



September 1, 2017

FOIA REQUEST

Interior Department
Office of the Secretary FOIA Officer
Clarice Julka
MS-7328, MIB
1849 C Street, NW
Washington, D.C. 20240

Bureau of Land Management
IRM Governance Division
Attn: FOIA, Washington Office Coordinators
Ryan Witt
MS-WO-640
1849 C Street, NW
Washington, D.C. 20240

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

ROCKY MOUNTAIN 633 17TH STREET, SUITE 1600 DENVER, CO 80202

T: 303.623.9466 F: 303.623.8083 RMOFFICE@EARTHJUSTICE.ORG
WWW.EARTHJUSTICE.ORG

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



August 25, 2017

FOIA REQUEST

Interior Department
Office of the Secretary FOIA Officer
Clarice Julka
MS-7328, MIB
1849 C Street, NW
Washington, D.C. 20240

Bureau of Land Management
IRM Governance Division
Attn: FOIA, Washington Office Coordinators
Ryan Witt
MS-WO-640
1849 C Street, NW
Washington, D.C. 20240

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:

- **The report on national monuments and the Antiquities Act given by Secretary of the Interior Ryan Zinke to the President of the United States on August 24, 2017, referred to in the Department of the Interior press release titled “Secretary Zinke Sends Monument Report to the White House”;¹ and**
- **Attachments, summaries, cover letters, communications, or other records relating to the report that the Department of Interior or Secretary Zinke gave to the White House, to members of Congress, to state officials, or to any other entities.**

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.

¹ <https://www.doi.gov/pressreleases/secretary-zinke-sends-monument-report-white-house>

ROCKY MOUNTAIN 633 17TH STREET, SUITE 1600 DENVER, CO 80202

T: 303.623.9466 F: 303.623.8083 RMOFFICE@EARTHJUSTICE.ORG
WWW.EARTHJUSTICE.ORG

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 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

There is an urgent need to inform the public of Secretary Zinke’s recommendations and the implications of those recommendations on the fate of the national monuments subject to the review. News reports indicate that President Trump will act expeditiously on Secretary Zinke’s recommendations by signing an executive order that will alter the future management and protection of some of these widely-cherished national monuments.² 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.

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

² 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>

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 the Requesters will disseminate the information as a primary part of their organizations' missions.

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

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,

A handwritten signature in black ink that reads "Heidi McIntosh". The signature is written in a cursive, flowing style.

/s/

Heidi McIntosh
Managing Attorney



August 24, 2017

FOIA Officer
Office of the Secretary
US Department of the Interior
E-Mail: osfoia@ios.doi.gov

RE: Request for National Monuments Final Report Transmitted from Secretary Zinke to President Trump Per Executive Order 13792 of April 26, 2017 “Review of Designations Under the Antiquities Act” and related documents

Request for Expedited Processing

“Other” fee requester category; fee waiver request included

Dear FOIA Officer,

On behalf of the Sierra Club, I hereby submit the following request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and its implementing regulations, 43 C.F.R. §§ 2.1–2.34, seeking records held by the Department of Interior (DOI) generated in response to Executive Order 13792, as explained in detail below.

In Executive Order 13792 of April 26, 2017, “Review of Designations Under the Antiquities Act,” the President required the Secretary of Interior to submit, within 120 days of the date of the order “a final report to the President, through the Director of the Office of Management and Budget, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chairman of the Council on Environmental Quality, summarizing the findings of the review described in subsection (a) of [section 2 of the] order.” 82 Fed. Reg. 20,430. The Executive Order required that “[t]he final report shall include

recommendations for such Presidential actions, legislative proposals, or other actions consistent with law as the Secretary may consider appropriate to carry out the policy set forth in section 1 of [the] order.” *Id.*

Today, August 24th, the Department of Interior published a press release announcing that the Secretary had transmitted the final report. However the Department of the Interior has not made that final report available to the public. Instead, DOI has published only a two-page “summary” of the review process, lacking any specific recommendations regarding specific National Monuments that were subjected to the “review.”

Pursuant to FOIA and DOI’s implementing regulations for it, the Sierra Club requests:

1. The full text of the final report that was transmitted from the Secretary of Interior to the President. (Referred to hereafter as the “Final Report”).
2. Any documents upon which the recommendations in the Final Report to modify the boundaries or management of specific national monument rely.
3. Any communications regarding recommendations for modifications of the boundaries or management of specific national monuments exchanged between Secretary Zinke and federal, state, or local officials, or business interests, such as parties with mining, oil and gas, timber, or grazing interests.

Excluded Documents

This request does *not* include a request for the public comments that were submitted on the public docket in response to the public comment period on the National Monuments that Secretary Zinke held prior to completing the Final Report. To the extent that the Final Report

includes these voluminous materials as an attachment or appendix, Sierra Club excludes any such compendium of comments from the public docket from this request.

This request also excludes any other documents that are already publicly available.

Records Delivery

We urge DOI to make the response to this FOIA request available online per 5 U.S.C. § 552(a)(2)(D)(i)(II), as the Final Report is likely to be the subject of numerous independent FOIA requests.

We request that DOI, in responding to this request, comply with all relevant deadlines and other obligations set forth in FOIA. 5 U.S.C. § 552, (a)(6)(A)(i). Please produce the forthcoming records, as noted above, as they are received by DOI. In particular, as discussed below, please provide expedited processing for the request for the Final Report itself. Please produce the requested records on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

The Sierra Club prefers electronic copies of all responsive documents.

Withheld Documents

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the agency must include the following information:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and

2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club.

Request for Expedited Processing for the Final Report

Both the Executive Order and Secretary Zinke's Order implementing it have heavily emphasized the importance of providing opportunities for public comment in connection with decisions about National Monuments. *See* 82 Fed. Reg. 22,016 (seeking public comment on the National Monuments). The purpose of the Secretary's Final Report is ostensibly to inform recommendations that the President will make to Congress regarding changes to specific national monument boundaries, and to inform decisions that the President will make regarding the monuments. As the Secretary's recommendations have now been given to the President, there is an urgent need to inform the public of the Secretary's conclusions so that the public may evaluate the Secretary's conclusions and inform the President and their Congressional representatives about their evaluation of the Final Report prior to the time of any decisions related to the monuments.

Moreover, the Secretary has in the past weeks incrementally released information about his recommendation for a few of the monuments that will be addressed in the Final Report, but not for the others.¹ The fact that the Secretary has released specific recommendations about some

¹ Prior to the August 24th deadline, the Secretary of Interior released a series of statements indicating that he would recommend no changes to a number of the 27 monuments subjected to the review. These monuments included Sand to Snow National Monument in California, Canyons of the Ancients National Monument in Colorado, Craters of the Moon National Monument in Idaho, Grand Canyon-Parashant National Monument in Arizona, Hanford Reach

of the monuments covered by the Final Report demonstrates that these recommendations constitute information that *can and should* be made available to the public, and that they should be made available to the public as soon as they are available.

