

To: Edward Keable[edward.keable@sol.doi.gov]
From: Jorjani, Daniel
Sent: 2017-07-19T14:20:33-04:00
Importance: Normal
Subject: Fwd: Email Search Request - OS-2017-00704
Received: 2017-07-20T02:35:35-04:00
 FOIA Control Form (updated) (3).pdf
 17-00704qa.pdf

----- Forwarded message -----

From: **Bowman, Randal** <randal_bowman@ios.doi.gov>
Date: Mon, Jul 10, 2017 at 10:51 PM
Subject: Fwd: Email Search Request - OS-2017-00704
To: "Jorjani, Daniel" <daniel_jorjani@ios.doi.gov>

here is another - apparently sent it to draft for some reason

----- Forwarded message -----

From: **OS, OS FOIA** <osfoia@ios.doi.gov>
Date: Tue, Jun 20, 2017 at 2:14 PM
Subject: Email Search Request - OS-2017-00704
To: Downey Magallanes <downey_magallanes@ios.doi.gov>, Randal Bowman
 <Randal_Bowman@ios.doi.gov>, Timothy Williams <timothy_williams@ios.doi.gov>, Laura
 Rigas <laura_rigas@ios.doi.gov>, Caroline Boulton <caroline_boulton@ios.doi.gov>

OS FOIA has received a Freedom of Information Act request for which we believe your Office may have responsive materials. Please use the below chart, attached copy of the FOIA request, and attached FOIA Control Form to inform us of your search efforts.

- ☐ If available, please provide responsive documents to OS FOIA electronically (CD, FOIA DMU Processing Application, email, or thumb drive). Please note that Bison Connect can pull emails electronically with the DMU Processing App's and OS staff can assist with this tool. Please contact OS FOIA if electronic documents are not available.
- ☐ Please track the time required to search for these documents on the attached control form.
- ☐ If you have any questions regarding the specific guidance on copying, reviewing, and submitting documents to the OS FOIA office, please call 202-513-0765.

Please reply/send all items to osfoia@ios.doi.gov - Except "FOIA/DMU Processing Tool" searches (Please include osfoia@ios.doi.gov on all communications/discussions regarding this FOIA request.)	
Action Office: Office of the Secretary	Responsible Program Office: OS/Exec Sec

Current Date: 06/20/17	Due Date: 7/5/17
FOIA Request Control Number: OS-2017-00704	OS FOIA Contact (MIB 7328): Cindy Sweeney
Requester's Name: Katherine Desormeau	Amount Requester Is Willing To Pay: Fee Waiver Requested

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Department of the Interior
Office of the Secretary, FOIA Office
1849 C Street, NW, MS 7328
Washington, D.C. 20240
os_foia@ios.doi.gov
(202) 513 0765 phone
(202) 219 2374 fax

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OS, OS FOIA <osfoia@ios.doi.gov>

FOIA from: Katherine Desormeau

1 message

U.S. Department of the Interior <doi-webforms@ios.doi.gov>

Mon, Jun 12, 2017 at 6:55 PM

Reply-To: kdesormeau@nrdc.org

To: os_foia@ios.doi.gov

Submitted on Monday, June 12, 2017 - 6:55pm

Submitted by anonymous user: [10.156.8.158]

Submitted values are:

Your Name: Katherine Desormeau

Street Address: 111 Sutter Street, 21st floor

City: San Francisco

State or Country: CA

Zip or Postal Code: 94104

Address Type: Business

Daytime Phone Number: 4158756158

Fax Number: n/a

E-mail Address: kdesormeau@nrdc.org

Confirm E-mail Address : kdesormeau@nrdc.org

Your Organization: Natural Resources Defense Council

Are you filing the request on behalf of another party? Yes

If so, who are you filing the request on behalf of? Natural Resources Defense Council, Southern Utah Wilderness Alliance, and Grand Canyon Trust

Contact Information Certification: I certify that the above statement(s) concerning who I am filing the request on behalf of are true and correct to the best of my knowledge and belief. If I want to receive greater access to records about a person I represent, I will submit proof that the person consents to the release of the records to me, as discussed in 43 C.F.R. § 2.9.

Bureau/Office: Office of the Secretary (OS)

Relevant park, refuge, site or other location: Bears Ears National Monument

Request Description:

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC), together with the Southern Utah Wilderness Alliance (SUWA), and Grand Canyon Trust (collectively, "Requesters") to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq., and implementing regulations, 43 C.F.R. § 2.1 et seq.

