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# Managing Resources

**Innovative sale of mine preserves income, jobs and power for Navajo Nation**



## THE CHALLENGE

As owner/operator of the Navajo Mine, a large and economical surface coal mining operation on the Navajo Reservation, BHP Navajo Coal Company ("BNCC") had a long and successful run. However, as operating, commercial and regulatory conditions changed, the Navajo Mine was no longer a strategic fit with the company's ongoing business model.

Closing the mine, however, was not a viable option for BNCC or its parent. With deep roots in the community, BNCC had a strong understanding of the importance of the mine's operation to the Navajo Nation, its people, as well as to surrounding areas. Not only did the mine provide hundreds of high-paying jobs to the mostly Native American workforce – a workforce in dire need of quality employment opportunities – it provided important royalty and tax revenue to the Navajo Nation itself.

Moreover, the mine supplied much-needed coal to the Four Corners Power Plant ("FCPP"), a coal-fired generating station operated by Arizona Public Service Company ("APS") located on the Navajo Reservation adjacent to Navajo Mine.

The Navajo Nation was seen as the natural successor, as the Nation and its tribal members were key beneficiaries of continued operations.

## THE SOLUTION

BHP Billiton, BNCC's parent, and Navajo Nation representatives, together with APS, initiated discussions to explore the restructuring of ownership of Navajo Mine to the mutual benefit of all parties, including the local communities in which the Mine and power plant operate. What resulted was the development of a series of complex and interconnected agreements to facilitate the restructuring. In putting together what would become one of the most substantial and innovative energy transactions in Indian country in recent years, the Modrall Sperling team, led by Walter Stern and Meg Meister, understood that Navajo Nation ownership of the mine dovetailed with one of BHP Billiton's "charter values" in regard to respect for tribal sovereignty and the importance of leaving behind a sustainable operation for its employees and the communities in which they live. It would also help ensure future economic benefits for the Navajo Nation.

Completing the sale necessitated the careful structuring of interrelated transactions between BHP Billiton New Mexico Coal, Inc., Arizona Public Service Company, the Navajo Nation and Navajo Transitional Energy Company, LLC, ("NTEC"), a newly formed and wholly owned enterprise of the Navajo Nation. Like a multi-faceted puzzle, each of the various transactions had to fit together before the full picture could be revealed in a way that made sense to all parties.

## THE RESULT

The successful closings followed rigorous due diligence, detailed discussions to develop creative deal structures, navigating Navajo Nation legislative and executive processes, and an evolving power plant regulatory regime. During the transaction



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negotiations, the team crafted stock purchase and mine management agreements, and a full panoply of financing documentation, including a note, mortgages, UCC filings, and the like, together with new and amended Coal Supply Agreements with the owners of FCPP to ensure a market for the coal reserves that NTEC acquired.

From the outset, BHP Billiton's objectives were to sustain the operation, preserve jobs, perpetuate a legacy of community service and provide critical economic support to the Nation, surrounding communities, and its employees. The resulting sale achieved each of these goals, leaving in place a sustainable benefit to employees and to the region.

## RELATED ATTORNEYS

Deana M. Bennett

Margaret Lewis Meister

Walter E. Stern

## RELATED PRACTICES

Energy, Environment and Natural Resources

Mining

Native American Law

Economic Development

Energy and Resources

## RELATED INDUSTRIES

Business in Indian Country

Energy

Mining