



**Western
Watersheds
Project**

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FOIA/PA REQUEST

Case No.: 2010-0078
Date Rec'd: 12-22-09
Specialist: Christina
Related Case: _____

Working to protect and restore Western Watersheds

December 19, 2009

U.S. Nuclear Regulatory Commission
FOIA/Privacy Officer Mailstop: T-5 F09
Washington, DC 20555-0001

Re: FOIA Request

I. INTRODUCTION

Western Watersheds Project has a public lands management oversight program as part of its continuing efforts in the state of Wyoming to educate and involve the public in the sound management principles of public lands. Part of WWP's grazing program is designed to serve as a watchdog over federal agencies to ensure sound decision-making and enforcement of laws designed to protect public lands.

As this request will be received on December 21st, FOIA requires a completed response to be issued within 20 working days or by January 20th.

On March 19th, 2009 Attorney General Eric Holder issued a memorandum to all federal agencies regarding the implementation of FOIA. This memorandum rescinds Attorney General Ashcroft's FOIA Memorandum of October 12, 2001 and restores the presumption of disclosure. The memo quotes President Obama "The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." The President also stated that "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Further, it clearly defines the intent of FOIA and agency's duties in fulfilling this intent:

"First, an agency should not withhold information simply because it may do so legally"

"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."

The Attorney General also stated that the Department of Justice "will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law."

Attorney General Holder continued that “I would like to emphasize that responsibility for effective FOIA administration belongs to all of us—it is not merely a task assigned to an agency's FOIA staff. We all must do our part to ensure open government... Unnecessary bureaucratic hurdles have no place in the "new era of open Government" that the President has proclaimed.”

On December 16th, 2005, an Executive Order was issued clarifying agency's role under FOIA:

"FOIA requestors are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately.....

agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. A citizen-centered and results-oriented approach will improve service and performance, thereby strengthening compliance with the FOIA, and will help avoid disputes and related litigation.”

II. SCOPE OF REQUEST

In order to assist our public lands management oversight program on lands administered by the BLM and to be able to monitor the activities on BLM lands in Wyoming, WWP requests the following documents from the Nuclear Regulatory Commission pursuant to the Freedom of Information Act:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §522 et seq., Western Watersheds Project hereby request the following documents:

- 1) All communications between the BLM WO, Wyoming State Office or any BLM Wyoming Field Office, and the NRC regarding any aspects of NEPA analysis, NEPA compliance, or issues surrounding NRC as lead agency in NEPA analyses for the General Insitu Uranium Mining EIS or any of the SEIS tiered to the GEIS.

For the Lost Creek Insitu Uranium Mine:

- 1) All studies, analyses, summaries and reports regarding the surface and subsurface hydrology and aquifer as well as potential effects of the proposed actions
- 2) All communications with or about the proponent of the proposed actions
- 3) All documents describing the proponent including but not limited to listing of officers
- 4) All communications, emails, meeting notes, conversation records or other documents regarding this project from or to any employee or other representative of the BLM, the USFWS, Wyoming DEQ, EPA, Wyoming Department of Game and Fish
- 5) Names and addresses where copies of the General EIS were sent or delivered to
- 6) Names and addresses where copies of the SEIS were sent or delivered to
- 7) Records of how many copies of the SEIS were shipped to the Lander and Rawlins BLM Field Offices for distribution
- 8) Public participation plan, mailing lists and records of contact for public involvement in the GEIS and SEIS

For the Moore Ranch and Nichols Ranch Insitu Uranium Mines:

- 1) All studies, analyses, summaries and reports regarding the surface and subsurface hydrology and aquifer as well as potential effects of the proposed actions
- 2) All communications with or about the proponent of the proposed actions
- 3) All documents describing the proponent including but not limited to listing of officers
- 4) All communications, emails, meeting notes, conversation records or other documents regarding this project from or to any employee or other representative of the BLM, the USFWS, Wyoming DEQ, EPA, Wyoming Department of Game and Fish
- 5) Names and addresses where copies of the SEIS were sent or delivered to
- 6) Records of how many copies of the SEIS were shipped to the Buffalo, Casper and Newcastle BLM Field Offices for distribution
- 7) Public participation plan, mailing lists and records of contact for public involvement in the SEIS

For the JAB/Antelope Insitu Uranium Mine:

