

EXHIBIT G



September 1, 2017

FOIA REQUEST

Interior Department
Office of the Secretary FOIA Officer
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Bureau of Land Management
IRM Governance Division
Attn: FOIA, Washington Office Coordinators
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Via Email: os_foia@ios.doi.gov

Via Email: blm_wo_foia@blm.gov

Re: Expedited Request for Records Relating to the Review of National Monuments

Greetings:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and implementing regulations, 43 C.F.R. § 2.1 et seq., I request the following records:

- **All records on which Secretary Zinke’s relied in the course of his review and development of recommendations conducted pursuant to President Donald J. Trump’s Executive Order 13792 of April 26, 2017, Review of Designations Under the Antiquities Act, 82 Fed. Reg. 20429, 20431 (May 1, 2017); and pursuant to 82 Fed. Reg. 22016, 22017 (May 11, 2017).**

This request is made on behalf of the Southern Utah Wilderness Alliance and Natural Resources Defense Council (collectively, “the Requesters” unless specified otherwise).

Note that we do not seek any records that have already been published and are in the public domain or records that DOI or BLM has provided to the Requesters pursuant to previous FOIA requests.

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind, including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), reports, consultations, papers, studies, notes, field notes, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic

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recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. See, e.g., 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). We request that you provide the responsive records in electronic .pdf format without any “profiles” or “embedded files.” Please do not provide the records in a single or “batched” .pdf file. To the extent that a subset of the requested records is readily available, please provide that subset immediately while you continue to search for additional records to complete your response.

If you decide to invoke a FOIA exemption in response to this request, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

In addition, if you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

Relevant Legal Background on the Freedom of Information Act

FOIA was designed to provide citizens a broad right to access government records. FOIA’s basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the public’s “right to be informed about what their government is up to.” U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). Congress amended FOIA with the Openness Promotes Effectiveness in Our National (OPEN) Government Act of 2007, 110 Pub. L. No. 175, 121 Stat. 2524 (to be codified at 5 U.S.C. § 552). In the Congressional findings to the OPEN Government Act, Congress found that “the American people firmly believe that our system of government must itself be governed by a presumption of openness.” 110 Pub. L. No. 175 § 2(2). In addition, Congress found that “disclosure, not secrecy, is the dominant objective of [FOIA].” Id. § 2(4) (quoting Dep’t of Air Force v. Rose, 425 U.S. 352 (1976)). Thus, under FOIA, there is a “strong presumption in favor of disclosure.” Id. § 2(3) (quoting Dep’t of State v. Ray, 502 U.S. 164 (1991)).

In a March 19, 2009 memorandum to the heads of executive departments and agencies, the U.S. Attorney General underscored that agencies should release records requested under FOIA even if the agency might have a technical excuse to withhold them:

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure.

Memo. of Attorney General E. Holder (March 19, 2009).

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

REQUEST FOR EXPEDITED PROCESSING

The Requesters meet the requirements of 43 C.F.R. § 2.20(a)(2)(1)-(4). There is an urgent need to inform the public of the records on which Secretary Zinke based his report and the implications of those records on the fate of the national monuments subject to the review. News reports indicate that President Trump will act expeditiously on Secretary Zinke's August 24, 2017 report by signing an executive order that will alter the future management and protection of some of these widely-cherished national monuments, opening the door to damaging activities like increased off road vehicle use, staking of mining claims, oil and gas development and putting unique archaeological and fossil resources at risk.¹ This creates a critical and time-sensitive need to provide the requested records to the public to facilitate broad and informed public engagement concerning the monuments' future status.

As described below in support of the fee waiver request, the Requesters have significant experience in disseminating information about public lands issues, the activities of the Interior Department and BLM, and about monuments in particular to the public. *See infra* at 7-8. As demonstrated by the voluminous coverage of the review process in national, state and local news outlets, the monument review, the recommendations based on that review and the documents on

¹ https://www.washingtonpost.com/news/energy-environment/wp/2017/08/24/interior-secretary-recommends-trump-alter-a-handful-of-national-monuments-but-declines-to-reveal-which-ones/?hpid=hp_hp-top-table-main_monuments-3pm%3Ahomepage%2Fstory&utm_term=.9ad0b7140119; <http://thehill.com/policy/energy-environment/347794-zinke-wants-to-shrink-some-national-monuments>

which the Secretary relied in taking these actions are “breaking news” of general public interest within the meaning of FOIA’s expedited review requirements.

The Requesters certify that they will disseminate the information as a primary part of their organizations’ missions.