Finally, the Final Report is a discrete and readily identifiable document, making it unnecessary to conduct any extensive records searches to comply with this request. The Executive Order itself makes clear that the report that was to be transmitted from the Secretary to the President today is a *final* report, not a draft of any kind. Thus, there is no credible basis to withhold the report that was transmitted today on the ground that it is non-final.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.19. The Sierra Club has spent years promoting the public interest through the development of policies that provide enhanced environmental protection, particularly for public lands, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, non-profit, environmental organization with no commercial interest in obtaining the requested information. Instead, our organization intends to use the requested information to inform the public so that the public can meaningfully participate in protecting the nation's National Monuments.

As explained more fully below, the above referenced FOIA request satisfies the fee waiver criteria listed in 43 C.F.R. § 2.19 of the Department of Interior's FOIA regulations, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the

National Monument in Washington, and Upper Missouri River Breaks National Monument in Montana.

An August 7, 2017 e-mail message written by Senator John McCain to a constituent indicated that the Interior Department had informed his office that none of the four monuments in Arizona subject to the review would be rescinded or reduced in size as a result of the review.

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)(iii), *see also* 43 C.F.R. § 2.19(b).

I. The requested disclosure is in the public interest and is likely to contribute significantly to public understanding of the Secretary of Interior’s intentions for the future management of public lands within National Monuments

To be eligible for a full fee waiver, FOIA requires that the requested information “contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45(a)(1). DOI’s regulations set forth four factors FOIA Officers will consider in determining whether a request meets this FOIA requirement. 43 C.F.R. § 2.48. Because this request meets each of these four factors, the Sierra Club has shown that the disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

A. This request concerns the operations or activities of the federal government

DOI regulations require requesters to demonstrate that disclosure of the requested records is “[i]n the public interest because it is likely to contribute significantly to public understanding of government operations or activities.” 43 C.F.R. § 2.45(a)(1). To evaluate this standard, the FOIA officer will consider, *inter alia*, a requester’s explanation of “[h]ow the records concern the operations or activities of the Federal government.” *Id.* § 2.48(a)(1).

The Final Report and the records on which it relies concern the operations or activities of the Federal government because they have been generated by a federal agency in response to a Executive Order and pursuant to a Secretarial Order. Further, the Final Report and related records describe how the Secretary of Interior views designated National Monuments, which are

public lands under the management of the Secretaries of Interior and Agriculture that have received special protection under federal law—the Antiquities Act. The Final Report reveals the views of the Secretary on the proper future management by the federal government of these public lands, and will provide insight about future decisions by the Secretary and President related to the management of those lands. Thus, because these documents are generated by the federal government to describe its views and plans regarding the management of federal public lands, this request concerns the operations or activities of the federal government.

B. Disclosure is likely to contribute to public understanding of the operations and activities of the Department of Interior and the Agencies Thereunder

To evaluate the standard at 43 C.F.R. 2.45(a)(1), the FOIA officer will also consider a requester’s explanation of “[h]ow disclosure is likely to contribute to public understanding of those operations or activities, including: (i) How the contents of the records are meaningfully informative; [and] (ii) The logical connection between the content of the records and the operations or activities.” *Id.* § 2.48(a)(2)(i)–(ii).

The information about government operations contained in the Final Report and related records will meaningfully inform public understanding about the Administration’s plans for the future management of numerous specific National Monuments, a topic which has been the subject of intense public debate and controversy.

This information is highly relevant to the Sierra Club because we and our members are deeply concerned about how public lands within National Monuments are managed. Sierra Club members have a long history of advocacy and action to ensure that the remarkable features of the public lands within these National Monuments are protected under the Antiquities Act, and that the government’s management of these lands properly confers the protections mandated by the Act and the Presidential proclamations pursuant to it.

Obtaining the Final Report and related records will provide the Sierra Club with critical information about the future management of these public lands that otherwise would not be widely available to, or disseminated to, the public.

The Sierra Club and its members have long-standing experience and expertise in the subject area of this FOIA request, specifically the protection and management of public lands within National Monuments. With regard to the National Monuments to be addressed in the Final Report, Sierra Club and its members have advocated for National Monument designations, commented on management plans, conducted on the ground volunteer activities to conserve important values within the monuments, and litigated to ensure that the protections lawfully due these remarkable lands were implemented properly.

The Sierra Club also has the ability and intention to disseminate the information it receives through FOIA. The information is disseminated through a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, emailing and list serve distribution to our members, and posting on the Club's website. Each month, the Sierra Club website receives approximately 850,000 visits. Sierra Magazine, which is published bimonthly by the Sierra Club, reaches more than a million people across North America. Sierra Club Insider, our e-newsletter, is sent to over a million people twice a month. In addition, Sierra Club disseminates information obtained through FOIA through comments to administrative agencies, and when necessary, through the judicial system. The Sierra Club has already published, posted, and disseminated numerous sources of information on National Monuments, and the review process which led up to the Final Report.

Thus, Sierra Club unquestionably has the “specialized knowledge” to address the issue of National Monuments; the “ability and intention” to disseminate the information requested; and to do so in a manner that contributes to the understanding of the “public-at-large.”

C. Disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject.

To evaluate the standard at 43 C.F.R. 2.45(a)(1), the FOIA officer will also consider a requester’s explanation of “[h]ow 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.” *Id.* at 2.48(a)(3). The FOIA officer will consider whether the information requested is new, *id.* § 2.48(a)(3)(i), or already publicly available, *id.* § 2.48(a)(3)(iv), and whether disclosure will increase the level of public understanding that existed prior to disclosure, § *id.* § 2.48(a)(iii).

The Final Report and related records will enable Sierra Club to provide information to the public at large as to the current views of the Secretary of Interior regarding the proper management of federal lands within National Monuments. This information is essential to inform the public about potential changes to the management of those lands that the Secretary will either make himself, or request that the President or Congress make. Millions of Americans submitted public comments to Secretary Zinke as part of the public comment period that was intended to inform the conclusions in the Final Report. Thus it is obvious that there is a high level of public interest in the conclusions that the Secretary has reached, and any information and communications outside of those public comments that he has relied upon in reaching those conclusions.

Because DOI has yet to make those views known to the public, and has provided no public access to the specific recommendations for most of the monuments to be addressed by the Final Report, nor to the factual information or non-public communications underlying his conclusions, the information is new and is not publicly available at present. Sierra Club's dissemination of this information through social media and other public fora will therefore provide new insight to a broad audience of interested persons as to the consequences of Secretary's views for the future management of the public lands within the monuments that were subject to review. *See id.* at § 2.48(a)(3).

D. The public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

DOI regulations require consideration of whether the public's understanding of the subject will be enhanced to a *significant extent* by disclosure. 43 C.F.R. § 2.48(a)(4). FOIA's legislative history 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.

The protection of federal lands within National Monuments is an ongoing concern for Sierra Club's members, supporters, partner organizations, and the interested public. The responsive records Sierra Club has requested, and will disseminate to members, supporters, partner organizations, and the interested public, are essential in Sierra Club's efforts to protect the historic and scientific value of these lands for future generations, and ultimately to ensure

that these lands are managed in accordance with the protections afforded through the Antiquities Act.

