

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. **07-cv-01475-JLK**

**DINE CITIZENS AGAINST RUINING OUR ENVIRONMENT,
SAN JUAN CITIZENS ALLIANCE,**

Plaintiffs,

v.

**AL KLEIN, in his official capacity as Western Regional Director, Office of Surface
Mining Reclamation and Enforcement, Denver, Colorado,
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, a
federal agency within the U.S. Department of Interior,**

Defendants,

ARIZONA PUBLIC SERVICE and BHP NAVAJO COAL COMPANY,

Intervenors.

ORDER

Kane, J.

Intervenor BHP Navajo Coal Company and Plaintiffs have filed cross motions for a protective order (Docs. 75 and 79) concerning public disclosure and use of two documents in the administrative record for the agency decisions at issue here. These agency records, both of which are currently under seal in the court file, are the *Data Recovery and Treatment Plan for 47 Sites on Lease Area IV North* (AR 73-1 to 73-148) and “*Each Place Brings Stories*” (AR 74-1 to 74-157) (collectively “Studies”).

Several matters potentially relevant to disposition of the cross motions were unresolved at the time the parties completed briefing on these motions. In addition, other events may have occurred since briefing was completed that are relevant to the positions stated by the parties in these motions. Accordingly, the Federal Defendants and, as appropriate, the other parties to this action, shall file a supplemental response to the cross motions regarding the following matters:

1. Status of the request for disclosure of the Studies pursuant to the Freedom of Information Act (“FOIA”) referenced in footnote 1 of Defendants’ Response to Intervenor BHP’s Motion for Entry of Protective Order (Doc. 77), FOIA Request No. OSM-2008-00025 (referenced in Doc. 79-4 at 2), and/or any other requests pursuant to FOIA or other authority for disclosure of these agency records to members of the public, including the status of any litigation related to these requests.
2. Status of the Federal Defendants’ discussions with the Navajo Nation Historic Preservation Department (“NNHPD”) regarding disclosure of the Studies in redacted form, as referenced in OSM’s Response to Plaintiff’s Cross-Motion for Entry of Protective Order (Doc. 82), Exhibit A to this Response, and the Federal Defendants’ Supplemental Response (Doc. 86), or as otherwise relevant to the issues presented by the cross motions for a protective order.

3. Any other events or developments relevant to the issues under consideration that have occurred since briefing was completed on the cross motions.

The parties' response(s) may include argument regarding the significance of any of these matters to the issues raised by the cross motions. The parties shall confer in good faith in advance of submitting a supplemental response to determine if any of the matters listed above alter their stated positions with respect to public access to all or part of the Studies.

In addition, the parties are invited to include in their supplemental response(s) any new developments or authority they wish me to consider in deciding the motions to dismiss that are currently pending in this action.

The parties shall submit their supplemental response(s) on or before July 21, 2009.

IT IS SO ORDERED.

Dated this 1st day of July, 2009.

s/ John L. Kane
John L. Kane, Senior District Judge
United States District Court