Further, any action the President takes via executive order will likely have immediate effect, and the BLM, which manages many or all of the monuments at issue, will respond accordingly by focusing its management priorities towards development and away from the current preservation focus. There is an urgent need for public information about the immediate threats to the affected national monuments.

We thus ask for expedited processing of this request pursuant to 43 C.F.R. § 2.10 and § 2.20, and look forward to your response in no more than ten calendar days.

The undersigned certifies that the reasons for seeking expedited review are true and correct to the best of my knowledge or belief.

FEE WAIVER REQUEST

The Requesters meet the fee waiver requirements of § 552(a)(4)(A) and 43 C.F.R. § 2.45 and 2.48 and therefore request that you provide the documents identified above without charge. However, if a waiver is not granted, please inform the undersigned of the cost of disclosing the above-described records if such fees exceed \$25.00.

I. Background

A requester is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a) (DOI regulations mirroring the FOIA standard).

In 1974, Congress amended FOIA, replacing the “arbitrary and capricious” standard of review, by which courts are required to grant deference to agencies, with the more rigorous *de novo* review standard. See § 552(a)(4)(A)(vii). The reason for this change is that Congress was concerned that agencies were using search and copying costs to prevent critical monitoring of their activities:

Indeed, experience suggests that agencies are most resistant to granting fee waivers when they suspect that the information sought may cast them in a less than flattering light or may lead to proposals to reform their practices. Yet that is precisely the type of information which the FOIA is supposed to disclose, and agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information....

132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy).

FOIA's amended fee waiver provision was intended specifically to facilitate access to agency records by citizen "watchdog" organizations, which utilize FOIA to monitor and mount challenges to governmental activities. See Better Gov't Ass'n v. Dep't of State, 780 F.2d 86, 88-89 (D.C. Cir. 1986). Fee waivers are essential to such groups, which

[R]ely heavily and frequently on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities – publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions....

[The fee waiver] provision was added to FOIA 'in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,' in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups.

Id. at 93-94 (quoting Ettlinger v. FBI, 596 F. Supp. 867, 872 (D. Mass. 1984) (emphasis added)). Thus, one of the main goals of FOIA is to promote the active oversight roles of watchdog public advocacy groups, organizations that actively challenge agency actions and policies.

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) (quoting 132 Cong. Rec. S14298 (Sen. Leahy)). "[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, 596 F. Supp. at 873 (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. at 874 (quoting Fitzgibbon v. CIA, Civ. No. 76-700 (D.D.C. Jan. 10, 1977)). "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)).

II. The Requesters Qualify for a Fee Waiver.

The BLM regulations implementing FOIA's fee waiver provision, 43 C.F.R. § 2.48(a)(1)-(4), identify four specific criteria (with somewhat overlapping subparts) to determine whether a request is in the public interest:

(1) How the subject of the requested records concerns “the operations or activities of the Federal government;”

(2) How the disclosure is “likely to contribute” to public understanding of government operations or activities;

(3) How disclosure “is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the requester’s individual understanding; and

(4) How the public’s understanding of the subject “will be enhanced to a significant extent by the disclosure.”

As shown below, the Requesters meet each of these factors.

A. The Records Concern the Operations or Activities of the Federal Government (43 C.F.R. § 2.48(a)(1)).

On April 26, 2017, President Trump signed the Presidential Executive Order on the Review of Designations Under the Antiquities Act, which initiated a 120-day “review” of 27 national monuments. As part of this review, Secretary of the Interior Ryan Zinke has traveled to several national monuments to meet with stakeholders and discuss the future management of the monuments, and the U.S. Department of the Interior has received more than 160,000 public comments, demonstrating the substantial public interest in the results and nature of this review.

This request seeks records, acquired or created by DOI and BLM, on which Secretary Zinke relied for his review, including documents concerning Presidential authority over national monument designations.

B. Disclosure is Likely to Contribute to Public Understanding of DOI/BLM’s Operations or Activities (43 C.F.R. § 2.48(a)(2)(i)-(v)).

Public interest groups satisfy this requirement of FOIA where requestors show the “ability to understand and disseminate the information.” Judicial Watch, Inc. v. Dep’t of Justice (Judicial Watch I), 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 (Judicial Watch II), 185 F. Supp. 2d 54, 59-60 (D.D.C. 2002) (quoting Judicial Watch I, 122 F. Supp. 2d at 13). “[C]ourts have consistently overturned agency denials of fee waivers when requestors have made a legitimate, objectively supportable showing of using the requested information for scholarly research into political and historical events.” Ettlinger, 596 F. Supp. at 875; see also Weisberg v. Dep’t of Justice, 705 F.2d 1344, 1360 (D.C. Cir. 1983).

