

EXHIBIT H

From: Elisabeth Holmes eli.blueriverlaw@gmail.com

Subject: Re: HSHA FOIA No. 2015-00581

Date: January 29, 2016 at 2:27 PM

To: Bardwick, Deborah deborah.bardwick@sol.doi.gov

Cc: NPS PWR FOIA nps_pwr_foia@nps.gov, Woody Smeck woody_smeck@nps.gov, Jason Watkins jason_watkins@nps.gov



Hello Dee -

It will have to be next week sometime. Any day but Tuesday Feb. 2nd will work.

Elisabeth

On Jan 26, 2016, at 1:50 PM, Bardwick, Deborah <deborah.bardwick@sol.doi.gov> wrote:

Hello, Elisabeth -

Thank you for your confirmation on the administrative portion of the email. I appreciate your very prompt response.

I will be happy to talk to you further about the extension and the other matters that you raised in your earlier email. If it's convenient for you, please let me know if you have time later this week - perhaps Thursday or Friday afternoon? Next week I am also available most afternoons.

Best -

Dee

On Tue, Jan 26, 2016 at 1:36 PM, Elisabeth Holmes <eli.blueriverlaw@gmail.com> wrote:

Dee -

In the interests of time since the "interim" appeal is due in about 30 minutes, I am only responding to the administrative appeal portion of your email right now. We appreciate NPS recognizing the terms of the FOIA and the regulations, such that an administrative appeal is not due until after a final determination is made. In reliance on that, HSHA will not file its "interim" administrative appeal today.

As to the additional extension being sought, there are requirements that must be satisfied to properly invoke extension, and HSHA does not believe they are properly being claimed here. We will follow up with you about that separately.

Thank you for the contact informaton for the FOIA Liaison.

Elisabeth

On Jan 26, 2016, at 1:24 PM, Bardwick, Deborah <deborah.bardwick@sol.doi.gov> wrote:

Hello, Elisabeth -

Thank you so much for you clarification.

By this email, NPS agrees that no administrative appeal will be due until, as is set forth in the regulations, the final production is complete.

Since our last letter to you, which anticipated that the final production would be completed by March 21, 2016, it has become apparent that another extension will be needed. The Park will contact you by letter revising its determination date.

Our FOIA regional staff apologizes for leaving out the name of our FOIA liaison. Her name and contact information is below:

Ms. Charis Wilson, PhD, CRM
NPS FOIA Officer
12795 W. Alameda Parkway
PO Box 25287
Denver, CO 80225-0287
303-969-2959
Fax: 303-969-2557
1-855-NPS-FOIA

Please let me know if you have any further questions or concerns.

Please let me know if you have any further questions or concerns.

Best -

Dee

On Tue, Jan 26, 2016 at 12:50 PM, Elisabeth Holmes <eli.blueriverlaw@gmail.com> wrote:

Hello Dee -

Our understanding is that the Administrative Appeal deadline is today, January 26, 2016, by 2pm Pacific / 5pm Eastern. And as we discussed on January 19th, technically an Administrative Appeal is not even due now because NPS has not issued a final determination on the FOIA, there are still 7 outstanding FOIA categories, and the 2 categories that have been produced only contain partial productions.

That said, because of the wording in NPS's Nov. 4, 2015 and Dec. 17, 2015 letters, we have prepared an "interim" administrative appeal for filing via email today by 2pm Pacific. If you can provide me with the letter addressing NPS's agreement to a "stay" of administrative appeal deadlines until after the March 21, 2016 final production date, then we will hold off on filing the appeal today so that the other parts of the production can proceed.

Thank you.

Elisabeth

On Jan 26, 2016, at 12:41 PM, Bardwick, Deborah <deborah.bardwick@sol.doi.gov> wrote:

Hello, Elisabeth -

As we discussed, please accept this email as my confirmation of my error on the date of the administrative appeal. I thought the date to file the administrative appeal was today, not yesterday, although your email stated that the date was "in advance of" January 26, not [on] January 26.

