Peabody Energy and Native Americans in Dispute Over Mining in Arizona

By LESLIE MACMILLAN • DEC. 29, 2016

KAYENTA, Ariz. — The world’s largest coal company, Peabody Energy, is seeking federal approval to expand its mine on Navajo and Hopi land in northern Arizona, a move supported by tribal leaders. But many other tribe members say the expansion would destroy burial grounds and pre-Columbian ruins and are opposing it in court.

The dispute is the latest episode in a series of longstanding conflicts involving the treatment of Native American ancestral lands, mining companies and the federal government.
project, the Kayenta mine dispute pits the rights of tribes against powerful industry and federal interests.

Peabody built its first mine on this coal-darkened plateau 50 years ago, and in the process dug up an adjacent American Indian village. The dig uncovered an “enormous body of knowledge” about ancient Indian tribes who flourished here three millennia ago, according to Beth Sutton, a Peabody spokeswoman.

But Leland Grass, a Navajo horse trainer, called the dig a “desecration.” He and other tribe members complained that Peabody handed off 192 sets of human remains to an anthropology professor, destroyed ancient petroglyphs and archaeological ruins, and warehoused 1.2 million artifacts at Southern Illinois University, which helped conduct the dig.

Unlike the pipeline project at Standing Rock, however, Peabody’s mine plan has the backing of the official tribal governments because the original mine is one of the few sources of jobs and revenue on the impoverished reservations. Peabody has paid about $50 million per year to the Navajo and Hopi tribes since 1987, according to a federal report released in 2012, because the mine was built on tribal land.

But several powerful Navajo nongovernmental organizations, at odds with their leaders, have joined with the Sierra Club to try to curb the mine expansion, arguing that the mine harms air and water quality and that Peabody’s initial plan did not include enough protections for so-called cultural resources like graves. While they acknowledge that they cannot stop the mine project, they at least want Peabody and the government to protect ceremonial sites, ruins and graves in the expanding mine’s path.

To that end, these groups have brought a lawsuit that has forced the government to undertake a Preservation Act study to identify burial grounds and sites of archaeological importance. For projects on or near tribal land, the government must consult with tribes.
The problem, however, say tribal activists and preservation law experts, is that the permitting system is set up in such a way that it usually favors the project proponents while giving short shrift to tribal concerns. Even when “tribal consultation does happen, it’s often not in the spirit of the law,” said Anne Mariah Tapp, a lawyer who works on similar cases for other tribes.

In the Peabody case, the tribal plaintiffs who are demanding protection for Indian sites complain that they have not been included in decision making as the project moves forward and that they are not privy to the study that identified which sites might be protected.

They also claim there is a conflict of interest.

The mine fuels a power plant whose majority owner is the permitting agency, the United States Bureau of Reclamation.
Sandra Eto, environmental protection specialist with the Bureau of Reclamation, denied any conflict of interest and said the plant’s ownership would have no bearing on the integrity of the study. She also said that the study was being kept confidential because of “the sensitive and confidential nature of the material.”

For Peabody, at stake is a huge federal energy project that powers most of the Southwest. But the issue is especially fraught because of persistent questions about how Peabody has dealt with tribal property on its mine lease area over the past 50 years.

Documents obtained under the Freedom of Information Act show that although Peabody’s promotional materials say artifacts are “curated in a state-of-the-art facility,” a 2002 government audit found that the collection “needed complete rehabilitation to comply with federal guidelines for archaeological curation.” Looting was a problem among Peabody employees, according to government records.

Even though Peabody’s mine has the backing of tribal officials, government records show a long history of tribal leaders appealing to the mining company to better respect their land and cultural artifacts. For example, the federal government “loaned” 192 sets of human remains to Debra L. Martin — an anthropology professor at Hampshire College in Amherst, Mass., who is now with the University of Nevada, Las Vegas — without permission from the tribes, causing outrage. “I was shocked when I found out,” said Alan Downer, a former historic preservation officer for the Navajo Nation.

Peabody’s permit requires workers to stop and notify regulators and the tribe at the first sight of bone or native pottery. But, only three findings of human remains have been recorded by mining crews since 1983.

Asked about the lack of finds, Gregg Heaton, a Peabody spokesman, said in an email, “Peabody achieves full regulatory compliance.”
Peabody’s current lease is set to expire in 2019, and the company is seeking federal permission for a permit that would allow it to continue mining until 2044. The government’s environmental study is in draft form and was available for public comment until Dec. 29. Complicating matters is Peabody’s entry into Chapter 11 bankruptcy, which Ms. Sutton said would not have any bearing on the mine re-permitting or the company’s commitment to protect native sacred sites and graves.

For many here, the loss of ancestral remains and archaeological ruins is devastating.

“What will I have to show my grandchildren once the evidence of our ancestors is gone?” said Harrison Crank, a Navajo miner and former 30-year Peabody employee. He agreed to participate in the Preservation Act study, and one late autumn day he led researchers into the scrub behind his home, pointing out material he thought should be saved from mining.

“This is all I’m trying to tell them: These are the sites where we prayed, where we buried our dead, where we made pottery a long time ago,” he said. “Please honor it. Please let it be known.”