To determine whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. Carney v. U.S. Dept. of Justice,

19 F.3d 807 (2nd Cir. 1994). The Requesters need not show how they intend to distribute the information, because “[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity.” Judicial Watch, 326 F.3d at 1314. It is sufficient for the requester to show how it distributes information to the public generally. Id.

The Requesters do not seek the documents for their own benefit, but seek the records to provide additional, new information to the public about DOI and BLM operations. Disclosure will foster a better public understanding of the DOI and BLM’s decision-making process and intent regarding ongoing and future management of the national monuments. See 43 C.F.R. § 2.48(2)(iii) (requiring the requester to show that the “disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to” its own understanding). The Requesters have extensive experience disseminating public records and analysis to the public, media and decision makers and they routinely communicate with the public and the media on issues related to the protection of public lands and sites of historic, cultural, and scientific importance. As discussed below, numerous articles, press releases, and websites attesting to the Requesters’ expertise on the national monuments are found on the internet and on their websites. The Requesters intend to broadly disseminate the records, or summaries of the records, to the media, to their members and to the public.

More specifically, the Southern Utah Wilderness Alliance (SUWA) has worked to protect the outstanding redrock wilderness of the American southwest since 1983, and has since become Utah’s most prominent environmental organization. SUWA worked with the Bears Ears Inter-Tribal Coalitions in the campaign to create Bears Ears National Monument, and its website contains copious information about both the Bears Ears and the Grand Staircase-Escalante National Monuments—two of the monuments subject to Secretary Zinke’s review.² SUWA officials have been quoted extensively in the media regarding Bears Ears and Grand Staircase, as well as on national monuments in general.³

The Natural Resources Defense Council (NRDC) is an environmental non-profit organization that is in part organized and operated to gather and publish or transmit news to the public. NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>, along with blogs and staff analyses. NRDC has published multiple stories

² <https://suwa.org/help-save-grand-staircase-escalante-national-monument/>;
<https://suwa.org/press-release-utah-counties-closed-door-meetings-zinke-others-spark-lawsuit/>;
<https://suwa.org/issues/bears/ears/>

³ <https://suwa.org/category/bears/ears/> ; <https://suwa.org/category/antiquities-act/>;
<http://www.eenews.net/stories/1060037480> ; <http://www.ksl.com/?nid=148&sid=42708529>;
<http://www.deseretnews.com/article/865669559/A-Bears-Ears-primer-How-Obamas-pen-could-affect-southern-Utah.html>;
<http://www.grandcanyontrust.org/joint-statement-draft-public-lands-initiative>;
<http://www.sltrib.com/opinion/3499388-155/op-ed-ple-fails-to-protect-america>;
<http://www.sltrib.com/news/environment/2017/08/16/lawsuit-filed-over-kane-garfield-commissions-meetings-with-zinke/> ; <http://www.hcn.org/articles/Public-land-transfer-advocates-target-national-monuments-bears-ears>

on its website about the national monuments subject to review,⁴ as well as publicizing issues related to the monuments on Facebook and Twitter. NRDC staff members and spokespeople have been quoted in national news coverage and have written op-eds regarding the national monuments and the need for protecting them.⁵ NRDC's more than one million members and online activists constitute a large audience of people interested in the subject, and when combined with NRDC's communications to the public at large, NRDC has the capacity to reach a very broad audience. Further, NRDC has a long history of analyzing and incorporating information obtained through FOIA into reports, articles, and other communications, and it is well prepared to convey to the public any relevant information it obtains through this records request.

As demonstrated above, both Requesters have the expertise and capacity effectively to analyze and distribute information contained in records responsive to this request to the interested public. See 43 C.F.R. § 2.48(a)(2)(iv-v). Accordingly, they have satisfied this prong of the fee waiver test.

C. Disclosure is Likely to Contribute Significantly to the Understanding of a Reasonably Broad Audience of Persons Interested in the Protection of Historic Sites and National Monuments, Beyond the Requesters' Individual Understanding (43 C.F.R. § 2.48(a)(3)(i)-(iv)).

