

Exhibit 1:

Wyoming Outdoor Council's February 9, 2018
Freedom of Information Act Request



Wyoming Outdoor Council

wyomingoutdoorcouncil.org

262 Lincoln Street
Lander, WY 82520
307.332.7031

February 9, 2018

ELECTRONIC MAIL (BLM_WY_FOIA@blm.gov) RETURN RECEIPT REQUESTED

Jennifer Litman, FOIA Coordinator
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82009

Re: Freedom of Information Act Request Pertaining to the BLM's Management of the Chain Lakes Wildlife Habitat Management Area ("Chain Lakes WHMA")

Dear Ms. Litman:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended ("FOIA") from the Wyoming Outdoor Council ("Outdoor Council"), Wyoming's oldest independent statewide conservation organization. The Outdoor Council is a non-profit, public interest organization whose mission is to protect Wyoming's environment and quality of life for future generations.

REQUESTED RECORDS

Consistent with the Outdoor Council's mission, and pursuant to FOIA and its amendments, the Outdoor Council respectfully requests immediate production of the following records from the Bureau of Land Management ("BLM"):

- 1) The full and complete proposal to designate some or all of the Chain Lakes WHMA an "area of critical environmental concern" (ACEC) referenced in the BLM's ACEC Proposal Evaluation Report titled "Evaluation of Relevance and Importance Criteria for Existing and Proposed ACECs - BLM Rawlins Field Office," available online at https://eplanning.blm.gov/epl-front-office/projects/lup/63197/78314/89275/RevisedDraft_ACEC_Proposal_Report_101507.pdf, and in Table 4 of the BLM's Scoping Report, available online at <https://eplanning.blm.gov/epl-front-office/projects/lup/63197/78302/88923/ScopingReport.pdf>.



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- 2) All interagency and intra-agency correspondence, records and communications related in any way, directly or indirectly, to the ACEC proposal referenced above including, but not limited to, correspondence with the Wyoming Governor's Office, Wyoming state agencies and other federal, county, and local governments.
- 3) All records and communications that relate in any way, directly or indirectly, to the BLM's review and ultimate rejection of the above referenced ACEC proposal.
- 4) Records created or received after January 1, 2017, that relate in any way, directly or indirectly, to oil and gas development activities proposed or taking place within the Chain Lakes WHMA. You may exclude from this request: a) NEPA documents available on BLM's ePlanning website; b) records provided by the Wyoming Outdoor Council, such as requests for State Director Review, and decisions issued by BLM in response thereto; and 3) email correspondence to and from the requester.

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), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, databases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

This request is not intended to exclude any other records that, although not specifically requested, are reasonably related to the subject matter of this request. If any requested records have been destroyed, cannot be located, or you or your office determine to withhold any records that could be reasonably construed as responsive to this request, we respectfully ask that you indicate this fact and the reasons therefore in your response.

Per the FOIA Improvement Act of 2016, agencies may not deny requests for information under FOIA unless the agency reasonably foresees that release of the information will harm an interest that is protected by an expressed FOIA exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(a).

Should you or your office decide to invoke an exemption, please respond with sufficient information for the Outdoor Council to evaluate the basis for that exemption, including any interest(s) potentially harmed by that information's release. Please provide a detailed ledger including:



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1. Basic factual material about each record withheld including the originator, date, length, subject matter and location of each record; and
2. Complete explanations and justifications for each withholding, including the specific exemption under which the record (or portion thereof) was withheld and a complete explanation of how the exemption applies to the record. Your written explanation will help the Outdoor Council decide whether to appeal any adverse decisions and may help to avoid litigation.

If you determine that portions of any records are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to the address on this letterhead within the statutory time limit pursuant to 5 U.S.C. § 522(b). Finally, the Outdoor Council respectfully requests that you make any records that will become the subject of subsequent requests for substantially the same records, and any records that have been released to any person and requested three or more times, publicly available online pursuant to FOIA's "frequently requested record provision" and FOIA's Rule of 3. See 5 U.S.C. § 522(a)(2)(D)(ii)(I) and 5 U.S.C. § 522(a)(2)(D)(ii)(II), respectively.