The Final Report and related records will provide the public with final recommendations from the Secretary that the President is considering in determining whether to implement actions to alter the boundaries of National Monuments. At present, the public has no insight into the specific recommendations for the vast majority of the monuments that were to be addressed in the Final Report. Neither the recommendations for changes to monument boundaries nor the rationale and supporting documentation underlying them are presently available to the public. This information is absolutely essential to the public in making effective communications to the President and Congress regarding the future management and status of the lands within the National Monuments.

The Final Report and related records are therefore important new information that has not previously been disclosed, and disclosing it will increase public understanding of the subject above the level that currently exists.

Sierra Club plans to use the Final Report and related records to educate its members and the public at large about the Secretary's current views on the future management of public lands within the National Monuments. This information will improve the ability of the public to oversee and evaluate the Secretary's position and plans regarding management of public lands within National Monuments, and to communicate with the President and members of Congress regarding the status and management of these public lands. Therefore, disclosure of such records, and the analysis and dissemination of the information contained therein, will enhance to a significant extent the public's understanding of the subject of this FOIA request. *See* 43 C.F.R. § 2.48(a)(4).

II. Obtaining the information is of no commercial interest to the Sierra Club

The Sierra Club has no commercial interest in the requested records. Nor does the Club have any intention of using these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a tax-exempt organization under section 501(c)(3) and 501(c)(4) of the Internal Revenue Code. The requested records will be used for the furtherance of the Club’s educational mission to inform the public on matters of vital importance to the environment, wildlife, and natural resources.

If the requester does have a commercial interest, the fee waiver must not be granted unless the public interest in disclosure outweighs the requester’s commercial interest. As noted above, the Sierra Club has no commercial interest in the requested records. Therefore, this requirement is not applicable. If any commercial interest was present, however, it would be outweighed by the public interest in disclosure of the information sought.

For the aforementioned reasons, the Sierra Club qualifies for a fee waiver under the test set out under 43 C.F.R. § 2.19(b). Pursuant to the same rule, DOI should waive processing and copying fees for this FOIA request. If DOI does not agree to this fee waiver request, then I request that you contact me before incurring any copying or production fees.

If you require clarification of any aspect of this FOIA records request and fee waiver request, please contact me at karimah.schoenhut@sierraclub.org or 202-548-4584.

Sincerely,



Karimah Schoenhut

Staff Attorney
Sierra Club
Environmental Law Program
50 F Street NW, 8th Floor
Washington, DC 20001
Phone: 202-548-4584
karimah.schoenhut@sierraclub.org



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

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

Ryan Witt or FOIA Officer
BLM FOIA Officer
Bureau of Land Management
1849 C. Street NW, Rm 2134LM
Washington, DC 20240
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):

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)).

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.

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.

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 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

Attn: Landon Newell

425 East 100 South

Salt Lake City, UT 84111

or

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.

Sincerely,

/s/ Landon Newell

Landon Newell
Staff Attorney



May 11, 2017

EXPEDITED FOIA REQUEST

Freedom of Information Officer
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Via facsimile: (202) 456-2710 and
Via e-mail: efoia@ceq.eop.gov

Re: Expedited FOIA Request for Records Relating to Bears Ears National Monument

Greetings:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Council on Environmental Quality's (CEQ) implementing regulations, 40 C.F.R. § 1515 et seq., I request the following records:

- **All records related to President Obama's designation of the Bears Ears National Monument; and**
- **All records related to the review of Bears Ears National Monument pursuant to Executive Order 13792.**

We submit this expedited records request on behalf of the Southern Utah Wilderness Alliance, Natural Resources Defense Council, Grand Canyon Trust, Great Old Broads for Wilderness, National Parks Conservation Association, The Wilderness Society, and the Sierra Club (collectively, "the Requesters" unless specified otherwise). An expedited response to this request is necessitated by Executive Order 13792 (Apr. 26, 2017), which requires the Secretary of the Interior to provide an interim report on his review of the Bears Ears National Monument within 45 days. Together with the report, the Secretary must provide recommendations for future action, including potential changes to the Monument's status, within 45 days. As part of that process, a **15-day public review period will commence on May 11, 2017, and end on May 26, 2017**. The requested records will aid in the public understanding and comment related to the Bears Ears National Monument review; they will be of less utility if received after the comment period closes. If it facilitates your response to this request, we are amenable to your

ROCKY MOUNTAIN 633 17TH STREET, SUITE 1600 DENVER, CO 80202

T: 303.623.9466 F: 303.623.8083 RMOFFICE@EARTHJUSTICE.ORG
WWW.EARTHJUSTICE.ORG

providing the records in batches as they are identified, as long as all the records are provided within the applicable response deadline.

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 recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained. Note that we do not seek any records that have already been published and are in the public domain.

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).

FEE WAIVER REQUEST

The Requesters meet the fee waiver requirements of § 552(a)(4)(A) and 40 C.F.R. § 1515.15 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 \$250.00.

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); 40 C.F.R. § 1515.15(b) (CEQ 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 CEQ regulations implementing FOIA’s fee waiver provision, 40 C.F.R. § 1515.15(b)(1)-(6), identify six specific criteria to determine whether a fee should be waived:

- (1) Whether the subject of the requested records “specifically concerns identifiable operations or activities of the government”;
- (2) Whether the information is already in the public domain;
- (3) Whether the disclosure “would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population”;
- (4) Whether the disclosure would “significantly enhance the public’s understanding” of the subject;
- (5) Whether the disclosure would further a commercial interest of the requester; and
- (6) Whether the public interest is greater than any commercial interest of the requester.

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

A. The Records Specifically Concern the Operations or Activities of the Federal Government (40 C.F.R. § 1515.15(b)(1)).

The Requesters seek records acquired or created by CEQ regarding the Bears Ears National Monument, which was designated pursuant to a Presidential Proclamation on December 28, 2016. The Monument includes federal public lands of national interest managed by the U.S. Forest Service and the Bureau of Land Management (BLM) pursuant to federal law and is the subject of an ongoing review of national monuments pursuant to Executive Order 13792.

B. The Information is Not in the Public Domain (40 C.F.R. § 1515.15(b)(2)).

The Requesters seek records that currently remain solely in the hands of executive agencies and not disclosed to the public. On information and belief, these records include, but are not limited to, records submitted to CEQ and the White House by the Departments of the Interior and Agriculture (and their constituent bureaus and agencies), and which informed former President Obama’s decision to designate the Bears Ears National Monument.

C. Disclosure is Likely to Contribute Significantly to the Understanding of a Reasonably Broad Audience of Persons Interested in the Protection of Bears Ears National Monument, Beyond the Requesters' Individual Understanding (40 C.F.R. § 1515.15(b)(3)).

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 contained in the requested records will increase the level of public understanding beyond that which existed prior to disclosure. 40 C.F.R. § 1515.15(b)(2)-(3).