The Requesters will contribute significantly to the public understanding of the federal government's decision-making process regarding protection of the national monuments because the records sought are new and have not been disclosed to the public—the public has never been provided access to the full record on which Secretary Zinke based his review and recommendations on national monuments. See 43 C.F.R. § 2.48(3)(i), (iv). The records may also confirm, clarify, or contradict documents or statements that are in the public domain and/or which DOI and BLM have previously released to the public. 43 C.F.R. § 2.48(3)(ii)-(iii). Indeed, because the requested records have not been released and are not in the public domain, the public does not currently have an ability to easily evaluate them. See *Cnty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about

⁴ <https://www.nrdc.org/stories/ancient-place-just-secured-membership-americas-culture-club>; <https://www.nrdc.org/experts/sharon-buccino/protection-wanted-and-bears-ears-monument-delivers>; <https://www.nrdc.org/media/2016/161228>; <https://www.nrdc.org/experts/sharon-buccino/bears-ears-we-trust-tribally-co-managed-national-monument-offers-protection>; <https://www.nrdc.org/resources/americas-monuments-worth-fight>; <https://www.nrdc.org/experts/trump-administration-puts-our-monuments-chopping-block>

⁵ See, e.g., <http://time.com/4454746/president-bears-ears-monument/>; <https://www.nytimes.com/2016/07/04/opinion/national-monuments-tell-americas-story.html>; <https://www.nytimes.com/interactive/2017/08/11/climate/doi-monument-review-five-to-watch.html>; <https://www.nytimes.com/2016/09/16/us/politics/obama-to-create-atlantic-oceans-first-marine-monument.html>; <https://www.usatoday.com/story/news/politics/2017/08/10/republicans-making-progress-longtime-goal-more-local-control-federal-lands/548969001/>

agency policy, “the CLS request would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in McClellan, 835 F.2d at 1286, “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .” Accordingly, the release of new and/or clarifying information regarding DOI and BLM’s planning, protection, and recommendations for the national monuments subject to Secretary Zinke’s review will increase the level of public understanding beyond that which existed prior to disclosure. 43 C.F.R. § 2.48(a)(3)(iii).

The Requesters will use the records and information contained therein to better inform the public, legislators, and the organizations’ members and staff about the factors influencing DOI and BLM’s decisions concerning the future boundaries, management, and status of the 27 national monuments. The numerous articles cited in this request concerning the national monuments attest to the broad public interest in this subject.

Once the information is made available, the Requesters will analyze it and present it to its members, online activists and the general public in a manner that will meaningfully enhance the public’s understanding of DOI and BLM’s management, decisions, and actions regarding the national monuments and the objects described in the proclamations. Through the Requesters’ synthesis and dissemination, disclosure of information contained and gleaned from the requested records will contribute not just to the Requesters’ understanding, but to the understanding of a broad audience of persons who are interested in the subject matter. Ettlinger, 596 F. Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); Carney, 19 F.3d at 815 (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own interests); Cnty. Legal Servs. v. Dep’t of Hous. & Urban Dev., 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience,” “there is a segment of the public that is interested in its work”); 43 C.F.R. § 2.48(a)(3). Accordingly, the Requesters have met this prong of the fee waiver test.

D. The Public’s Understanding of the DOI and BLM’s Current and Future Management of the National Monuments Will be “Enhanced to a Significant Extent” by the Disclosure (43 C.F.R. § 2.48(a)(4)).

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, 835 F.2d at 1284-86.

The Requesters address much of this prong of the test above. Additionally, the requested records will support public oversight by allowing the public to better understand BLM’s planning and management process regarding these 27 national monuments and BLM’s

implementation of the proclamations that established them. Debate and oversight of the DOI and BLM's planning and management processes and decisions will be better informed by the release of these records, none of which have been divulged or presented to the public. See 43 C.F.R. § 2.48(a)(4)(b).

E. The Requesters Have No Commercial Interest in the Records.

The formal fee assessment/waiver guidelines established by the Office of Management and Budget state that:

The term "'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that *furtheres the commercial, trade, or profit interests* of the requester or the person on whose behalf the request is made.

52 Fed. Reg. 10,012, 10,017-18 (Mar. 27, 1987) (emphasis added).

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Requesters' role of educating the general public. Both organizations are nonprofit conservation organizations which collectively have more than one million members and additional online activists dedicated to the protection of public lands, wild places, wildlife, and sites of historic and scientific significance. The Requesters have no commercial interest in the disclosure of the records, and will realize no commercial benefit or profit from the disclosure of the requested records. (In light of absence of commercial interest, the balancing test set forth in 43 C.F.R. § 2.48(a)(4)(b)(2)-(3) is inapplicable.)

As demonstrated above, the Requesters meet each of the statutory and regulatory requirements for a fee waiver.

Thank you for your prompt attention to this request. I look forward to your response as soon as possible, but not later than 20 days, as required by law. If you have any questions in this matter, please contact me at 303-996-9621.

Sincerely,



/s/

Heidi McIntosh
Managing Attorney