I. Description of Records Sought

Please produce any and all records in the possession, custody, or control of the Department of the Interior ("the Department") relating to the Secretary of the Interior's "review" of the Bears Ears National Monument as described in Executive Order No. 13792 (Apr. 26, 2017), including but not limited to:

- Any and all public comments the Department has received relating to the Bears Ears National Monument from May 11, 2017, through the date of this letter, excluding comments that are publicly available in full at <https://www.regulations.gov/document?D=DOI-2017-0002-0001>;
- Any and all records relating to the Department's claim in Secretary Zinke's June 10, 2017 Memorandum to the President that it received approximately 76,500 comments on Bears Ears;
- Any and all records relating to the Department's statement in Secretary Zinke's June 10, 2017 Memorandum to the President that federal and state elected officials from Utah "strongly oppose" the current Bears Ears National Monument boundary;
- Any and all records (including agendas, minutes, attendee lists, and calendar entries) relating to any meetings between the Secretary of the Interior, or any other Department employees or agents, and "stakeholders" on Bears Ears, see U.S. Department of the Interior, Media Advisory: Secretary Zinke to Host Press Briefing on Bears Ears National Monument (June 12, 2017);

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- Any and all other records that the Secretary of the Interior or any other Department employees or agents considered or relied upon in conducting the "review" described in Section 2(a) of Executive Order No. 13792; and
 - The full text of the Secretary of the Interior's "interim report" described in Section 2(d) of Executive Order No. 13792, including any summaries, attachments, cover letters, or other related records.
- For purposes of this request, the term "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, summaries, memoranda, consultations, papers, studies, notes, field notes, drawings, surveys, maps, graphs, charts, photographs, videos, meeting notes or minutes, bibliographies, 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 any FOIA exemptions in response to this request, please include in your response sufficient information for us to assess the basis for the exemption(s), 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.

If you determine that portions of any requested records are exempt from disclosure, the FOIA requires that you produce any reasonably segregable non-exempt portions within the statutory time limit. See 5 U.S.C. § 552(b). For example, if you determine that any portions of any requested records are exempt under the FOIA's deliberative process provision, 5 U.S.C. § 552(b)(5), you must produce any reasonably segregable portions of those records containing factual rather than deliberative material. See, e.g., *Gatore v. U.S. Dep't of Homeland Sec.*, 177 F. Supp. 3d 46, 53 (D.D.C. 2016); *Gosen v. U.S. Citizenship & Immigration Servs.*, 118 F. Supp. 3d 232, 243-44 (D.D.C. 2015).

Please produce the records on a rolling basis. The Department's search for or deliberations concerning certain records should not delay the production of others that the Department has already retrieved and elected to produce. If the Department takes the position that any of these records are publicly available, please indicate where each of them may be found.

Please email the requested records or, if it is not possible to email, mail a CD of electronic copies of the requested records to Katherine Desormeau at the NRDC office address listed below. Please call or email me with any questions. Thank you for your time.

Sincerely,

/s/ Katherine Desormeau
 Katherine Desormeau
 Natural Resources Defense Council, Inc.
 111 Sutter Street, 21st Floor
 San Francisco, CA 94104
 Tel: (415) 875-6158
 kdesormeau@nrdc.org
 For NRDC

/s/ Stephen Bloch
 Stephen Bloch
 Southern Utah Wilderness Alliance
 425 East 100 South
 Salt Lake City, Utah 84111
 Tel: (801) 486-3161
 steve@suwa.org
 For SUWA

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DEPARTMENT OF THE INTERIOR Mail FOIA from: Katherine Desormeau

/s/ Heidi McIntosh
 Heidi McIntosh
 Earthjustice
 633 17th Street, Suite 1600
 Denver, CO 80202
 Tel.: (303) 623-9466
hmcintosh@earthjustice.org
 For Grand Canyon Trust

Desired Format of Disclosure: Electronic format via email

Select the applicable reason why you are requesting expedited processing:

Justification for Expedited Processing:

Expedited Processing Certification:

Please select the appropriate statement: I am requesting a waiver or reduction of fees.

I agree to pay fees up to this particular amount:

To assist in determining my requester category to assess fees, you should know that I am: a representative of the news media and this request is made as part of a news gathering effort and not for commercial use

Affiliated Organization: Natural Resources Defense Council, Southern Utah Wilderness Alliance, and Grand Canyon Trust

Check the boxes to the right to confirm that you meet the Department's fee waiver criteria:

- Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government.

- Disclosure of the information is not primarily in my commercial interest.