- 1) All studies, analyses, summaries and reports regarding the surface and subsurface hydrology and aquifer as well as potential effects of the proposed actions
- 2) All communications with or about the proponent of the proposed actions
- 3) All documents describing the proponent including but not limited to listing of officers
- 4) All communications, emails, meeting notes, conversation records or other documents regarding this project from or to any employee or other representative of the BLM, the USFWS, Wyoming DEQ, EPA, Wyoming Department of Game and Fish

III. PURPOSE OF REQUEST

Western Watersheds Project, a non-profit 501c3 membership organization dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP has over 1200 members, including members who live in Wyoming. WWP is active in seeking to protect and improve the riparian areas, water quality, fisheries, wildlife, and other natural resources and ecological values of western watersheds. To do so, WWP actively participates in agency decision-making concerning Forest Service and BLM lands throughout the West, and the Forest Service and BLM's management of livestock grazing in Idaho, Nevada, Utah, and Wyoming.

WWP is effective at increasing public awareness of environmental matters, such as protection of the diverse and valuable sagebrush-steppe ecosystem, through public education and outreach, participation in administrative processes, litigation and other enforcement of federal environmental laws.

Disclosure of the information we have requested will significantly contribute to the public's understanding of federal agency activities with respect to the environmental impacts associated with grazing. Information gathered from this request may be disseminated to the public through one or more of the above activities as well as our

quarterly newsletter the *Watershed Messenger*. WWP also represents its members in advocating improvements in state and federal statutes, regulations, and procedures concerning the protection of natural ecosystems and biodiversity.

V. WITHHOLDING OF DOCUMENTS:

If you believe any portion of this request is exempt from disclosure under FOIA please provide a detailed description of each withheld document and the legal basis for withholding such document.

VI. FEE WAIVER REQUEST:

The following describes how and why Western Watersheds Project (WWP) meet the six factors defined by the U.S. Department of Interior entitling requestors to a fee waiver for the provision of public documents under the Freedom of Information Act. WWP is a non-profit membership organization dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP has over 1200 members, including members who live in Wyoming. WWP is active in seeking to protect and improve the riparian areas, water quality, fisheries, wildlife, and other natural resources and ecological values of western watersheds. To do so, WWP actively participates in agency decision-making concerning BLM lands throughout the West, and the BLM's management of livestock grazing in Idaho, Nevada, Utah, and Wyoming.

WWP is effective at increasing public awareness of environmental matters, such as protection of the diverse and valuable sagebrush-steppe ecosystem, through public education and outreach, participation in administrative processes, litigation and other enforcement of federal environmental laws. The following details WWP and our use and dissemination of the requested information demonstrate their eligibility for a fee waiver.

Factor 1: *Do the requested records concern "the operations or activities of the government"?*

Yes. Our request is for public documents relating to the BLM. Such management is "operations or activities of the government".

Factor 2: *What is the informative value of the information to be disclosed? Explain in detail why the information requested is "likely to contribute" to the understanding of government operations or activities. For this factor, the requester bears the burden of identifying "with reasonable specificity" the public interest served.*

Documents requested in this FOIA request are essential to these organizations' mission to protect the land and water of the Interior West, including Wyoming, and to educate their members and the general public to enable and empower them to advocate for this protection. The information requested enables WWP to inform and educate the public on the management of livestock grazing and natural resources protection on the BLM lands - which are public lands, owned by the taxpayers. Moreover, WWP utilizes this type of information to meaningfully participate in the NEPA process for public land grazing issues and so that it can observe FS management of the public lands to prevent abuses. There is not doubt, therefore, that the requested information, read and digested by WWP staff, will contribute to the public understanding of these issues.

Factor 3: *Please identify why disclosure of the documents would contribute to the understanding of the subject by the public, as opposed to an individual's understanding of the requester or by a narrow segment of interested persons. This factor concerns whether disclosure of the information will contribute to an understanding by "a reasonably broad audience of persons interested in the subject," and requires the requester to have the ability to disseminate the information to the public.*

The third criteria, "to public understanding" was covered above. "Likely to contribute" is met through our intended purpose in obtaining the information and our means of public dissemination. "Public understanding" is met as well. Public land grazing issues, allotment management plans, permit renewals, the interplay and role of NEPA and enforcement criteria are complex matters, as you well know. Accordingly, educating the public concerning these matters will undoubtedly add to the public understanding.

