

EXHIBIT I
Science Summary FOIA Appeal



October 28, 2013

Sent via email to: FOIA.Appeals@sol.doi.gov

FOIA Appeals Officer
U.S. Department of the Interior
1849 C Street, N.W., MS 6556
Washington, D.C. 80240

**Re: FREEDOM OF INFORMATION APPEAL
USGS FOIA Request 2013-00130**

Dear FOIA Appeals Officer:

This letter serves as an appeal by Western Energy Alliance (“the Alliance”) pursuant to 5 U.S.C. § 552(a)(6) in the matter of its Freedom of Information Act (“FOIA”) Request 2013-00130 concerning the U.S. Geological Survey’s (“USGS”) refusal to disclose certain documents within its control.

The release of this information is critical for the Alliance and its members as it will help them ascertain the legal and scientific sufficiency of key studies related to greater sage grouse conservation measures. These conservation measures form the basis of regulatory actions that are being implemented by the Bureau of Land Management and the U.S. Forest Service in land use planning amendments across the species range. The Alliance and its members will use the information requested under FOIA in its comments on these land use planning amendments. Some comment deadlines have already passed so timely release of the information requested is critical. Timely release of this information is also essential given the pending U.S. Fish and Wildlife Service determination on the listed status of greater sage-grouse under the Endangered Species Act.

The Alliance’s FOIA request, dated June 17, 2013, asked for access to and copies of documents related to the report entitled “Summary of Science, Activities, Programs, and Policies That Influence the Rangeland Conservation of Greater Sage-Grouse (*Centrocercus urophasianus*).”¹ See *Exhibit 1*. Specifically, the Alliance requested access to and copies of documents related in whole or in part to the Team Report² with respect to the following:

¹ Manier, D.J., Wood, D.J.A., Bowen, Z.H., Donovan, R.M., Holloran, M.J., Juliusson, L.M., Mayne, K.S., Oylar-McCance, S.J., Quamen, F.R., Saher, D.J., and Titolo, A.J., 2013, Summary of science, activities, programs, and policies that influence the rangeland conservation of Greater Sage-Grouse (*Centrocercus urophasianus*): U.S. Geological Survey Open-File Report 2013-1098, 170 p., <http://pubs.usgs.gov/of/2013/1098/>.

² Reference to the Team Report herein necessarily includes draft(s) of the Team Report that existed prior to the release of the final report and any part or portion of the Team Report that existed independently of any other part or portion at any time during the Team Report’s drafting process.

EXHIBIT I
Science Summary FOIA Appeal

After two extensions by the USGS on August 2, 2013 and August 23, 2013, the Alliance received the USGS's final response on September 16, 2013. *See Exhibits 2-4.* The final response provided answers, in part, to the Alliance's request, and one document. The following explains the results and deficiencies in the USGS's final response:

1. The names and institutions of employment and/or affiliations (e.g., university, scientific organization, corporation, agency, etc.) of all persons contacted for the purposes of providing peer review of the Team Report.

The USGS response only includes the name of one reviewer, Susan Skagen, a research wildlife biologist with the USGS Fort Collins Science Center. The second reviewer is referred to not by name, but by affiliation only: Upland Game Staff Specialist, Nevada Department of Wildlife.

The USGS response did not state whether any additional reviewers were contacted, or their affiliation(s). If these are the only two reviewers contacted then the USGS needs to acknowledge this fact.

2. The names and institution of employment or affiliation (e.g., university, scientific organization, corporation, etc.) of those who actually engaged in peer review of the Team Report (the "Peer Reviewers").

This part was responsive.

3. The questions asked and/or issues presented to the Peer Reviewers with respect to the Team Report.

The USGS provided only a general response, stating that, "*Reviewers are asked to provide a scientific peer review of the subject document. There were no specific issues or questions presented to the reviewers.*" However, this is not responsive to our request because the USGS response did not include any information regarding questions asked and/or issues presented to reviewers. How were peer reviewers to know if they were to provide a peer review if they were not asked and given even a minor amount of direction? We require the text or copies of the actual request sent out to peer reviewers.

4. Any formal or informal report(s), paper(s), data compilation(s), communication(s), comment(s), red-line(s), summary(ies) or other document type related to the Peer Reviewers' review or impression of the Team Report.

The USGS provided a copy of a draft manuscript with tracked changes and comments in the margins from Skagen. The USGS did not provide copies of the actual peer reviews of this document by any reviewer. No peer review/comment of any kind was provided from the Upland Game Staff Specialist from the Nevada

EXHIBIT I
Science Summary FOIA Appeal

Department of Wildlife. The USGS needs to acknowledge if the Skagen comments on the draft manuscript was the "peer review" obtained by the USGS.

The Alliance asks that the USGS respond to its FOIA request in full, with the disclosure of all documents to support the information provided in the USGS final response letter. If the USGS fails to disclose any of the requested information, the agency is required to provide the names and titles or positions of each person responsible for such denial. 5 U.S.C. § 552(a)(6)(C)(i).