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 the current and future management and status of Bears Ears National Monument. The numerous articles cited in the footnotes throughout this request concerning the Bears Ears National Monument 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 the management, decisions, and actions regarding the Bears Ears National Monument and the objects described in the proclamation establishing the Monument. 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 (holding that benefit to a population group of some size distinct from the requester alone is sufficient); Carney v. U.S. Dep’t of Justice, 19 F.3d 807, 815 (2d Cir. 1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own interests); Cnty. Legal Servs. v. HUD, 405 F. Supp. 2d 553, 557 (E.D. Pa. 2005) (noting, in granting fee waiver to community legal group, 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”); 40 C.F.R. § 1515.15(b)(3). Accordingly, the Requesters have met this prong of the fee waiver test.

Further, the Requesters will contribute significantly to the public understanding of the federal government’s decision-making process regarding the Bears Ears National Monument because the records sought are new and have not been disclosed to the public. See 40 C.F.R. § 1515.15(b)(2). The records may also confirm, clarify, or contradict documents or statements that are in the public domain and/or which have previously been released to the public. Id. Indeed, because the requested records have not been released and are not in the public domain, the public does not currently have the ability to evaluate them. See Cnty. Legal Servs., 405 F. Supp. 2d at 560 (finding that because requested records “clarify important facts” about agency policy, “the CLS request would likely shed light on information that is new to the interested public”).

D. Disclosure Would Significantly Enhance Public Understanding of the Current and Future Management of Bears Ears National Monument (40 C.F.R. § 1515.15(b)(4)).

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).

The legislative history of FOIA makes clear that the “significance” prong of the 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.

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, 19 F.3d at 807. 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 CEQ records related to the Bears Ears National Monument. Disclosure will foster a better public understanding of the basis for decisions by the Obama and Trump administrations regarding current and future management of the Bears Ears National Monument, a issues which has received significant and broad public

attention in the media.¹ See 40 C.F.R. § 1515.15(b)(3) (requiring requester to show that the “disclosure will contribute to the understanding of the public-at-large as opposed to a narrow segment of the population”). The Requesters have extensive experience disseminating public records and analysis to the public, media, and decision makers; they routinely communicate with the public and the media on issues related to the protection of public lands; sites of historic, cultural, and scientific importance; and Bears Ears, specifically. As discussed below, numerous articles, press releases, and websites attesting to the Requesters’ expertise on the Bears Ears 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 Grand Canyon Trust, with over 4,000 members, was established in 1985 to protect and restore the Colorado Plateau. As part of its mission, it also “supports tribal communities in their efforts to protect natural and cultural resources,” including those now protected within the Bears Ears National Monument.² Portions of the Trust’s website are dedicated to informing its members and the public about Bears Ears National Monument, opportunities to learn more about the land, and opportunities for action and public input on the designation decision. It has included articles about Bears Ears in its member magazine. Executive Director Bill Hedden has penned editorials about Bears Ears in the Salt Lake Tribune,³ and his words, and those of other Trust officers, have appeared in many regional articles and publications.⁴

Great Old Broads for Wilderness, founded in 1989 with a mission of protecting wilderness and wild places for future generations, now has 36 local chapters throughout the

¹ https://www.nytimes.com/2017/05/05/opinion/trump-antiquities-act-utah.html?_r=0 ;
<https://www.nytimes.com/2017/05/06/opinion/sunday/will-bears-ears-be-the-next-standing-rock.html> ;
<https://www.nytimes.com/2017/04/26/climate/antiquities-act-federal-lands-donald-trump.html> ;
https://www.washingtonpost.com/national/health-science/bears-ears-is-a-national-monument-now-but-it-will-take-a-fight-to-save-it/2017/03/22/c927a35a-05a5-11e7-b9fa-ed727b644a0b_story.html?utm_term=.9b979f32e7bb ; <http://time.com/4721490/bears-ears-donald-trump-hatch/>

² <http://www.grandcanyontrust.org/native-america>

³ <http://www.sltrib.com/opinion/3883842-155/op-ed-tribes-involvement-would-make-bears> ;
<http://www.sltrib.com/opinion/4732301-155/op-ed-midnight-monument-no-utah-leaders>

⁴ <http://grandcanyontrust.nonprofitsoapbox.com/bears-ears> ;
<http://www.grandcanyontrust.org/blog/bears-ears-needs-you> ;
<http://grandcanyontrust.nonprofitsoapbox.com/protectbears> ;
<http://www.grandcanyontrust.org/bears-ears-cultural-landscape> ;
<http://www.grandcanyontrust.org/protecting-our-canyonlands> ;
<http://www.grandcanyontrust.org/advocatemag/fall-winter-2016/proposed-bears-ears-national-monument> ;
<http://www.sltrib.com/opinion/4732301-155/op-ed-midnight-monument-no-utah-leaders> ;
<http://www.hcn.org/articles/in-love-with-the-wild-thoughts-on-public-lands-in-21st-century-Escalante-Grand-Canyon-Bears-Ears-wilderness>

nation, and over 5,000 members and supporters. It organizes recreational and volunteer events in iconic wild places — including a camping trip in the Bears Ears — designed to educate the public about the history of the area and the proposed monument protections.⁵ It has voiced its support for Bears Ears as a national monument to the BLM and has issued press releases detailing opportunities for public input.⁶

Since its founding in 1919, the National Parks Conservation Association has grown to a membership base of over one million. It actively informs and organizes its members and engages policy-makers to protect iconic wild lands and enhance the National Park System. It widely distributed information regarding Bears Ears and opportunities for public input on the proposed monument through its website and through public action alerts,⁷ and it has been recognized as an impassioned advocate for protecting the Bears Ears area.⁸

The Sierra Club is one of the oldest and most influential environmental organizations in the United States. Its mission includes, among other things, engaging its members and the public to protect public lands and wildlife habitat. It is a longstanding and active public advocate on behalf of public lands, national monuments, and the Bears Ears National Monument designation. It has disseminated extensive information about Bears Ears to its approximately 774,000 members and supporters, as well as to the general public through press releases, its website, published opinion pieces, and alerts to members.⁹

⁵ http://www.greatoldbroads.org/?event=bears-ears-broadwalk&event_date=2016-09-22 ;
<https://www.torreyhouse.org/single-post/2016/10/13/Bears-Ears-and-the-Great-Old-Broads>

⁶ <http://www.greatoldbroads.org/press-releases/great-old-broads-for-wilderness-joins-native-american-tribes-to-call-for-president-obama-to-designate-bears-ears-as-a-national-monument/>

⁷ <https://www.npca.org/events/136-southern-utah-conservation-public-meeting#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ;
<https://www.npca.org/articles/1437-president-preserves-iconic-canyon-country-with-bears-ears-national-monument#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ;
<https://www.npca.org/advocacy/46-one-of-our-newest-national-monuments-is-at-risk#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ;
https://www.washingtonpost.com/national/health-science/with-new-monuments-in-nevada-utah-obama-adds-to-his-environmental-legacy/2016/12/28/e9833f62-c471-11e6-8422-eac61c0ef74d_story.html?utm_term=.a5031b2ba208

