted, but the regional tax base was eliminated, which had devastating impacts on local towns and communities. the livelihood of the tribal workforce that worked at the mines and the generating station was devastated.

Given the above, creating a stable, post-coal economy will require creating stable alternative revenue sources and jobs, and improving the lives of our tribal members. This is the responsibility of the federal government. In other words, enacting legislation that helps the federal government carry out the promises the made to our tribes would be beneficial.

So, the question then becomes, what should the federal government do to provide for a sustainable economy for the tribes? The following are some suggestions:

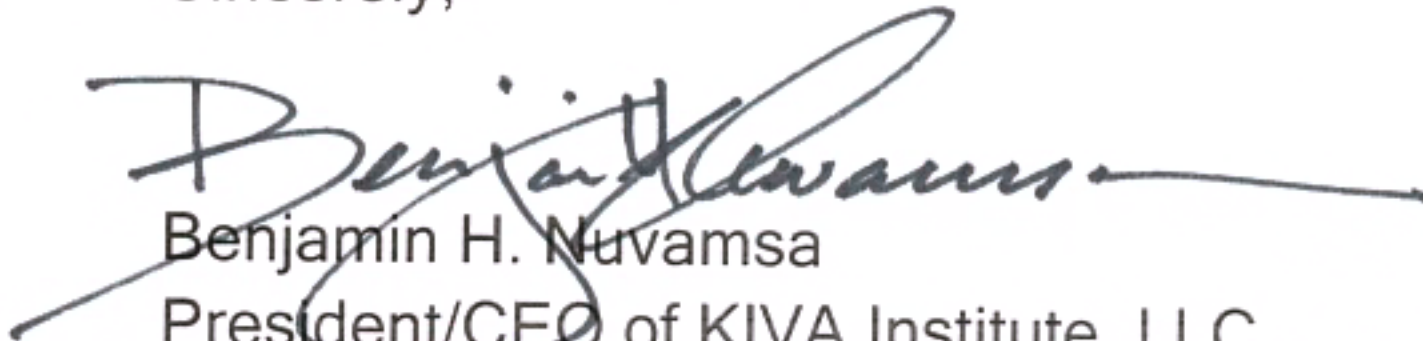
1. Assist the tribes in developing viable economic endeavors such as development of renewable energy projects like solar and wind energy through:
 - a. Enact federal legislation that creates special tax incentives for developers to partner with tribes; and provide funding for developmental costs.
 - b. Create avenues and incentives for long-term (permanent) power purchase agreements between the Hopi and Navajo tribes and public utility companies; and commit or provide federal statutory mandates for federal agencies like the Bureau of Reclamation to enter into long-term power purchase agreements with the tribes to buy their electricity.
 - c. Require the previous owners of NGS (Arizona Public Service, Tucson Gas & Electric, Salt River Project, Nevada Energy, Los Angeles Department of Water and Power, Bureau of Reclamation) to enter into long-term power purchase agreements with tribal renewable energy enterprises. This will assist the utility companies and states to meet their renewable energy portfolio standards and goals.
 - d. Provide for accelerated access (rights-of-way, permitting, licensing) to the power grid or establish a dedicated power grid for tribes to transmit electricity to their customers nationwide.

- e. Streamline federal requirements for approval of leases, environmental and cultural resource clearances and permitting requirements for renewable energy projects developed on Hopi and Navajo lands.
- 2. Enact federal legislation that would provide for a ten-year transitional funding stream for the Hopi Tribe and Navajo Nation equivalent to the annual coal royalty revenues, or annual negotiated amounts to permit the tribes to transition away from a forced coal-based economy.
- 3. Continue the college scholarship programs and vocational training programs that tribes previously used using their coal royalties; and provide funding for local elementary, high schools, and tribal colleges.
- 4. Conduct a comprehensive study on the health impacts resulting from coal mining; and provide federal appropriations to address the health impacts, compensating those individuals/families that suffered from respiratory illnesses caused by emission of pollutants from the Navajo Generating Station.
- 5. Provide for and develop a water delivery infrastructure to provide for permanent and a dependable domestic water supply for our communities; and provide recurring appropriations for annual operations, maintenance, and repair costs.
- 6. Provide for domestic water, sewer and electric power delivery systems for families impacted by coal mining.
- 7. Develop and improve roads and transportation network in affected communities so that school buses may transport school children safely especially during the wintery and rainy seasons. Provide recurring federal road and bridge maintenance funding.
- 8. Create a special fund to assist affected workers and families to recover from job layoffs at the Kayenta Mine and Navajo Generating Station
- 9. Provide special federal legislation and funding to conduct an independent and comprehensive assessment of the impacts on the N-Aquifer caused by excessive pumping of tribal groundwater from half a century of coal mining:
 - a. Provide for a special, independent hydrologic impact study of the N-Aquifer caused by coal mining.

- b. Hold Peabody Coal and OSMRE accountable for any adverse impacts.
- c. Provide annual federal appropriations to address the impacts to the N-Aquifer.

Again, I thank the subcommittee for the opportunity to present these issue that are critical for the future or our people on land that we have called home for countless generations.

Sincerely,



Benjamin H. Nuvamsa
President/CEO of KIVA Institute, LLC
Member of the Hopi Tribe
Former Hopi Tribal Chairman