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Vicki Christiansen, Chief
USDA Forest Service
SM.FS.WOFOIA@usda.gov

RE: FOIA APPEAL, 2021-FS-R2-03896-F

Dear Chief Christiansen,

I am writing on behalf of Colorado Wild Public Lands (COWPL or CWPL) to appeal the Forest Service's response, dated June 23 2021, to the above-numbered FOIA request related to the Valle Seco Land Exchange. We appeal the redactions made in the two provided appraisal documents. These documents should be provided to COWPL in their entirety, since they have been shared with people and entities besides the agency and its appraisal contractor, or at most released with minor privacy redactions. Alternatively, to the extent they have not been so shared with outside parties, the factual portions of the documents must be provided.

Factual Background

The background to this matter is recounted in the related appeal 2021-FS-R2-02802-F (May 14, 2021). As recounted there, the Forest Service had not be responsive to COWPL requests for copies of actual appraisals reports for the Valle Seco land exchange, instead only providing the Technical Appraisal Review Report (mostly redacted), which is a different document. Accordingly, in an abundance of caution, on May 14, 2021, on behalf of CWPL I requested the actual appraisal report(s). Attachment 1. In a letter dated June 23, 2021 (provided to me on June 24, 2021), the Forest Service provided two documents in response to the request, but almost entirely redacted. *See Attachments 2 & 3.*

Withholding the Redactions to the Appraisal Report Documents is Not Warranted under Exemption 5 or Any Other Exemption

The appraisal report documents should be provided in full. It is our understanding that they have been shared with people outside the agency and the company which prepared the appraisals. Such people include, but are not limited to, the proponents and the beneficiaries of the land exchange, and/or the Western

Land Group, facilitator of the exchange. This being the case, the agency has waived any claim of privilege under FOIA, and the documents must be provided.

Leadership Conf. on Civil Rights v. Gonzales, 404 F. Supp. 2d 246 (D. D.C. 2005)

Further, to the extent any portions of these documents have not been shared with outside parties, the Forest Service is required to provide factual portions of the documents. *Coastal States Gas Corp. v. DOE*, 617 F.2d 854, 866-67 (D.C. Cir. 1980). A great deal of the documents are factual in nature and should be provided, by stating values and the reasons for determining those values, rather than making policy recommendations (especially since these documents were created outside the agency, by a private company) To the extent anything is withheld, the Service is required to explain with specificity and detail why each withheld document, or portion of a document, should be exempt from disclosure. *Senate of the Commonwealth of Puerto Rico v. U.S. Dep't of Justice*, 823 F.2d 574, 585 (D.C. Cir. 1987).

That these documents are not protected by Exemption 5 is further shown by how the BLM treats such documents. In all cases of which we are aware, the BLM has provided the appraisal reports in substantially complete form,¹ well before land exchanges have been finalized—most recently on its own, with previous ones provided as a result of litigation. See Buffalo Horn Land Exchange documents posted on the BLM website at <https://eplanning.blm.gov/eplanning-ui/project/69551/570> (without suit)²; Sutey Ranch Land Exchange (see *CWPL v. Shoop*, 2021 WL 1138061 at *8—noting BLM did so after previous FOIA suit filed, finding that “[t]here is something uncomfortable about the BLM concealing appraisals of the value of lands subject to a proposed exchange; it smacks of secrecy rather than transparency and thus gives rise to suspicions that the BLM is hiding some improper conduct. Accordingly, the Court does not condone the BLM’s behavior . . .”); Blue Valley Ranch land Exchange (see *CWPL v. BLM*, No. 18-2781 (D. D.C.)—provided after suit filed).

For these reasons, the documents should be provided without redaction, or at most with only minor privacy redactions (while we do not request personal phone numbers, emails or addresses, all names should be provided as releasing them does not constitute an invasion of personal privacy). Please contact me if you would like to discuss this matter or have any questions.

¹ Privacy redactions have been made by BLM under Exemption 6. COWPL does not waive challenge to any such privacy redactions, but notes that they are much less substantial than the Exemption 5 redactions made by the Forest Service here, and COWPL may be satisfied if only such redactions are made.

² Note that appraisal states that it is being shared with “Buffalo Horn Properties, LLC (the proponent of the federal land exchange).”

Sincerely,

/s/Matt Kenna

Attorney for Colorado Wild Public Lands

Attachments:

- 1) FOIA Request dated May 14, 2021
- 2) FOIA Response email dated June 24, 2021
- 3) FOIA Response letter dated June 23, 2021