⁸ <http://www.nationalparkstraveler.com/2016/12/bears-ears-jigsaw-piece-southeastern-utahs-national-park-landscape-declared-national>

⁹ <http://www.sierraclub.org/michael-brune/2016/07/its-time-protect-bears-ears> ;
<http://www.sierraclub.org/sierra/2016-4-july-august/green-life/fight-protect-bears-ears> ;
<http://www.sierraclub.org/lay-of-the-land/2017/02/stand-bears-ears> ;
<http://www.sierraclub.org/sierra/green-life/antiquities-act-has-paved-way-for-some-america-s-most-awesome-national-parks-now> ; <https://sierra.secure.force.com/actions/National?actionId=AR0072730> ;
<https://medium.com/@utahsierraclub/protection-for-bears-ears-at-last-b7e2d0c03e7e> ;
http://www.huffingtonpost.com/michael-brune/on-the-road-to-red-rock_b_7625292.html ;

Since 1983, the Southern Utah Wilderness Alliance (SUWA) has worked to protect the outstanding red rock wilderness of the American southwest 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 the Monument. SUWA officials have been quoted extensively regarding Bears Ears in the media.¹⁰

The Natural Resources Defense Council (NRDC) is an environmental nonprofit 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 about Bears Ears on its website¹¹ and has publicized issues related to the monument on Facebook and Twitter. NRDC staff members and spokespeople have been quoted in national news coverage and have written op-eds regarding Bears Ears and the need for protections there.¹² 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.

The Wilderness Society (TWS) is a nonprofit corporation devoted to preserving wilderness, forests, parks, rivers, deserts, and shorelands, and is committed to fostering an American land ethic. Its mission is to protect wilderness and inspire Americans to care for our wild places. TWS's interest in obtaining the requested information is to advance TWS's understanding, and that of the public, on the nature of the Bears Ears National Monument

<http://www.climbing.com/news/in-depth-bears-ears-and-the-ongoing-battle-to-protect-us-climbing-areas/> ; <http://www.ecowatch.com/bears-ears-gold-butte-2169858371.html>

¹⁰ <https://suwa.org/issues/bears-ears/> ; <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-americas>

¹¹ <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>

¹² 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>

designation. TWS has been active in this designation for years, including asking its members and supporters to advocate for protecting the Bears Ears region.¹³ TWS has also been a spokesperson for the protection of the monument in the news media.¹⁴ As a nonprofit organization, TWS is not involved in organization or trade; TWS does not seek this information for commercial use.

As shown above, the requested records will support public oversight by allowing the public to better understand the initial decision to designate the Bears Ears National Monument, the administration's intent to implement the proclamation that established the Monument, as well as the current review process and how to engage in it. Debate and oversight of decisions regarding Bears Ears will be better informed by the release of these records, none of which have been divulged or presented to the public. See 40 C.F.R. § 1515.15(b)(2). Each of the Requesters has the expertise and capacity effectively to analyze and distribute to the interested public information contained in records responsive to this request. See 40 C.F.R. § 1515.15(b) (requiring disclosure not to be primarily in the commercial interest of the requester). Accordingly, they have satisfied this prong of the fee waiver test.

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).

All of the Requesters 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. Their requested disclosure is solely in the public's interest. See 40 C.F.R. § 1515.15(b)(6). In light of absence of commercial interest, the balancing test set forth in 40 C.F.R. § 1515.15(b)(5)-(6) is inapplicable.

¹³ <http://wilderness.org/tell-president-obama-%E2%80%9Cbears-ears%E2%80%9D-region-utah-needs-protection-drilling-mining-and-vandalism> ;
<http://wilderness.org/bears-ears%E2%80%94dont-let-special-place-be-erased> ;
<http://wilderness.org/photo-gallery-utahs-bears-ears-region-natural-cultural-treasure> ;
<http://wilderness.org/press-release/bears-ears-region-and-public-lands-initiative-time-national-monument>

¹⁴ <http://www.sltrib.com/home/4238931-155/obamas-environmental-legacy-some-24-national> ;
<http://www.eenews.net/stories/1060023763>

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

REQUEST FOR EXPEDITED PROCESSING

As noted at the outset, we request expedited processing of this request pursuant to 40 C.F.R. § 1515.7. There is an urgent need to inform the public about the administration's ongoing review of the Bears Ears National Monument and the government records related to the Monument given the June 10, 2017 deadline by which the Secretary must provide an interim report and recommendations to the President based on his review of the Monument. See Executive Order 13792, Sec. 2(d). This creates a critical and time-sensitive need to provide the requested records to the public to facilitate broad and informed public engagement in the review and subsequent decisions concerning the Monument's future status as soon as possible.

Further, the proclamation establishing the Monument directed the BLM to initiate planning for the Monument that would protect its objects of scientific and historic importance, and the Requesters intend to participate in that process, both as members of the public and, in some cases, as members of a stakeholders' advisory group, also established by the Proclamation. Threats to the conservation of the Monument are immediate and there is an urgent need for the immediate implementation of the prescribed protective measures. The public has a right to know what information was transmitted to the White House on this topic.

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

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, 40 C.F.R. § 1515.6(a). Your response to the request for expedited processing is due within 10 days. 40 C.F.R. § 1515.7(d). If you have any questions about this request, please contact me at 303-996-9621.

Sincerely,



/s/Heidi McIntosh
Managing Attorney



May 8, 2017

EXPEDITED FOIA REQUEST

Interior Department
Office of the Secretary FOIA Contact
Clarice Julka
MS-7328, MIB
1849 C Street, NW
Washington, DC 20240

Bureau of Land Management
IRM Governance Division
Attn: FOIA, Washington Office Coordinators
Ryan Witt
MS-WO-640
1849 C Street, NW
Washington, DC 20240

Via Email: os_foia@ios.doi.gov

Via e-mail: blm_wo_foia@blm.gov

Re: Expedited FOIA Request for Records Relating to Bears Ears National Monument

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 records related to the Bears Ears National Monument. The requested records include, but are not limited to the following:

- All records the Department of Interior and any of its agencies and bureaus (collectively, “DOI”) provided to the White House in connection with President Obama’s decision to designate the Bears Ears National Monument; and
- All records provided to, or created by, DOI in connection with Secretary Zinke’s review of the Bears Ears National Monument pursuant to President Trump’s April 26, 2017 Executive Order ([see https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act](https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act)) (the “Executive Order”).

This expedited request is made on behalf of the Southern Utah Wilderness Alliance, Natural Resources Defense Council, Grand Canyon Trust, Great Old Broads for Wilderness, National Parks Conservation Association, The Wilderness Society, and the Sierra Club (collectively, “the Requesters” unless specified otherwise).

ROCKY MOUNTAIN 633 17TH STREET, SUITE 1600 DENVER, CO 80202

T: 303.623.9466 F: 303.623.8083 RMOFFICE@EARTHJUSTICE.ORG
WWW.EARTHJUSTICE.ORG

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 their March 31, 2017 FOIA Request (control number OS-2017-00387).

