FOIA-2009-000753
9/8/2009

Energy Minerals Law Center
a nonprofit law firm serving communities impacted by energy mining

1911 Main Avenue, Suite 238, Durango, Colorado 81301
Phone: (970) 247 9334 Fax: (970) 382 0316
Email: emlc@frontier.net

September 4, 2009

BY CERTIFIED MAIL RETURN RECEIPT REQUESTED
BY ELECTRONIC MAIL

SEP 08 2009 01
2 HOURS SEARCH FREE/100 FREE PAGES

U.S. Department of Energy
Office of Fossil Energy (FE-22)
Attn: Joesph Giove
1000 Independence Ave., SW
Washington D.C. 20585
joseph.giove@hq.doe.gov

U.S. Department of Energy
The Freedom of Information Act and Privacy Act Division/Office
Attn: FOIA Officer
1000 Independence Avenue, SW
Washington, DC 20585
Email: FOIA-CENTRAL@hq.doe.gov

Re: <u>FREEDOM OF INFORMATION ACT REQUEST (RESPONSE DEADLINE 20 WORKING DAYS):</u> Records Regarding a proposed Carbon Capture and Sequestration Project at Black Mesa

Dear Mr. Giove and DOE FOIA Officer:

On behalf of Black Mesa Water Coalition, Diné C.A.R.E., San Juan Citizens Alliance, Grand Canyon Trust and the Sierra Club the undersigned attorney(s) hereby submit this Freedom of Information Act ("FOIA") request pursuant to the requirements of 5 U.S.C. §552(a).

Under the provisions of FOIA we hereby request all documents in the possession, custody, or control of the U.S. Department of Energy ("DOE") and created or obtained after January 1, 2007 regarding a proposed Carbon Sequestration Project in Northern Arizona and specifically within the Black Mesa Basin that meet the following description:

(1) Any and all records of communication between the DOE and Peabody Energy and/or Peabody Western Coal Company;
(2) Any and all records of communication between the DOE and Salt River Project;
(3) Any and all records of communication between the DOE and Tucson Electric Power;
(4) Any and all records of communication between the DOE and Tri-State Generation and Commission;

(5) Any and all records of communication between the DOE and the Hopi Indian Tribe;
(6) Any and all records of communication between the DOE and the Navajo Nation;
(7) Any and all records of communication between DOE and the Office of Surface Mining Control and Enforcement;
(8) Any and all records of communication between DOE and the Bureau of Indian Affairs; and,
(9) Any and all applications or requests for Federal funding.

The term "communication" as used herein is to be given the broadest possible definition and should include, but not limited, to external and internal communications, memorandums, surveys, notes, reports, studies, emails, or portions thereof

This FOIA request is directed to you as the persons likely to have control or access to the requested documents. In order to conserve paper resources, electronic copies of the records are preferred where possible – ensuring that the electronic copies are exact and complete electronic copies of the agency record. But please provide the records in the format which is most expeditious.

Additionally, we request that all charges (*e.g.* copying and search charges) be waived, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). The requested information is not sought for commercial purposes, and disclosure of information regarding projects on Black Mesa is in the public interest. We are non-profit organizations, with over 600,000 members nationwide. We seek the documents: (1) to ensure that the permit application complies with all applicable laws and regulations; and, (2) to inform its members and the public of the potentially serious environmental consequences, through our websites and special reports. Under these circumstances, we are entitled to a fee waiver. *See Carney v. Department of Justice*, 19 F.3d 807 (2d Cir. 1994)(requester's right to fee waiver turns on subject matter of requests and ability of requester to disseminate information); *Larson v. CIA*, 843 F.2d 1481 (D.C. Cir. 1988)(fee waiver is proper where information is not sought for commercial purposes, and where disclosure would contribute significantly to understanding of government operations or activities).

In addition, our record speaks to the public interest utility of disclosure. As but one example, and based on information obtained in previous FOIA requests, public interest organizations published *Drawdown*, which has substantially advanced the public's understanding of hydrology on the Black Mesa complex.[1] In addition, information obtained in previous FOIA requests contributed significantly to the pertinence and value of our comments on other permit applications on Black Mesa. Moreover, this most recent request focuses on information relevant to the latest governmental operations and activities on Black Mesa-- specifically SRP's proposal to obtain public funding to drill a 9,000-foot hole would be drilled into a geological formation on Black Mesa where excess carbon from power production could be stored.

We look forward to your expedited response within twenty (20) days. If a response is not received within twenty (20) working days, this request will be deemed denied. If you have any

[1] See David Beckman, et. al., Drawdown: Groundwater Mining on Black Mesa (Oct. 2000) (www.nrdc.org/water/conservation/draw/drawinx.asp) (an NRDC-published report describing the impact of coal mining on Black Mesa's water supply).

comments or questions regarding this request, please do not hesitate to contact me directly at (970) 247-9334 or brad.bartlett@frontier.net.

Respectfully submitted,

/s Brad A. Bartlett

Brad A. Bartlett, Managing Attorney
Energy Minerals Law Center

Copy: Enei Begaye and Wahleah Johns, *Black Mesa Water Coalition*
Anna Fraizer and Dailan Long, *Diné C.A.R.E.*
Roger Clark, *Grand Canyon Trust*
Andy Bessler, *Sierra Club*

Ogbazghi, Joan

From: Brad Bartlett
Sent: Friday, September 04, 2009 12:40 PM
To: Giove, Joseph; FOIA-Central
Cc: Wahleah Johns; andy.bessler@sierraclub.org; eneibegaye@mac.com; Ann Frasier; Mike Eisenfeld; rclark@grandcanyontrust.org
Subject: Re: Freedom of Information Act Request

Attachments: FINAL DOE FOIA Sept. 4.pdf

FINAL DOE FOIA Sept. 4.pdf (13...

Dear Mr. Giove and DOE FOIA Officer:

please find a FOIA request attached to this email communication. Please confirm you were able to open the document.

Sincerely,

Brad A. Bartlett

Copy: Enei Begaye and Wahleah Johns, Black Mesa Water Coalition

Anna Fraizer and Dailan Long, Diné C.A.R.E.

Mike Eisenfeld, San Juan Citizens Alliance

Roger Clark, Grand Canyon Trust

Andy Bessler, Sierra Club

--

Brad A. Bartlett, Managing Attorney
Energy Minerals Law Center
1911 Main Avenue, Suite 238
Durango, Colorado 81301
Phone: (970) 247 9334
Fax: (970)382-0316

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable laws. You are hereby notified that any dissemination, distribution, or copying of this communication or other use of a transmission received in error is strictly prohibited. If you have received this transmission in error, immediately notify me at the telephone number above.
~~~~~~
~~~~~~