

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE WILDERNESS SOCIETY)	
1615 M Street, NW)	
Washington, DC 20036)	
)	Civil No.
Plaintiff,)	
)	COMPLAINT FOR
)	DECLARATORY AND
v.)	INJUNCTIVE RELIEF
)	
UNITED STATES DEPARTMENT OF THE)	
INTERIOR and GALE NORTON in her capacity)	
as Secretary of the Interior of the United States,)	
)	
Defendants.)	

INTRODUCTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, challenging the Department of Interior’s failure to produce records requested by The Wilderness Society (“TWS”) in a pair of FOIA requests. The records requested by TWS concern the Department of Interior’s (“DOI’s”) wilderness inventories on millions of acres of its Bureau of Land Management (BLM) lands and the status of recommended and designated Wilderness Study Areas. TWS’s FOIA request also seek documents related to DOI’s recent settlement of a lawsuit with the State of Utah, which could have a dramatic impact on the management of BLM’s most pristine western wildlands.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question).

3. Venue in this Court is proper under 5 U.S.C. § 552(a)(4)(B) because TWS resides in this District, and under 28 U.S.C. § 1391(b) & (e) because DOI resides in this District.

PARTIES

4. Plaintiff The Wilderness Society is a non-profit environmental organization with approximately 200,000 members nationwide. TWS has eight regional offices and a headquarters in Washington, D.C. TWS employees and members work to protect America's wilderness and to develop a national network of wildlands through public education, scientific analysis, and advocacy. TWS's goal is to ensure that future generations will enjoy the clean air and water, wildlife, natural beauty, opportunities for recreation, and spiritual renewal that pristine forests, rivers, deserts, and mountains provide.

5. As part of its wilderness-preservation mission, TWS strives to educate the public about wilderness-related issues on DOI lands, including the results of wilderness inventories, the management of Wilderness Study Areas ("WSAs"), and the status of relevant legal actions. TWS's access to government information concerning these issues is essential in order for TWS to fulfill its organizational purposes.

6. Defendant Department of the Interior is the executive branch department that has possession or control of the records TWS seeks in this action.

7. Defendant Gale Norton is the Secretary of the Department of the Interior. In that capacity, Ms. Norton is responsible for ensuring that the DOI complies with all federal law and regulations, including FOIA. Secretary Norton is sued in her official capacity.

STATUTORY BACKGROUND

10. The Freedom of Information Act requires federal agencies to provide requested documents to the public unless one of the statute's exemptions applies. 5 U.S.C. § 552.

11. Upon receiving a FOIA request, an agency has twenty working days to determine and announce what documents the agency will release, what documents the agency plans to withhold, the reasons justifying any such withholding, and the appeal rights available to the requester. 5 U.S.C. § 552(a)(6)(A).

12. Although an agency may grant itself an extension of ten additional days in “unusual circumstances,” FOIA does not permit an agency to delay a response indefinitely. 5 U.S.C. § 552(a)(6)(B). FOIA’s regulations identify specific “unusual circumstances” that may justify a 10-day extension in the 20-day deadline. 43 C.F.R. § 2.17(c) (2002). FOIA’s regulations also require an agency to notify the requester in writing of such an extension, and to state the justification for the extension. 43 C.F.R. § 2.17(d) (2002).

13. FOIA provides that a requester “shall be deemed to have exhausted his administrative remedies... if the agency fails to comply with the applicable time limit provisions.” 5 U.S.C. § 552(a)(6)(A).

14. FOIA provides this Court with jurisdiction to enjoin DOI “from withholding agency records and to order the production of any such records improperly withheld from” TWS. 5 U.S.C. § 552(a)(4)(B).

FACTS

15. In the Wilderness Act of 1964, Congress declared that “[i]n order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” 16 U.S.C. § 1131(a). To that end, Congress

directed DOI to review the lands within its national parks and national wildlife refuges to determine what lands could qualify for wilderness designation. 16 U.S.C. § 1132(c). In order to qualify, The Wilderness Act requires that an area be:

undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

16 U.S.C. § 1131(c). The Wilderness Act also required DOI to make a formal recommendation to the President concerning which of the qualifying lands actually should be proposed for Congressional wilderness designation. 16 U.S.C. § 1132(c).

16. In 1976, Congress passed the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701-1784, which, among other things, broadened The Wilderness Act's wilderness inventory requirement by requiring BLM to inventory and identify all of its lands that would qualify for wilderness designation. 43 U.S.C. § 1782(a).

