

# **EXHIBIT D**



southern  
utah  
wilderness  
alliance

## **FREEDOM OF INFORMATION ACT REQUEST**

6/23/2017

*Via Electronic Mail*

Clarice Julka or FOIA Officer  
Office of the Sectary  
Department of the Interior  
MS-7328, MIB  
1849 C Street, NW  
Washington, DC 20240  
[os\\_foia@ios.doi.gov](mailto:os_foia@ios.doi.gov)

Lance Purvis or FOIA Officer  
Office of the Solicitor  
Department of the Interior  
MS-6429, MIB  
1849 C Street, NW  
Washington, DC 20240  
[sol.foia@sol.doi.gov](mailto:sol.foia@sol.doi.gov)

Ryan Witt or FOIA Officer  
BLM FOIA Officer  
Bureau of Land Management  
1849 C. Street NW, Rm 2134LM  
Washington, DC 20240  
[rwitt@blm.gov](mailto:rwitt@blm.gov)

Re: *Maps and other records concerning boundaries of Grand Staircase-Escalante National Monument*

Dear FOIA Officers:

On behalf of Southern Utah Wilderness Alliance (SUWA), and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I request the following records in the possession or control of the Department of the Interior (DOI):

Southern Utah Wilderness Alliance FOIA re: Grand Staircase-Escalante National Monument

FOIA Officers

Page 2 of 7

1. Any and all records relating to maps of recommended new boundaries for Grand Staircase-Escalante National Monument. This includes, but is not limited to, any records shared by or with the State of Utah and its counties, including Kane County, and officials or employees thereof, state or federal legislators (including their staff), state and federal agencies (such as DOI, the Bureau of Land Management, or Utah's Public Lands Policy Coordinating Office), and any non-state or non-federal individual or entity.

For the purpose of this FOIA, the term "DOI" includes the Bureau of Land Management. The term "records" in this FOIA requests includes but is not limited to maps, electronic mail messages, correspondences, draft documents, photos, GIS or GPS data, handwritten notes, meeting or phone conversation notes, and calendar entries, generated, modified, or acquired by DOI.

Records submitted to the DOI by non-government parties "are not internal agency documents exempt from disclosure." *Klamath Water Users Protective Ass'n v. DOI*, 189 F.3d 1034, 1038 (9th Cir. 1999).

### **SUWA Is Entitled To A Fee Waiver**

SUWA is a non-profit public interest environmental organization. Accordingly, SUWA requests that all copy and research fees be waived under 5 U.S.C. § 552(a)(4)(iii) and 43 C. F.R. § 2.45. A fee waiver is justified because the information requested is likely to contribute significantly to public understanding of the operations and activities of DOI and DOJ and the information is not primarily in SUWA's commercial interest.

Public interest fee waivers are to be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). "[T]he presumption should be that requesters in these categories are entitled to fee waivers, especially if the requesters will publish the information or otherwise make it available to the general public." *Ettlinger v. FBI*, 596 F. Supp. 867, 874 (D. Mass. 1984) (quoting legislative history). An agency may not refuse a fee waiver when "there is nothing in the agency's refusal of a fee waiver which indicates that furnishing the information requested cannot be considered as primarily benefiting the general public." *Id.* (citation omitted). Once the "FOIA requester has made a sufficiently strong showing of meeting the public interest test of the statute, the burden, as in any FOIA proceeding, is on the agency to justify the denial of a requested fee waiver." *Id.* (citing 5 U.S.C. § 552(a)(4)(B)).

Southern Utah Wilderness Alliance FOIA re: Grand Staircase-Escalante National Monument  
FOIA Officers  
Page 3 of 7

SUWA—a non-profit group interested in oversight of DOI’s management of public lands and natural resources—is entitled to a fee waiver for the reasons described below.

**1. The records concern the operations or activities of the Federal government under 43 C.F.R. § 2.48(a)(1) and 5 U.S.C. § 552(a)(4)(A)(iii).**

The records requested by SUWA concern the operations of the Federal government because they involve government communications regarding DOI’s decisions regarding the management of public lands.

**2. The disclosure of the requested information is likely to contribute to the public’s understanding of the Federal government’s management of public lands under 43 C.F.R. § 2.48(a)(2) and 5 U.S.C. § 552(a)(4)(A)(iii).**

The information sought is not already in the public domain and will meaningfully inform the public of DOI’s dealings and considerations regarding the management and designation of public lands in Utah, including the Grand Staircase-Escalante National Monument. In May 2017, DOI announced that it would review the designation of certain national monuments, including Grand Staircase-Escalante National Monument, and invited public comment on these designations. Disclosure of the requested information will contribute to the public’s understanding of the Federal government’s decisionmaking regarding Grand Staircase-Escalante National Monument.

SUWA is a non-profit, 13,000 member non-profit environmental organization dedicated to the preservation of Utah’s wild lands, and has been involved in such protection for over thirty years. SUWA is recognized to have expertise in matters of public land law. SUWA is frequently solicited for comment on such issues by local and national media, as well as various federal agencies.