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 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).

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 \$250.00.

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)).

The Requesters seek records acquired or created by DOI and BLM regarding the Bears Ears National Monument, which includes federal public lands of national interest managed by the U.S. Forest Service and BLM pursuant to federal law and which is the subject of an ongoing review on national monuments pursuant to the Executive Order.

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. Dep't of Justice, 19 F.3d 807 (2d 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 Monument. 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; they routinely communicate with the public and the media on issues related to the protection of public lands; sites of historic, cultural, and scientific importance; and Bears Ears, specifically. As discussed below, numerous articles, press releases, and websites attesting to the Requesters’ expertise on the Bears Ears 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 Grand Canyon Trust, with over 4,000 members, was established in 1985 to protect and restore the Colorado Plateau. As part of its mission, it also “supports tribal communities in their efforts to protect natural and cultural resources,” including those now protected within the Bears Ears National Monument.¹ Portions of the Trust’s website are dedicated to informing its members and the public about Bears Ears National Monument, opportunities to learn more about the land, and opportunities for action and public input on the designation decision. It has included articles about Bears Ears in its member magazine. Executive Director Bill Hedden has penned editorials about Bears Ears in the Salt Lake Tribune,² and his words, and those of other Trust officers, have appeared in many regional articles and publications.³

¹ <http://www.grandcanyontrust.org/native-america>

² <http://www.sltrib.com/opinion/3883842-155/op-ed-tribes-involvement-would-make-bears> ;
<http://www.sltrib.com/opinion/4732301-155/op-ed-midnight-monument-no-utah-leaders>

³ <http://grandcanyontrust.nonprofitsoapbox.com/bears-ears> ;
<http://www.grandcanyontrust.org/blog/bears-ears-needs-you> ;
<http://grandcanyontrust.nonprofitsoapbox.com/protectbears> ;
<http://www.grandcanyontrust.org/bears-ears-cultural-landscape> ;
<http://www.grandcanyontrust.org/protecting-our-canyonlands> ;
<http://www.grandcanyontrust.org/advocatemag/fall-winter-2016/proposed-bears-ears-national-monument> ;
<http://www.sltrib.com/opinion/4732301-155/op-ed-midnight-monument-no-utah-leaders> ;
<http://www.hcn.org/articles/in-love-with-the-wild-thoughts-on-public-lands-in-21st-century-Escalante-Grand-Canyon-Bears-Ears-wilderness>

Great Old Broads for Wilderness, founded in 1989 with a mission of protecting wilderness and wild places for future generations, now has 36 local chapters throughout the nation, and over 5,000 members and supporters. It organizes recreational and volunteer events in iconic wild places — including a camping trip in the Bears Ears — designed to educate the public about the history of the area and the proposed monument protections.⁴ It has voiced its support for Bears Ears as a national monument to the BLM and has issued press releases detailing opportunities for public input.⁵

Since its founding in 1919, the National Parks Conservation Association has grown to a membership base of over one million. It actively informs and organizes its members and engages policy-makers to protect iconic wild lands and enhance the National Park System. It widely distributed information regarding Bears Ears and opportunities for public input on the proposed monument through its website and through public action alerts,⁶ and it has been recognized as an impassioned advocate for protecting the Bears Ears area.⁷

The Sierra Club is one of the oldest and most influential environmental organizations in the United States. Its mission includes, among other things, engaging its members and the public to protect public lands and wildlife habitat. It is a longstanding and active public advocate on behalf of public lands, national monuments, and the Bears Ears National Monument designation. It has disseminated extensive information about Bears Ears to its approximately 774,000 members and supporters, as well as to the general public through press releases, its website, published opinion pieces, and alerts to members.⁸

⁴ http://www.greatoldbroads.org/?event=bears-ears-broadwalk&event_date=2016-09-22 ;
<https://www.torreyhouse.org/single-post/2016/10/13/Bears-Ears-and-the-Great-Old-Broads>

⁵ <http://www.greatoldbroads.org/press-releases/great-old-broads-for-wilderness-joins-native-american-tribes-to-call-for-president-obama-to-designate-bears-ears-as-a-national-monument/>

⁶<https://www.npca.org/events/136-southern-utah-conservation-public-meeting#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ;
<https://www.npca.org/articles/1437-president-preserves-ionic-canyon-country-with-bears-ears-national-monument#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ;
<https://www.npca.org/advocacy/46-one-of-our-newest-national-monuments-is-at-risk#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ;
https://www.washingtonpost.com/national/health-science/with-new-monuments-in-nevada-utah-obama-adds-to-his-environmental-legacy/2016/12/28/e9833f62-c471-11e6-8422-eac61c0ef74d_story.html?utm_term=.a5031b2ba208

⁷ <http://www.nationalparkstraveler.com/2016/12/bears-ears-jigsaw-piece-southeastern-utahs-national-park-landscape-declared-national>

⁸ <http://www.sierraclub.org/michael-brune/2016/07/its-time-protect-bears-ears> ;
<http://www.sierraclub.org/sierra/2016-4-july-august/green-life/fight-protect-bears-ears> ;
<http://www.sierraclub.org/lay-of-the-land/2017/02/stand-bears-ears> ;
<http://www.sierraclub.org/sierra/green-life/antiquities-act-has-paved-way-for-some-america-s-most-awesome-national-parks-now> ; <https://sierra.secure.force.com/actions/National?actionId=AR0072730> ;
<https://medium.com/@utahsierraclub/protection-for-bears-ears-at-last-b7e2d0c03e7e> ;

Since 1983, the Southern Utah Wilderness Alliance (SUWA) has worked to protect the outstanding red rock wilderness of the American southwest 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 the Monument. SUWA officials have been quoted extensively regarding Bears Ears in the media.⁹

The Natural Resources Defense Council (NRDC) is an environmental nonprofit 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 about Bears Ears on its website¹⁰ and has publicized issues related to the monument on Facebook and Twitter. NRDC staff members and spokespeople have been quoted in national news coverage and have written op-eds regarding Bears Ears and the need for protections there.¹¹ 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.

The Wilderness Society (TWS) is a nonprofit corporation devoted to preserving wilderness, forests, parks, rivers, deserts, and shorelands, and is committed to fostering an American land ethic. Its mission is to protect wilderness and inspire Americans to care for our wild places. TWS's interest in obtaining the requested information is to advance TWS's understanding, and that of the public, on the nature of the Bears Ears National Monument

http://www.huffingtonpost.com/michael-brune/on-the-road-to-red-rock_b_7625292.html ;
<http://www.climbing.com/news/in-depth-bears-ears-and-the-ongoing-battle-to-protect-us-climbing-areas/> ;
<http://www.ecowatch.com/bears-ears-gold-butte-2169858371.html>

⁹ <https://suwa.org/issues/bears-ears/> ; <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-americas>

¹⁰ <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>

¹¹ 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>

designation. TWS has been active in this designation for years, including asking its members and supporters to advocate for protecting the Bears Ears region.¹² TWS has also been a spokesperson for the protection of the monument in the news media.¹³ As a nonprofit organization, TWS is not involved in organization or trade; TWS does not seek this information for commercial use.

