

Exhibit 9

Ms. Amy Atwood
Center for Biological Diversity
PO Box 11374
Portland, OR 97211-0374

May 7, 2010

Re: Freedom of Information Act Request # 09-FOI-00247-10

Dear Ms. Atwood:

This letter responds to your Freedom of Information Act (FOIA) request, dated March 29, 2010 which included six categories of documents pertaining to Clean Water Act permits for the Black Mesa coal mine, Kayenta coal mine, and/or the Black Mesa Complex. Enclosed you will find copies of most of the documents responsive to your request. In an effort to save paper, EPA did not print out any attachments to emails if the attachment was already included in documents being released.

We are unable to provide you with documents, or portions of documents, which have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. 552(b) (5). An itemized list by categories of the withheld material along with the basis for withholding is provided on the enclosure to this letter.

You may appeal this partial denial to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination being appealed (including the assigned FOIA request number 09-FOI -00247-10). For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please note that it has come to our attention that there may be additional documents which have not been located by EPA staff. We anticipate that if any additional responsive documents are located, they will be provided to you no later than May 14, 2010. The deadline for any appeal of today's partial denial will be extended if this response is amended to identify additional withheld documents.

EPA May 7, 2010 Response to
Center for Biological Diversity's March 29, 2010 FOIA Request # 09-FOI-00247-10

List of Categories of Withheld Material

- EPA comments on the Office of Service Mining's ("OSM's") Preliminary Draft EIS – Such comments are primarily unresponsive, but the few comments, which may be responsive to the FOIA request, are being withheld pursuant FOIA exemptions 5 (deliberative process privilege), because they are comments on OSM's predecisional document.
- EPA and U.S. Army Corps of Engineers discussions concerning timing of 401 certifications and 404 permits – In many cases, the discussion concerns related -- but unresponsive -- matters, and thus the documents are outside the scope of the FOIA request. If the discussion is responsive to the FOIA request, EPA is withholding them pursuant to FOIA Exemption 5 (deliberative process privilege), because they are pre-decisional discussions between agency staff.
- Internal EPA discussions on legal analysis of "new source" – Such documents are being withheld pursuant to FOIA exemption 5 (deliberative process and attorney-client privileges), because they are pre-decisional documents and confidential communications between an EPA attorney and EPA staff seeking legal advice.
- Discussion between agency staff and attorney regarding effect of OSM's ESA analysis on EPA – This discussion is being withheld pursuant to Exemption 5 (attorney-client privilege) because it was a confidential communication between an EPA attorney and EPA staff seeking legal advice.
- Draft documents, and communications concerning these documents, created in preparation for publishing draft NPDES permit– These documents and communications are being withheld pursuant to FOIA Exemption 5 (deliberative process and attorney-client privileges) because they are pre-decisional documents and confidential communications between an EPA attorney and EPA staff seeking legal advice.
- Notes and Drafts briefs created by EPA attorney in order to respond to NPDES permit appeal – Information in these documents are largely non-responsive. To the extent the information is responsive to the FOIA request, EPA is withholding the information pursuant to FOIA Exemption 5 (attorney work-product privilege).