The designation and management of Grand Staircase-Escalante National Monument has been an issue of public controversy and concern for years. Public oversight of DOI’s activities and operations is not possible without the participation of an informed public. SUWA plays a critical role in this oversight by collecting, analyzing, and disseminating information on DOI’s activities and decisions regarding the designation, protection, and management of public lands. SUWA has a long history of submitting comments on, litigating, and monitoring the management of public lands in Utah, including Grand Staircase-Escalante National Monument. The requested documents will aid in these activities, and provide public insight into the extent and impact of DOI’s management objectives and activities.

Southern Utah Wilderness Alliance FOIA re: Grand Staircase-Escalante National Monument

FOIA Officers

Page 4 of 7

Federal courts have held that public interest groups satisfy such requirements where requestors show the “ability to understand and disseminate the information.” *Judicial Watch, Inc. v. Dep’t of Justice*, 122 F. Supp. 2d 5, 10 (D.D.C. 2000). In addition, a description of past successful methods of informing the public combined with a “firm intent to disseminate” the information has been held to meet this test. *Judicial Watch, Inc. v. Dep’t of Justice*, 185 F. Supp. 2d 54, 59-60 (D.D.C. 2002) (quoting *Judicial Watch I*, 122 F. Supp. 2d at 13).

SUWA intends to review and evaluate the requested information. As appropriate, SUWA will then disseminate this information to SUWA’s membership through publication on SUWA’s website, newsletters, action-alerts, public service announcements, tabling, and other grassroots outreach activities. SUWA’s newsletter alone has a distribution list in excess of 20,000 people and SUWA has a proven history of being able to disseminate information to a large and diverse segment of the public. Articles, alerts, newsletters, and other publications generated by SUWA for the specific purpose of educating the public on particular issues, including regulation of public lands, can be found on SUWA’s website including at <https://suwa.org/>. See e.g. SUWA Quarterly Newsletter, *Redrock Wilderness*, “Champs Reintroduce American’s Red Rock Wilderness Act,” Summer 2015 (explaining to Congress’ efforts to permanently protect 9 million acres of land in Utah) (*available at* <https://suwa.org/newsletter-archive/>); see also SUWA Press Release, “BLM Announces Proposal to Sell Oil, Gas Leases on Doorstep of Zion National Park”, January 12, 2017 (informing public about BLM’s proposal to offer oil and gas leases less than two miles from Zion National Park in southwestern Utah) (*available at* <https://suwa.org/press-release-blm-announces-proposal-sell-oil-gas-leases-doorstep-zion-national-park/>).

**3. The disclosure of the requested information will significantly contribute to and enhance the understanding of a broad audience under 43 C.F.R. § 2.48(a)(3), (4) and 5 U.S.C. § 552(a)(4)(A)(iii).**

The legislative history of FOIA makes clear that the “significance” test is met where, as here, the information requested will support “public oversight of agency operations”: “A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.” 132 Cong. Rec. H9464 (Reps. English and Kindness); see also *McClellan Ecological Seepage Situation*, 835 F.2d at 1284–86.

Southern Utah Wilderness Alliance FOIA re: Grand Staircase-Escalante National Monument

FOIA Officers

Page 5 of 7

The information requested by this FOIA has not been disclosed to the public, and the requested records will support public oversight by significantly contributing to the public understanding of the Federal government's decisionmaking with regards to Grand Staircase-Escalante National Monument. The records requested also will show, among other things, how DOI's interaction with various stakeholders may impact the future regulation of public lands, water quality, wildlife, and other resources.

SUWA specifically intends to use the information provided to educate the public concerning the Federal government's and DOI's plans regarding public lands in Utah. Debate and oversight over DOI's management public lands, water quality, wildlife, and other natural resources will be better informed by the release of the requested records. SUWA believes that such information has not been disclosed or presented to the public.

**4. The disclosure of the requested information is not primarily in SUWA's commercial interest under C.F.R. § 2.48(b) and 5 U.S.C. § 552(a)(4)(A)(iii).**

The disclosure of information in response to this FOIA request is not in SUWA's commercial interest. SUWA, a not-for-profit corporation, does not seek these documents for commercial use.

Should SUWA's request for reduced or waived fees be denied, please contact me at (801) 428-3991 or [landon@suwa.org](mailto:landon@suwa.org) before proceeding with the processing of this request.

FOIA directs a responding agency to make a "determination" on any request within twenty (20) working days of receipt. 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. *Id.* § 552(b). Should any documents be withheld, in part or in their entirety, I request that you inform us of the grounds for denial and the specific administrative appeal rights which are available. *Id.* § 552(a)(6)(A)(i).

We request that responsive records be released as soon as they are available. To the extent that a subset of the requested records is readily available, SUWA requests to receive those records while DOI searches for the other records. SUWA is amenable to receiving electronic copies of the requested records (on a CD, for example). If the agency intends to make records available electronically, please make the records available in "pdf" format.

Please send the requested information to:

Southern Utah Wilderness Alliance FOIA re: Grand Staircase-Escalante National Monument

FOIA Officers

Page 6 of 7

Southern Utah Wilderness Alliance

Attn: Landon Newell

425 East 100 South

Salt Lake City, UT 84111

or

[landon@suwa.org](mailto:landon@suwa.org)

Thank you for your prompt attention to this request. If you have any questions in this matter, please contact me at (801) 428-3991 or [landon@suwa.org](mailto:landon@suwa.org).

Sincerely,

/s/ Landon Newell

Landon Newell  
Staff Attorney