As demonstrated above, each of the Requesters has the expertise and capacity effectively to analyze and distribute to the interested public information contained in records responsive to this request. 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 Bears Ears National Monument, 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 Bears Ears National Monument because the records sought are new and have not been disclosed to the public. 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 Cmty. Legal Servs. v. HUD, 405 F. Supp. 2d 553, 560 (E.D. Pa. 2005) (finding that because requested records "clarify important facts" about 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 and protection for Bears Ears National Monument 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 management and status of Bears Ears National Monument. The numerous articles cited in this request concerning the Bears Ears National Monument attest to the broad public interest in this subject.

¹² <http://wilderness.org/tell-president-obama-%E2%80%9Cbears-ears%E2%80%9D-region-utah-needs-protection-drilling-mining-and-vandalism> ;
<http://wilderness.org/bears-ears%E2%80%94dont-let-special-place-be-erased> ;
<http://wilderness.org/photo-gallery-utahs-bears-ears-region-natural-cultural-treasure> ;
<http://wilderness.org/press-release/bears-ears-region-and-public-lands-initiative-time-national-monument>

¹³ <http://www.sltrib.com/home/4238931-155/obamas-environmental-legacy-some-24-national> ;
<http://www.eenews.net/stories/1060023763>

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 Bears Ears National Monument and the objects described in the proclamation establishing the Monument. 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 (holding that 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., 405 F. Supp. 2d at 557 (noting, in granting fee waiver to community legal group, 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 Bears Ears National Monument 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 Bears Ears National Monument and BLM's implementation of the proclamation that established the Monument. 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. All of the 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.

REQUEST FOR EXPEDITED PROCESSING

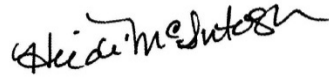
We request expedited processing of this request pursuant to 43 C.F.R. § 2.10 and § 2.20 because there is an urgent need to inform the public concerning the DOI and BLM's intended management and protection of the Bears Ears National Monument, particularly given the 45-day deadline by which the Secretary must provide an interim report to the President on his review of the Bears Ears National Monument and the critical need to provide the related records to the public to facilitate broad engagement in the review and decision making as soon as possible.

Further, the proclamation establishing the Monument directed the BLM to initiate planning for the Monument that would protect its objects of scientific and historic importance, and the Requesters intend to participate in that process, both as members of the public and, in some cases, as members of a stakeholders' advisory group, also established by the Proclamation. Threats to the conservation of the Monument are immediate and there is an urgent need for information about BLM's planning and its initiation of immediate protective measures. The public has a right to know what information and communications Secretary Zinke and the BLM have received on this topic.

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

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, 43 C.F.R. § 2.16(a), and not more than 10 days for a decision on our request for expedited processing, 43 C.F.R. § 2.20(d). If you have any questions in this matter, please contact me at 303-996-9621.

Sincerely,

A handwritten signature in black ink that reads "Heidi McIntosh". The signature is written in a cursive, slightly slanted style.

/s/Heidi McIntosh
Managing Attorney



March 30, 2017

FOIA REQUEST

Interior Department
Office of the Secretary FOIA Contact
Clarice Julka
MS-7328, MIB
1849 C Street, NW
Washington, DC 20240

Bureau of Land Management
IRM Governance Division
Attn: FOIA, Washington Office Coordinators
Ryan Witt
MS-WO-640
1849 C Street, NW
Washington, DC 20240

Via Email: os_foia@ios.doi.gov

Via e-mail: blm_wo_foia@blm.gov

Re: FOIA Request for Records Relating to Bears Ears National Monument

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:

All records dated or created after January 20, 2017 that relate to the Bears Ears National Monument. The requested records include, but are not limited to, communications (and references thereto) between the Department of Interior (DOI) and/or the Bureau of Land Management (BLM), including any member of the transition, landing or “beachhead” teams, and:

- 1. Members of the House of Representatives and their staff or agents;***
- 2. Members of the U.S. Senate and their staff or agents;***
- 3. Representatives of the White House, including President Trump;***
- 4. Representatives of the state of Utah, including Governor Herbert and his staff;***
- 5. Members of the Utah legislature and their staff or agents.***

This request is made on behalf of the Southern Utah Wilderness Alliance, Natural Resources Defense Council, Grand Canyon Trust, Great Old Broads for Wilderness, National Parks Conservation Association, The Wilderness Society, and the Sierra Club (collectively, “the Requesters” unless specified otherwise).

ROCKY MOUNTAIN 633 17TH STREET, SUITE 1600 DENVER, CO 80202

T: 303.623.9466 F: 303.623.8083 RMOFFICE@EARTHJUSTICE.ORG
WWW.EARTHJUSTICE.ORG

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 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).

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))

The Requesters seek records acquired or created by DOI and BLM regarding the Bears Ears National Monument, which includes federal public lands of national interest managed by the by the U.S. Forest Service and BLM pursuant to federal law.

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 Monument. 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, and Bears Ears, specifically. As discussed below, numerous articles, press releases, and websites attesting to the Requesters’ expertise on the Bears Ears 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 Grand Canyon Trust, with over 4,000 members, was established in 1985 to protect and restore the Colorado Plateau. As part of its mission, it also “supports tribal communities in their efforts to protect natural and cultural resources,” including those now protected within the Bears Ears National Monument.¹ Portions of the Trust’s website are dedicated to informing its members and the public about Bears Ears National Monument, opportunities to learn more about the land, and opportunities for action and public input on the designation decision. It has included articles about Bears Ears in its member magazine. Executive Director Bill Hedden has penned editorials about Bears Ears in the Salt Lake Tribune,² and his words, and those of other Trust officers, have appeared in many regional articles and publications.³⁴

¹ <http://www.grandcanyontrust.org/native-america>

² <http://www.sltrib.com/opinion/3883842-155/op-ed-tribes-involvement-would-make-bears> ;
<http://www.sltrib.com/opinion/4732301-155/op-ed-midnight-monument-no-utah-leaders>

³ <http://grandcanyontrust.nonprofitsoapbox.com/bears-ears> ;
<http://www.grandcanyontrust.org/blog/bears-ears-needs-you> ;
<http://grandcanyontrust.nonprofitsoapbox.com/protectbears> ;
<http://www.grandcanyontrust.org/bears-ears-cultural-landscape> ;
<http://www.grandcanyontrust.org/protecting-our-canyonlands> ;
<http://www.grandcanyontrust.org/advocatemag/fall-winter-2016/proposed-bears-ears-national-monument>

⁴ <http://www.sltrib.com/opinion/4732301-155/op-ed-midnight-monument-no-utah-leaders> ;
<http://www.hcn.org/articles/in-love-with-the-wild-thoughts-on-public-lands-in-21st-century-Escalante-Grand-Canyon-Bears-Ears-wilderness>