17. In the decades since the passage of the Wilderness Act and FLPMA, DOI has inventoried millions of acres of land. Based at least in part on these inventories, Congress has designated 6.5 million acres of wilderness on BLM lands, 43.6 million acres of wilderness on National Park Service lands, and 20.7 million acres on National Wildlife Refuge System lands. DOI also has identified tens of millions of acres of additional lands that are eligible for protection as wilderness.

18. Of particular relevance to the instant matter is BLM's inventory process in the State of Utah. BLM's initial wilderness inventory, carried out in the 1970s, concluded that only 3.2

million of the nearly 24 million acres of BLM lands in the state qualified as wilderness. Those 3.2 million acres are treated as Wilderness Study Areas by BLM. Because only Congress may designate an area as wilderness under the Wilderness Act, FLPMA preserves Congress's prerogative to do so by requiring BLM to manage such WSAs so that their wilderness character is not impaired. 43 U.S.C. § 1782(c).

19. In 1996, the Secretary of Interior ordered BLM to re-inventory portions of its Utah lands in response to the claim by TWS and many others that the agency's initial inventory had overlooked significant amounts of wilderness-quality lands. The State of Utah quickly filed suit to prevent the re-inventory from even taking place. This effort failed when the Tenth Circuit Court of Appeals dismissed all of the State's inventory-related claims for lack of standing in State of Utah v. Babbitt, 137 F.3d 1193 (10th Cir. 1998). With the go-ahead from the courts, BLM proceeded with its wilderness re-inventory and ultimately concluded that, in fact, the agency's earlier inventory had overlooked 2.8 million acres of wilderness quality lands in Utah. As a result of their exclusion, these lands had improperly been denied WSA status by the agency.

20. The Tenth Circuit declined to dismiss one of the State's eight claims, its claim that DOI was imposing an illegal "de facto wilderness" management standard on non-WSA public lands in Utah. Id. at 1215-1216. Following the Tenth Circuit remand of this one claim, the case languished for several years in the district court without any significant proceedings taking place.

The Wilderness Society's FOIA Requests

21. On March 25, 2003, TWS filed a FOIA request with DOI after learning that several members of Congress had raised concerns with the department concerning its wilderness inventory authority and practices.

22. In particular, TWS understood that Representative Hansen sent a letter to Secretary Norton, dated May 15, 2001, in which he detailed his concerns with the Wilderness Inventory Handbook, which governed the management of WSAs. In addition, TWS understood that DOI had been contacted by members of Congress and other elected officials regarding the designation and management of WSAs, the wilderness review process for DOI lands in Alaska, and the treatment of other wilderness-quality lands.

23. On March 28, 2003, three days after TWS filed its original FOIA request, the State of Utah filed a third amended complaint in its long-dormant Utah lawsuit. Just 14 days later, on Friday April 11, 2003, Utah and BLM filed a Stipulation and Join Motion to Enter Order Approving Settlement. The district court in Utah approved the settlement the following business day. In that settlement, DOI agreed to a radically new interpretation of the wilderness provisions of FLPMA, an interpretation contradicted by 26 years of agency practice and federal caselaw. Under this new interpretation, BLM would no longer be able to carry out wilderness inventories on its lands and would not be able to protect wilderness quality lands by designating them as WSAs through the agency's land management planning process.

24. On Monday, April 14, the very day the settlement was approved by the Utah court, TWS filed a second FOIA request in which it asked for copies of all records related to the Utah settlement agreement. In that same letter, TWS also updated its March 25 request by requesting that DOI provide TWS with any responsive documents that had been received or created by the agency in the three weeks between the original FOIA request and the approval of the Utah settlement.

DOI's Response to Plaintiff's FOIA Requests

Response to March 25, 2003 FOIA Request

25. On March 26, 2003, TWS received a note from the Office of the Secretary acknowledging TWS's March 25, 2003 request. The note also stated that TWS's document request had been referred to several offices within the Office of the Secretary.

26. On April 1, the Office of Congressional and Legislative Affairs contacted a TWS representative and asked TWS to narrow the scope of its FOIA request. On April 2, TWS received a letter from the Office of the Secretary informing TWS that the Office of the Secretary would respond on behalf of the entire Department and confirming the April 1 telephone conversation and the Department's request that TWS narrow its FOIA request.

27. On April 3, 2002, TWS wrote to the Office of the Secretary agreeing that the scope of the request would be narrowed to include:

All controlled correspondence to elected, appointed, and career officials, and from election, appointed and career officials, since January 20, 2001, concerning "wilderness review issues" [as defined via the footnote on page 2 of your April 2] on file in headquarters office of the National Park Service, the U.S. Fish & Wildlife Service, the Bureau of Land Management, all BLM offices I the State of Utah, and the Office of the Secretary.