I look forward to your ruling on this appeal within the 20-day statutory time limit. If you have any questions or would like to discuss this matter, please contact me directly at KSgamma@westernenergyalliance.org or (303) 623-0987 extension 226.

Sincerely,



Kathleen Sgamma
Vice President of Government & Public Affairs

Enclosures



June 17, 2013

Sent via U.S. mail and email to: djnewman@usgs.gov

David J. Newman
USGS FOIA Officer
12201 Sunrise Valley Drive
Mail Stop 807
Reston, VA 20192

Re: Freedom of Information Act Request to the U.S. Geological Survey

Dear Mr. Newman:

This letter serves as a request by Western Energy Alliance ("Western Energy") pursuant to the Freedom of Information Act ("FOIA," codified at 5 U.S.C. § 552) for access to and copies of documents related to the report entitled "Summary of Science, Activities, Programs, and Policies That Influence the Rangeland Conservation of Greater Sage-Grouse (*Centrocercus urophasianus*)."¹ Specifically, Western Energy requests access to and copies of documents related in whole or in part to the Team Report² with respect to the following:

1. The names and institutions of employment and/or affiliations (*e.g.*, university, scientific organization, corporation, agency, etc.) of all persons contacted for the purposes of providing peer review³ of the Team Report, including internal USGS reviews that are required prior to release.
2. The names and institution of employment or affiliation (*e.g.*, university, scientific organization, corporation, etc.) of those who actually engaged in peer review of the Team Report (the "Peer Reviewers").
3. The questions asked and/or issues presented to the Peer Reviewers with respect to the Team Report.

¹ Manier, D.J., Wood, D.J.A., Bowen, Z.H., Donovan, R.M., Holloran, M.J., Juliusson, L.M., Mayne, K.S., Oyler-McCance, S.J., Quamen, F.R., Saher, D.J., and Titolo, A.J., 2013, Summary of science, activities, programs, and policies that influence the rangeland conservation of Greater Sage-Grouse (*Centrocercus urophasianus*): U.S. Geological Survey Open-File Report 2013-1098, 170 p., <http://pubs.usgs.gov/of/2013/1098/>.

² Reference to the Team Report herein necessarily includes draft(s) of the Team Report that existed prior to the release of the final report and any part or portion of the Team Report that existed independently of any other part or portion at any time during the Team Report's drafting process.

³ For the purposes of this request, "peer review" is defined to mean review by persons knowledgeable in the field of inquiry with respect to the methods, evidence, and conclusions drawn by the document subject to the review.

EXHIBIT I
Science Summary FOIA Appeal

4. Any formal or informal report(s), paper(s), data compilation(s), communication(s), comment(s), red-line(s), summary(ies) or other document type related to the Peer Reviewers' review or impression of the Team Report.

Please send the copies of the requested documents to:

Kathleen Sgamma
Western Energy Alliance
410 17th St., Ste 700
Denver, Colorado 80202
T: (303) 623-0897
E: ksgamma@westernenergyalliance.org

Please waive any applicable fees with respect to this request. Western Energy is a non-profit organization; accordingly, Western Energy has no commercial interest in the disclosure of this information. Moreover, release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities; in particular, with respect to the best available science requirement under the Endangered Species Act (codified at 16 U.S.C. § 1531, *et seq.*).

If Western Energy's request is denied in whole or part, please identify all deletions by reference to specific exemptions of FOIA. Western Energy will also expect you to release all segregable portions of otherwise exempt material. Western Energy reserves the right to appeal your decision to withhold any information or to deny a waiver of fees.

Should you have questions or require clarification of any of the foregoing, please contact me at the contact information listed above. We look forward to your reply within twenty (20) business days, as the statute requires. Thank you in advance for your assistance.

Sincerely,



Kathleen Sgamma
Vice President of Government & Public Affairs



WESTERN ENERGY ALLIANCE

EXHIBIT I
Science Summary FOIA Appeal

From: [Kathleen Sgamma](#)
To: [Kent Holsinger \(kholsinger@holsingerlaw.com\)](mailto:kholsinger@holsingerlaw.com);
[Alyson Meyer Gould \(agould@holsingerlaw.com\)](mailto:agould@holsingerlaw.com);
Subject: FW: Your USGS FOIAs: 2013-00130 and 00131
Date: Monday, August 05, 2013 8:05:49 AM

From: jldurant@usgs.gov [mailto:jldurant@usgs.gov] On Behalf Of Freedom of Information Act, GS-GIO
Sent: Friday, August 02, 2013 8:47 AM
To: Kathleen Sgamma
Subject: Your USGS FOIAs: 2013-00130 and 00131

August 2, 2013

Kathleen Sgamma

Because we will need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request, the USGS is taking a 28-workday extension under [43 C.F.R. § 2.19\(b\)](#). USGS expects to complete the processing of your requests by August 23, 2013.