I will provide you with the email we discussed, addressing the points you summarized in your email, within the next hour. You retain your right to file an administrative appeal. If you do decide to file an administrative appeal today, I will notify the FOIA Appeals Office that I will not contest your appeal on grounds of timeliness.

Please confirm that this is also your understanding, or let me know immediately.

Best -

Dee

On Mon, Jan 25, 2016 at 11:15 AM, Elisabeth Holmes <eli.blueriverlaw@gmail.com> wrote:

Hello Dee -

I am just following up to our conversation last week, and the Jan. 26, 2016 "interim" appeal deadline referenced in the Nov. 4, 2015 NPS letter. Will you be able to get me something in writing before tomorrow confirming a "stay" of administrative appeal deadlines until the FOIA production is complete? If not, I will have to prepare the appeal this afternoon for the purpose of preserving my client's rights.

Thanks.

Elisabeth

On Jan 19, 2016, at 4:48 PM, Elisabeth Holmes <eli.blueriverlaw@gmail.com> wrote:

Dee -

To follow up to our discussion today, these are the points I noted we discussed, and next steps on each:

1. Administrative appeal deadline. We agree that the "administrative appeal" noted in the NPS's letter dated Nov. 4, 2015 is in fact not an "administrative appeal" as contemplated by FOIA or the NPS regulations because NPS has only made interim productions on the FOIA, and there are outstanding productions to be made. We agreed that our understanding of the FOIA and the regulations is that an administrative appeal is not appropriate until the agency has issued its final determination of the

FOIA request. Thus, any administrative appeal deadline referenced in the Nov. 4, 2015 letter is not yet ripe. Prior to an administrative appeal timeframe, NPS is willing to discuss the initial productions. These communications will in no way waive or limit HSHA's or NPS's rights when an administrative appeal is due, or in litigation if that is necessary. You will be sending me a letter to this effect, in advance of January 26, 2016, which is the current 30-day mark from when the Nov. 4, 2015 letter was actually sent out to HSHA.

2. Schedule for production. The FOIA has been pending since May 2015, and since the search terms were agreed to in late August - early September 2015, NPS has produced part of 2 of the 9 categories of records requested. NPS informed HSHA that it would complete production on or before March 21, 2016. That is only 8 weeks from now, and I am very concerned about NPS's ability to meet the deadline. I would like NPS to indicate dates it will issue subsequent productions, so that it can demonstrate it will meet its own deadline. I also noted that the 90 day extension NPS claimed also requires the appointment of a FOIA Liaison (43 CFR 2.19(b)(2)), and this was not done.

3. Fee Waiver. I would like NPS correspondence regarding HSHA's request for a fee waiver. This may be in a May 29, 2015 letter, which I would like to get a copy of.

4. Document logistics.

a) I asked about Bates stamping, and you stated this could only be done with an outside third party vendor which would delay processing of the FOIA. We did not discuss this on our call, but FYI and for future reference, Adobe Pro allows users to Bates stamp PDF documents quite quickly.

b) The 692 pages produced for Category #4 included several pages that were redacted in full or in part. The letter regarding this production referenced documents "withheld". It is unclear whether there are additional document that were not produced because they were withheld, or whether the "withheld" documents were redacted in full and then included with the 692 pages. If NPS can let me know, and make sure this is clear going forward, it will be very helpful to us throughout the course of this FOIA as we reference the records.

5. Vaughn Index. We would like a Vaughn index for the records redacted in full, part, or withheld. Ideally the Index would come simultaneously with the record production, but given the short timeframe between now and March 21, 2016, HSHA is willing to accept NPS producing an Index with 10 days of the final record production. In thinking about the logistics of this, I now also suggest that any administrative appeal would not be due until 30 days after the Vaughn Index is produced, as really it is not until the index is produced that the FOIA production is completed.

6. Exemptions. I mentioned some of the exemptions that my cursory review of the materials caused me some concern. For example, the (b)(5) redactions seemed liberally and broadly applied. Also, the (7)(f) exemptions seem overbroad. After we receive a letter from NPS regarding Point #1 above, we can respond with more substance regarding the exemptions claimed.

Please let me know whether this email accurately confirms your understanding of our discussion today, and next steps.

Thanks.

Elisabeth

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