All documents, excluding email messages, since January 20, 2001 developed, written, submitted, received or compiled in response to the documents outlined in 1., above, on file in the Office of the Secretary and in all Alaska office of the NPS, FWS and BLM.

28. On April 14, 2003, TWS received some of the documents that it had requested. In the accompanying letter from DOI, the Department stated that "[t]his completes the first installment of our response to your request. We hope to be able to complete our response to your FOIA request within the next several weeks."

29. Despite repeated requests by TWS over the past four months, DOI has refused to provide TWS with the remaining responsive documents.

Response to April 14, 2003 FOIA Request

30. On April 30, 2003, TWS received what DOI's Office of the Secretary characterized as the "first installment" of records responsive to TWS's April 14, 2003 request. This installment consisted of a mere four documents, totaling 11 pages.

31. On May 2, 2003, DOI mailed to TWS what the Office of the Secretary characterized as the "next installment" of records responsive to TWS's April 14, 2003 request. This installment consisted of 189 pages of documents, none of which were responsive to TWS's request for documents concerning the Utah settlement agreement. DOI's May 2 letter does not indicate that it constituted DOI's final and complete response to TWS's April 14 request.

32. DOI has failed to provide any additional documents or correspondence responsive to TWS's April 14, 2003 FOIA request over the intervening three and one-half months. During that period, TWS representatives have repeatedly called the Office of the Secretary and the Office of Congressional and Legislative Affairs in an effort to obtain the missing documents. In response to these repeated inquiries, DOI staff repeatedly stated that the records would be forthcoming in a matter of days.

FIRST CAUSE OF ACTION (Violation of the Freedom of Information Act)

33. The allegations contained in paragraphs 1-32 are incorporated herein by reference.

34. FOIA requires that a federal agency make available records "promptly" upon request, 5 U.S.C. § 552(a)(3)(A), that a federal agency determine "within 20 days" whether to comply with a request, and that the agency "immediately" notify the requester of the agency's

determination and of the right to appeal any adverse determination. 5 U.S.C. § 552(a)(6)(A)(i); see also 43 C.F.R. § 2.12(a) (DOI regulations implementing FOIA).

35. DOI has failed to make available the records requested on March 25, 2003 by TWS (as narrowed by TWS's letter of April 3, 2003, and updated on April 14), has failed to make a determination as to whether it would provide or withhold requested records, and has failed to notify TWS that it has the right to appeal any such decision.

36. DOI's failure to comply with its above-described duties violates FOIA, 5 U.S.C. §552(a)(6), and DOI regulations, 43 C.F.R. § 2.12(a), is arbitrary, capricious, and otherwise not in accordance with law, and/or constitutes final agency action unlawfully withheld or unreasonably delayed.

SECOND CAUSE OF ACTION
(Violation of the Freedom of Information Act)

37. The allegations contained in paragraphs 1-32 are incorporated herein by reference.

38. FOIA requires that a federal agency make available records "promptly" upon request, 5 U.S.C. § 552(a)(3)(A), that a federal agency determine "within 20 days" whether to comply with a request, and that the agency "immediately" notify the requester of the determination and of the right to appeal any adverse determination. 5 U.S.C. § 552(a)(6)(A)(i); see also 43 C.F.R. § 2.12(a) (DOI regulations implementing FOIA).

39. DOI has failed to make available the records requested on April 14, 2003 by TWS, has failed to make a determination as to whether it would provide or withhold requested records, and has failed to notify TWS that it has the right to appeal any such decision.

40. DOI's failure to comply with its above-described duties violates FOIA, 5 U.S.C. §552(a)(6), and DOI regulations, 43 C.F.R. § 2.12(a), is arbitrary, capricious, and otherwise not

in accordance with law, and/or constitutes final agency action unlawfully withheld or unreasonably delayed.

PRAYER FOR RELIEF

The Wilderness Society asks that this Court:

- (1) Declare that DOI's failure to provide TWS with all of the documents requested in TWS's March 25 and April 14 FOIA letters violated FOIA as set forth above;
- (2) Order DOI to immediately provide TWS with copies of all of the requested documents;
- (3) Grant TWS such other injunctive and declaratory relief as this Court deems just and proper.
- (4) Retain jurisdiction over this case to ensure compliance with this Court's decree; and
- (5) Award TWS its reasonable attorney fees, costs and expenses incurred in pursuing this action.

Respectfully submitted August _____, 2003,

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