BLM's planning and decision-making processes are supposed to be public processes in which information is readily available and comprehensible to the public at large. Unfortunately, in many instances, such documents as the ones requested here are long, tedious to read, and difficult to understand. Also, in many instances, they are not provided to the general public. Accordingly, organizations like WWP compile this information into a more readily understandable form for the general public, as well as for their members.

As one of only a few organizations specifically dedicated to the preservation and protection of the lands and waters of the sagebrush-steppe ecosystem, WWP is critically important sources of information for both their members and the general public who have an interest in the health and management of our public lands.

Factor 4: *How will the disclosure of the documents contribute "significantly" to public understanding? For example, will disclosure contribute to public understanding of government operations or activities? The public benefit should be "identified with reasonable specificity." To warrant a waiver, the public's understanding of the subject matter must increase as compared to the level of public understanding existing prior to the release of the documents.*

Fourth, the contribution to the public will be significant. The comparable BLM regulation clearly states that the "significant" test is met when the information "clearly supports public oversight of Department operations, and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department." 43 C.F.R. § 2.21(a)(2)(iii). There is no doubt that the information requested is significant in the effectiveness of our ongoing public lands management oversight program.

Factors 5 and 6: *Does the requester have a commercial interest that would be furthered by the requested documents, and what is the magnitude of that interest? What is the requester's primary interest in disclosure? Is the magnitude of the identified commercial interest of the requester sufficiently large when compared with the public interest in disclosure? Is disclosure "primarily in the commercial interest of the requester?"*

A commercial interest is one that furthers a commercial, trade, or profit interest. WWP does not have any commercial interest in obtaining this information and requested fee waiver. Rather, each is a not-for-profit group that strives to protect the natural resources of the West. Nowhere in WWP's mission statement, by-laws, or charter, do the organizations state a profit-motive goal. Thus, with no commercial interest, WWP clearly cannot have a commercial interest that "is sufficiently large, in comparison with the public interest in

disclosure, that disclosure is 'primarily in the commercial interest of the requester,'" as stated in the sixth factor.

Additional Information Concerning Fee Waiver: Legal Background.

In 1986, Congress amended the judicial review section for fee waivers under FOIA, replacing the "arbitrary and capricious" threshold of review, by which courts are required to grant deference to agencies, with the more rigorous *de novo* review standard. 5 U.S.C. § 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 (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 Government Association v. Department of State, 708 F.2d 86, 88-89 (D.C. Cir. 1986). Fee waivers are essential to such groups, which rely 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 (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). "[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, 873 (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. at 874, quoting Fitzgibbon v. Central Intelligence Agency, Civil 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).

In light of these principles, it is clear that WWP as a non-profit group interested in oversight of agency management of livestock grazing and resource protection on BLM's public lands, are entitled to a fee waiver for the specific documents requested.

Accordingly, WWP asserts that a fee waiver is proper as we comply with the six factors. If you have any further questions or if you require more information, please contact me at the address provided. If the BLM should deny our fee waiver, please notify us immediately of the costs for these documents so we can proceed from there. Thank you in advance for your prompt reply.

Sincerely yours,

A handwritten signature in black ink that reads "Jonathan B Ratner". The signature is written in a cursive style with a large, sweeping initial "J".

Jonathan B Ratner
Director, WWP –Wyoming Office



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Working to protect and restore Western Watersheds

U.S. Nuclear Regulatory Commission
FOIA/Privacy Officer Mailstop: T-5 F09
Washington, DC 20555-0001

FOIA Resource

From: Jonathan B. Ratner [jonathan@westernwatersheds.org]
Sent: Saturday, December 19, 2009 7:32 PM
To: FOIA Resource
Subject: FOIA Request
Attachments: NRC - DC- Uranium Leach Mining FOIA.pdf

Jonathan B. Ratner
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PO Box 1160
Pinedale, WY 82941
Tel: 877-746-3628
Fax: 707-597-4058

FOIA Resource

From: Jonathan B. Ratner [jonathan@westernwatersheds.org]
Sent: Sunday, December 20, 2009 3:09 PM
To: FOIA Resource
Subject: Previous Request

We would like delivery of our FOIA request in the form of hard copies with the exception of such things as photos which could either be color copies or on disk, or such things as GIS data which of course should be transmitted electronically.

Thanks for your help with this

Jonathan B. Ratner
Director - WWP Wyoming Office
PO Box 1160
Pinedale, WY 82941
Tel: 877-746-3628
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