Great Old Broads for Wilderness, founded in 1989 with a mission of protecting wilderness and wild places for future generations, now has 36 local chapters throughout the nation, and over 5,000 members and supporters. It organizes recreational and volunteer events in iconic wild places – including a camping trip in the Bears Ears – designed to educate the public about the history of the area and the proposed monument protections.⁵ It has voiced its support for Bears Ears as a national monument to the BLM, and has issued press releases detailing opportunities for public input.⁶

Since its founding in 1919, the National Parks Conservation Association has grown to a membership base of over one million. It actively informs and organizes its members and engages policy-makers to protect iconic wild lands and enhance the National Park System. It widely distributed information regarding Bears Ears and opportunities for public input on the proposed monument through its website, and through public action alerts,⁷ and has been recognized as an impassioned advocate for protecting the Bears Ears area.⁸

The Sierra Club is one of the oldest and most influential environmental organizations in the United States. Its mission includes, among other things, engaging its members and the public to protect public lands and wildlife habitat. It is a longstanding and active public advocate on behalf of public lands, national monuments, and the Bears Ears National Monument designation. It has disseminated extensive information about Bears Ears to its approximately 45,000 members and supporters, as well as to the general public through press releases, its website, published opinion pieces, and alerts to members.⁹

⁵ http://www.greatoldbroads.org/?event=bears-ears-broadwalk&event_date=2016-09-22 ;
<https://www.torreyhouse.org/single-post/2016/10/13/Bears-Ears-and-the-Great-Old-Broads>

⁶ <http://www.greatoldbroads.org/press-releases/great-old-broads-for-wilderness-joins-native-american-tribes-to-call-for-president-obama-to-designate-bears-ears-as-a-national-monument/>

⁷ <https://www.npca.org/events/136-southern-utah-conservation-public-meeting#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ;
<https://www.npca.org/articles/1437-president-preserves-iconic-canyon-country-with-bears-ears-national-monument#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ;
<https://www.npca.org/advocacy/46-one-of-our-newest-national-monuments-is-at-risk#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ;
https://www.washingtonpost.com/national/health-science/with-new-monuments-in-nevada-utah-obama-adds-to-his-environmental-legacy/2016/12/28/e9833f62-c471-11e6-8422-eac61c0ef74d_story.html?utm_term=.a5031b2ba208

⁸ <http://www.nationalparkstraveler.com/2016/12/bears-ears-jigsaw-piece-southeastern-utahs-national-park-landscape-declared-national>

⁹ <http://www.sierraclub.org/michael-brune/2016/07/its-time-protect-bears-ears> ;
<http://www.sierraclub.org/sierra/2016-4-july-august/green-life/fight-protect-bears-ears> ;
<http://www.sierraclub.org/lay-of-the-land/2017/02/stand-bears-ears> ;
<http://www.sierraclub.org/sierra/green-life/antiquities-act-has-paved-way-for-some-america-s-most-awesome-national-parks-now> ; <https://sierra.secure.force.com/actions/National?actionId=AR0072730> ;
<https://medium.com/@utahsierraclub/protection-for-bears-ears-at-last-b7e2d0c03e7e> ;

Since 1983, the Southern Utah Wilderness Alliance (SUWA) has worked to protect the outstanding redrock wilderness of the American southwest, 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 the Monument. SUWA officials have been quoted extensively regarding Bears Ears in the media.¹⁰

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 in Bears Ears on its website,¹¹ as well as publicizing issues related to the monument on Facebook and Twitter. NRDC staffmembers and spokespeople have been quoted in national news coverage and have written op-eds regarding Bears Ears and the need for protections there.¹² 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.

The Wilderness Society (TWS) is a non-profit corporation devoted to preserving wilderness, forests, parks, rivers, deserts, and shorelands, and committed to fostering an American land ethic. Its mission is to protect wilderness and inspire Americans to care for our

http://www.huffingtonpost.com/michael-brune/on-the-road-to-red-rock_b_7625292.html ;
<http://www.climbing.com/news/in-depth-bears-ears-and-the-ongoing-battle-to-protect-us-climbing-areas/> ;
<http://www.ecowatch.com/bears-ears-gold-butte-2169858371.html> ;

¹⁰ <https://suwa.org/issues/bears-ears/> ; <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> ;

¹¹ <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>.

¹² 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>.

wild places. TWS's interest in obtaining the requested information is to advance TWS's understanding, as well as that of members of the public, of the nature of the designation of Bears Ears National Monument. TWS has been active in the designation of the Bears Ears National Monument for years, including asking our members and supporters to advocate for protecting the Bears Ears region.¹³ TWS has also been spokesperson for the protection of the Bears Ears National Monument in the news media.¹⁴ As a not-for-profit organization, TWS is not involved in organization or trade; TWS does not seek this information for commercial use.

As demonstrated above, each of the Requesters has 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 Bears Ears National Monument, 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 Bears Ears National Monument because the records sought are new and have not been disclosed to the public. 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 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 and protection for Bears Ears National Monument will increase the level of public understanding beyond that which existed prior to disclosure. 43 C.F.R. § 2.48(a)(3)(iii).

¹³ <http://wilderness.org/tell-president-obama-%E2%80%9Cbears-ears%E2%80%9D-region-utah-needs-protection-drilling-mining-and-vandalism>
<http://wilderness.org/bears-ears%E2%80%94dont-let-special-place-be-erased>
<http://wilderness.org/photo-gallery-utahs-bears-ears-region-natural-cultural-treasure>
<http://wilderness.org/press-release/bears-ears-region-and-public-lands-initiative-time-national-monument>

¹⁴ <http://www.sltrib.com/home/4238931-155/obamas-environmental-legacy-some-24-national>
<http://www.eenews.net/stories/1060023763>

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 management and status of Bears Ears National Monument. The numerous articles cited in this request concerning the Bears Ears National Monument 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 Bears Ears National Monument and the objects described in the proclamation that established the Monument. 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 Bears Ears National Monument 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 Bears Ears National Monument, and BLM's implementation of the proclamation that established the Monument. 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. All of the 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.

REQUEST FOR EXPEDITED PROCESSING

We request expedited processing of this request pursuant to 43 C.F.R. §2.10 and §2.20 because there is an urgent need to inform the public concerning the DOI and BLM’s intended management and protection of the Bears Ears National Monument and the Requesters will disseminate the information as a primary part of their organizations’ missions. Further, the proclamation establishing the Monument directed the BLM to initiate planning for the Monument that would protect its objects of scientific and historic importance and the Requesters intend to participate in that process, both as members of the public and, in some cases, as members of a stakeholders’ advisory group, also established by the Proclamation. Threats to the conservation of the Monument are immediate and there is an urgent need for information about BLM’s planning and its initiation of immediate protective measures. Finally, new reports indicate that Secretary Zinke will visit Utah soon to review the Monument and may make decisions about its future management and protection in the near future, adding to the urgency of the information sought. The public has a right to know what information and communications Secretary Zinke and the BLM have received on this topic.

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

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,

A handwritten signature in black ink, appearing to read "Heidi McIntosh". The signature is written in a cursive, flowing style.

/s/

Heidi McIntosh
Managing Attorney