THE NAVAJO NATION

BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

July 20, 2011

Hyla Hurst, Regulatory Specialist
Office of Natural Resources Revenue
P.O. Box 25165, MS 61013C
Denver, CO 80225

Re: Navajo Nation Comments on Federal Register Vol. 76, No. 103 Advance Notice of Proposed Rule Regarding Indian Coal Valuation

Dear Ms. Hurst:

The following comments are submitted by the Navajo Nation (Nation) in response to the Advance Notice of Proposed Rulemaking notice published in 76 Federal Register 30881 on May 27, 2011 (ANPR), by the United States Department of the Interior, Office of Natural Resources Revenue (ONRR).

As a prelude to these comments, we want to emphasize that the Nation is the largest coal producing Indian tribe in the United States with approximately 16 million tons in annual sales. According to the latest U.S. Census Bureau report of 2010, the Navajo Indian population is 300,048. While the Census report of 2010 statistics has not been released showing the population living on the reservation, the Census report of 2000 reported that 180,462 people lived on the Navajo Reservation. The unemployment rate on the Nation is 47% and 37% of its citizens live below the poverty level. Furthermore, 38 percent of residences lack electrical service and running water, and 86 percent are without natural gas service.

The Nation is highly dependent on revenues it realizes from its natural resources to provide essential and basic governmental services and to improve the standard of living of its citizens. For FY 2010, coal royalties accounted for 32% of the Nation's total general fund revenues, which does not include the additional associated tax revenue.

While the ONRR seeks input on a number of areas regarding the valuation of coal produced from federal and Indian leases for royalty purposes, the following comments are limited to areas that have significant impact to the Nation:

The ONRR suggests that the current "gross realization or proceeds" methodology places accounting burden on reporters and makes the audit process more lengthy and complex. It further provides that it is considering whether there are valuation methods that would be more efficient, require less accounting and auditing work, and would still establish a value that reflects, or very closely approximates, actual market conditions.

It is important to point out the coal mining operations and coal markets specific to the mines on the Nation. There are three remaining mines producing coal on the Nation: the Black Mesa and Kayenta Mines operated by Peabody Western Coal Company; and the Navajo Mine operated by BHP Billiton. The Peabody Western Coal Company mining operations provide coal to the Navajo Generating Station Power Plant. The BHP Billiton mining operations provide coal to the Four Corners Power Plant. The coal produced from the Navajo Mine is supplied to a mine mouth power plant, and coal produced from the Kayenta and Black Mesa Mines is shipped to a power plant by a dedicated railroad approximately 90 miles from the mining area. The coal is sold under long-term arms-length coal supply and sales agreements between the coal companies (Lessees) and the utility companies that have interest in the power plants. The power plants are inextricably linked with the coal mines and they are economically dependent upon each other. There are no existing means of transportation to move the coal into open markets. All the coal is sold at a FOB mine (sales point) price and there are no allowable coal washing or transportation deductions.

The Nation believes that the current gross realization method, which is the coal pricing basis of the coal supply and sales agreements in effect for coal produced from the Nation, represents the fair valuation of its coal for royalty valuation purposes. The Nation is not aware of any published index-prices for coal produced from the Nation, and if such published prices exist, whether the prices accurately reflect the market value of coal produced on the Nation.

The Nation firmly believes that the ONRR should not consider any alternative valuation method for royalty valuation purposes for coal produced and sold from the Navajo Nation. Furthermore, the Nation is able to perform effective audits of its lessees under its cooperative agreement with the ONRR pursuant to Section 202 of the Federal Oil and Gas Royalty Management Act of 1982, as amended, and we do not believe that the accounting burdens on reporters and or on auditors constitute a legitimate reason to change the Indian coal product valuation regulations.

The Nation believes that the current approval and form filing requirements under the existing Indian coal valuation regulations for transportation and washing allowances must remain in place. The Nation feels that any deductions from gross proceeds from its leases must be approved and substantiated through the completion of the allowance filing forms. Finally, any regulations for product valuation for Indian leases should be established separately from those for federal leases. In addition to special Indian lease provisions, there are distinct and inherent reasons for requiring separate coal valuation regulations, including the fiduciary trust responsibility of the United States to Indian tribes in protecting the economic interest of the respective Indian tribes minerals owner.

Finally, ONRR as a Federal agency has a responsibility to carry out the trust responsibility of the United States to Indian tribes. Executive Order 13175 requires federal agencies to consult with Indian tribes on federal actions with tribal implications. It is the Nation's position that ONRR, as part of its consultation process, must do more than simply listen and respond to the

Nation's comments. To the extent that the Nation recommends a particular action, or inaction in this instance, to allow the Indian coal product valuations to remain unchanged, ONRR must give substantial weight to that recommendation as part of its decision-making process. This would equally apply to promulgation of any new regulations that would address the valuation of coal produced and sold from Indian leases; as well as valuation regulations that would address in situ or surface gasification or liquefaction. ONRR must consult with the Nation and must consider the potential economic impacts of its actions when making its decisions.

In the past several coal subcommittees of the Royalty Policy Committee, along with the staff of the Minerals Management Service, attempts to change the coal royalty valuation regulations were unsuccessful because there was no consensus among the members of the subcommittees.

If you have any questions concerning these comments, please contact Mr. Akhtar Zaman, Director, Minerals Department, or Mr. Perry Shirley, Assistant Director, Minerals Department, at (928) 871-6587.

Sincerely,

DIVISION OF NATURAL RESOURCES

Frederick H. White
Acting Executive Director

xc: Akhtar Zaman, Director
Minerals Department

Perry Shirley, Assistant Director
Minerals Department