Joye Durant

Acting USGS FOIA officer

EXHIBIT I
Science Summary FOIA Appeal

From: [Kathleen Sgamma](#)
To: [Kent Holsinger \(kholsinger@holsingerlaw.com\)](#);
[Alyson Meyer Gould \(agould@holsingerlaw.com\)](#); "Rob Roy Ramey";
Subject: FW: Your USGS FOIAs: 2013-00130 and 00131
Date: Friday, August 23, 2013 9:34:04 AM

From: jldurant@usgs.gov [mailto:jldurant@usgs.gov] On Behalf Of Freedom of Information Act, GS-GIO
Sent: Friday, August 23, 2013 5:20 AM
To: Kathleen Sgamma
Subject: Your USGS FOIAs: 2013-00130 and 00131

August 23 2013

Kathleen Sgamma

Because we are still searching and reviewing requested records from field facilities or other establishments that are separate from the office processing the request, the USGS is taking an additional 15-workday extension under [43 C.F.R. § 2.19\(b\)](#). USGS expects to complete the processing of your requests by September 15, 2013.

Joye Durant

Acting USGS FOIA officer

----- Forwarded message -----

From: **Freedom of Information Act, GS-GIO** <foia@usgs.gov>
Date: Fri, Aug 2, 2013 at 10:46 AM
Subject: Your USGS FOIAs: 2013-00130 and 00131
To: ksgamma@westernenergyalliance.org

August 2, 2013

Kathleen Sgamma

EXHIBIT I
Science Summary FOIA Appeal

Because we will need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request, the USGS is taking a 28-workday extension under [43 C.F.R. § 2.19\(b\)](#). USGS expects to complete the processing of your requests by August 23, 2013.

Joye Durant

Acting USGS FOIA officer

EXHIBIT I
Science Summary FOIA Appeal



Freedom of Information Act, GS-GIO <foia@usgs.gov>

USGS FOIA 2013-00130

Freedom of Information Act, GS-GIO <foia@usgs.gov>
To: ksgamma@westernenergyalliance.org
Bcc: GS-GIO Freedom of Information Act <foia@usgs.gov>

Mon, Sep 16, 2013 at 12:52 PM

Kathleen Sgamma

Transmitted via email

September 16, 2013

Dear Kathleen Sgamma:

This letter concludes USGS communication concerning your Freedom of Information Act (FOIA) request, which was assigned individualized tracking number USGS-2013-00130. Your request concerned:

". . . access to and copies of documents related to the report entitled "Summary of Science, Activities, Programs, and Policies That Influence the Rangewide Conservation of Greater Sage-Grouse (*Centrocercus urophasianus*)."

Specifically you requested:

1. The names and institutions of employment and/or affiliations (e.g., university, scientific organization, corporation, agency, etc.) of all persons contacted for the purposes of providing peer review of the Team Report, including internal USGS reviews that are required prior to release.

There were two reviewers of this report:

Susan Skagen, Research Wildlife Biologist

U.S. Geological Survey

Fort Collins Science Center

Fort Collins, CO

Upland Game Staff Specialist

Nevada Department of Wildlife

Reno, NV

2. The names and institution of employment or affiliation (e.g., university, scientific organization, corporation, etc.) of those who actually engaged in peer review of the Team Report (the "Peer Reviewers").

Same as #1.

3. The questions asked and/or issues presented to the Peer Reviewers with respect to the Team Report.

Reviewers were asked to provide a scientific peer review of the subject document. There were no specific issues or questions presented to the reviewers.

4. Any formal or informal report(s), paper(s), data compilation(s), communication(s), comment(s), red-line(s), summary(ies) or other document type related to the Peer Reviewers' review or impression of the Team Report.

EXHIBIT I
Science Summary FOIA Appeal

This document will be mailed to you in CD format.

You may appeal this denial to the Department's FOIA Appeals Officer. The FOIA Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this letter, which is the USGS's final response to your FOIA request. Appeals arriving or delivered after 5 PM Eastern time, Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

FOIA Appeals Officer
U.S. Department of the Interior
1849 C Street, N.W., MS 6556
Washington, D.C. 20240
Fax: 202-208-6677
E-mail: FOIA.Appeals@sol.doi.gov

You must include with your appeal copies of all correspondence between you and the USGS concerning your FOIA request, including a copy of your original FOIA request and the denial letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. All communications concerning your appeal, including envelopes, should be clearly marked with the words "FREEDOM OF INFORMATION APPEAL." Your letter should include in as much detail as possible any reason(s) why you believe the USGS's response is in error. For more information on FOIA Administrative Appeals, you may review Subpart H of the Department's FOIA regulations, 43 C.F.R. Part 2, Subpart H.

Additionally, as part of the 2007 OPEN Government Act FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation.

You may contact OGIS in any of the following ways:

Office of Government Information Services (OGIS)
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, Maryland 20740-6001
Email: ogis@nara.gov

Please contact Joye Durant, acting USGS FOIA Officer, at 703-648-5789, or via email at foia@usgs.gov if you have any questions.

Thank you for your interest in the U.S. Geological Survey.

Sincerely,

Joye Durant