FORMAT OF REQUESTED RECORDS

FOIA requires agencies to provide records in a readily accessible electronic format and in the format requested. See, e.g., 5 U.S.C. § 522(a)(3)(B) ("In making any record available to a person under this paragraph and agency shall provide the record in any form or format requested by the person if the record is readily producible by the agency in that form or format.") Accordingly, the Outdoor Council requests all records in electronic format. Additionally, please provide the records in either

- (1) load-ready format with a CSV file index or Excel spreadsheet; or
- (2) for files that are in .PDF format without any "portfolios" or "embedded files," as portfolios and embedded files are not readily accessible. Please do not provide the records in a single, or "batched," file. The Outdoor Council would greatly appreciate your inclusion of an index.

RECORD DELIVERY

The Outdoor Council thanks you for your prompt determination on the requested records, and, as mandated by FOIA, we expect a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 5 C.F.R.



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§ 1303.10(c). Please provide a timely and complete response with the requested records via mail or email to:

Dan Heilig
Wyoming Outdoor Council
262 Lincoln Street
Lander, WY 82520
dan@wyomingoutdoorcouncil.org

If any aspect of this request is unclear, or if the responsive records are voluminous, please contact Dan Heilig at (307) 332-7031 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

FOIA provides citizens with broad access to government records. The Act's basic purpose, per the U.S. Supreme Court, is "to open agency action to the light of public scrutiny." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989). Consistent with that purpose and the public interest generally, Congress provided that standard fees for document production be waived or reduced 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 government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C.Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

Non-profits like the Outdoor Council are particularly appropriate candidates for FOIA fee waivers. The 1986 fee waiver amendments were specifically intended to provide non-profits access to government records without payment of fees. In keeping with the public interest and the principle of government transparency, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and *non-profit public interest groups*." *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As such, and as supported in the detailed explanation below, the Outdoor Council qualifies for and respectfully requests a complete fee waiver.



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I. The Outdoor Council Qualifies for a Fee Waiver.

Per FOIA's fee waiver requirement at 5 U.S.C. § 552(a)(4)(A)(iii), *supra*, BLM must consider four factors to determine whether the Outdoor Council's request is in the public interest: (1) whether the subject of the requested records concerns "the operations or activities of the federal government," (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) whether the disclosure "will contribute to public understanding" of a reasonably broad audience of interested persons, and (4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The Outdoor Council qualifies for a fee waiver because it meets each of the four factors.

A. The Subject of This Request Concerns "The Operations and Activities of the Government."

The subject matter of this request concerns the operations and activities of the BLM, particularly the BLM's review and rejection of the above referenced ACEC proposal for Chain Lakes, and BLM's involvement with oil and gas activities in the area. The BLM's decision to reject the aforementioned proposal and authority over oil and gas permitting provide a federal handle, such that this FOIA request concerns clear and identifiable activities of the government. *Judicial Watch*, 326 F.3d at 1313 ("[R]easonable specificity is all that FOIA requires with regard to this factor") (internal quotations omitted). Public understanding of the BLM's operations and activities at Chain Lakes is particularly crucial given the significant energy resource development in the area, and potential conflicts with other land and resource uses and values like wildlife and habitat, recreation, grazing, and watershed management. The wetlands and playas in the Chain Lakes area are prime examples of Wyoming's basin wetlands, supporting remarkable biodiversity including migratory shorebirds.

Your response will provide the Outdoor Council and the public with insight into management of the Chain Lakes and BLM's decision-making process for ACEC proposals, operations and activities of the government of public concern. Thus, the Outdoor Council meets the first factor for a fee waiver.

B. Disclosure is "Likely to Contribute" to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations and activities and will increase and improve the public's understanding of those operations and activities.

Disclosure of the requested records will allow the Outdoor Council to inform the public regarding management of the Chain Lakes, the BLM's process for evaluating ACEC proposals, and the extent of oil and gas development in the Chain Lakes. The Outdoor Council has legal and policy expertise in evaluating environmental review of oil and gas projects, and will distribute our analysis of the requested records to our 5000 members and supporters, to the nonprofit organizations we partner with, and to the general public, in a manner that will meaningfully enhance the public's



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understanding of the BLM's operations and activities in the Chain Lakes. Thus, the Outdoor Council meets the second factor for a fee waiver.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding of Chain Lakes management and the ACEC approval process.

Disclosure of the requested records will meaningfully contribute to the public's understanding of Chain Lakes and its management and will provide insight into the BLM's evaluation of ACEC proposals. Disclosure will also contribute to public understanding of oil and gas development in the Chain Lakes. The operations and activities of the BLM are areas of interest to a reasonably broad segment of the public. Citizens and nonprofits will benefit from understanding how their public lands are managed and how ACEC proposals are evaluated. The public will benefit from knowing the extent of oil and gas development in the area and knowing how risks to public health and environmental degradation are being mitigated.

Through the Outdoor Council's analysis and dissemination, disclosure of the requested records will contribute to a reasonably broad audience of interested persons' understanding of the area and the activities and operations of the federal government related to it. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), cert. denied, 513 U.S. 823 (1994) (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, 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").

Currently, the public has no access to the requested records, as the above-referenced ACEC proposal and other requested records are not publicly available. Availability of BLM records is critical for the public to understand agency policy, and the Outdoor Council's analysis and dissemination of those records will facilitate that understanding for a reasonably broad audience. Thus, the Outdoor Council meets the third factor for a fee waiver.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

Disclosure of the requested records will significantly increase public understanding of government operations and activities, as it will reveal heretofore undisclosed information about the area, the ACEC proposal, and oil and gas development. Disclosure is more likely to contribute to public understanding where "the information is new and supports public oversight of agency operations."



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McLellan Ecological Seepage Situation v. Carlucci, 835 F.2d at 1286. Here, the requested records are new to the public domain and serve the public's interest in understanding how government activity is conducted and in ensuring agency accountability. Thus, the Outdoor Council meets the final factor for a fee waiver.

II. Obtaining the Requested Records is of No Commercial Interest to the Outdoor Council.

The Outdoor Council is a non-profit organization with no commercial interests and will realize no commercial benefit from the release of the requested information.

III. The Outdoor Council has a Recognized Ability to Disseminate this Information Broadly.

The Outdoor Council is a non-profit organization that believes in democracy, transparency, collaborative processes, non-partisan solutions, and that all citizens have a right to participate in ensuring a healthy environment. Public education is key to achieving these purposes, and the Outdoor Council is committed to conveying important information about Wyoming's environment to citizens, journalists, current and potential supporters, and other stakeholders. The Outdoor Council has an established track record of public education and regularly publishes newsletters, annual reports, blog posts, social media posts, email alerts and other sources of information to keep our members and the public at large abreast of environmental concerns and to empower public involvement in addressing those concerns. The Outdoor Council also hosts regular public meetings throughout the state regarding conservation issues and collaborates with non-profit partner organizations that will benefit from the disclosed records and disseminate information to their own members.

The Outdoor Council is well positioned to distribute information from your response to this FOIA request broadly, and to contribute to the public's understanding of the policies, operations and activities of the federal government through analysis and education.

IV. Conclusion

For all of the foregoing reasons, the Outdoor Council qualifies for a full fee waiver. We hope that the BLM will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact Dan Heilig, Senior Conservation Advocate, at (307) 332-7031 x13 or dan@wyomingoutdoorcouncil.org.



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Sincerely,

A handwritten signature in black ink that reads 'John W. Rader'.

John W. Rader
Wyoming Outdoor Council
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