Please explain why your request for a waiver of fees or a reduction in fees is justified.:

II. Request for a Fee Waiver

Requesters ask that the Department waive any fee it would otherwise charge for the search and production of the records described above. FOIA provides that a requester is entitled to a fee waiver when "disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); see also 43 C.F.R. § 2.45(a)(1)-(2) (DOI regulations mirroring the FOIA standard). The disclosure Requesters seek here meets both these requirements.

A. Disclosure is likely to contribute significantly to public understanding of the operations or activities of the government

First, the disclosure requested here is "likely to contribute significantly to public understanding of the operations or activities of the government," 5 U.S.C. § 552(a)(4)(A)(iii), based on the following factors. See 43 C.F.R. § 2.48(a)(1)-(4) (describing factors to be considered).

1. The requested records concern the operations or activities of the federal government (43 C.F.R. § 2.48(a)(1))

The requested records directly "concern the operations or activities of the Federal government." 43 C.F.R. § 2.48(a)(1). The records pertain to the Department's review of the Bears Ears National Monument and its interim report and recommendations to the President concerning possible "Presidential actions, legislative proposals, or other actions" that the federal government might take with respect to the Monument. Executive Order No. 13792, section 2(d). Disclosure of the records will provide context for the Department's recommendations and help the public to evaluate whatever actions the President, Congress, or other federal government officials take with respect to Bears Ears.

2. Disclosure is likely to contribute to public understanding of the government's activities (43 C.F.R. § 2.48(a)(2)(i)-(iii), 2.48(a)(3), 2.48(a)(4))

Disclosure of the requested records is "likely to contribute to public understanding of those operations or activities" of the federal government. 43 C.F.R. § 2.48(a)(2). The records are likely to be "meaningfully informative," as they directly relate to the Department's review of Bears Ears and will provide context and a rationale for actions the Administration may take with respect to Bears Ears. Id. § 2.48(a)(2)(i)-(ii). Because the Department's review of Bears Ears has attracted broad public attention, as explained below, disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in the subject." Id. at § 2.48(a)(2)(iii). Because the records requested are directly relevant to the fate of Bears Ears and have not previously been made available, their disclosure is "likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject," id. § 2.48(a)(3), and will enhance "the public's understanding of the subject in question . . . to a significant extent," id. § 2.48(a)(4).

The Department's review of Bears Ears is a matter of broad public interest. One of the ostensible reasons for this review, according to President Trump's Executive Order, was the charge that Bears Ears had been designated without

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adequate "public outreach," see Executive Order No. 13792, section 1—a charge that the tribes and others vigorously dispute. See, e.g., Letter from the Bears Ears Inter-Tribal Coalition to Secretary Zinke (Apr. 26, 2017). Secretary Zinke has repeatedly acknowledged the public interest and the importance of transparency in the Department's review of Bears Ears. In April, he pledged to reporters: "I'm going to review [the monuments] in a transparent matter to make sure . . . we have a voice [and] the process is transparent." Press Briefing by Secretary Zinke (Apr. 25, 2017). Similarly, when visiting Bears Ears in May, Secretary Zinke told reporters: "Public land is all of us . . . it's America's land. So we have a process [under the Executive Order] where everybody can have a say. . . . America deserves to hear their voice. And President Trump . . . he feels that sometimes Washington makes these rules where we don't have a voice. And he put this in motion to make sure that local communities count, states count, America counts. He wants to hear our voice[s]." Comments of Secretary Zinke, 8:30–9:00; 12:40–13:30 (May 22, 2017).

The Department called for "public comments" relating to the monuments under review, see Notice and Request for Comments, 82 Fed. Reg. 22016 (May 11, 2017), and reportedly conducted multiple meetings with stakeholders relating to Bears Ears.

The American public has demonstrated a strong interest in the monument review process, and in Bears Ears specifically. The www.regulations.gov website shows that 150,183 comments have been submitted online. See www.regulations.gov/document?D=DOI-2017-0002-0001 (last visited June 10, 2017). Bears Ears has been the subject of protests and rallies across the country, countless letters to the editor and op-eds, widespread social media activism, and numerous media reports in local and national publications. See, e.g., Valerie Volcovici, Interior Secretary to Make Proposal on Bears Ears Monument in Test for Protected Land, REUTERS (June 10, 2017); Christopher Smart, "We Want It to Be Protected": Looming Bears Ears Decision Weighs on Native Americans' Minds, SALT LAKE TRIBUNE (June 9, 2017); Kirk Siegler, Interior Secretary Ryan Zinke Reviews Bears Ears National Monument, NPR (June 9, 2017); Jake Bullinger, Will Bears Ears Remain a National Monument? THE ATLANTIC (June 9, 2017); Amy Joi O'Donoghue, Bears Ears Monument Designation Draws Thousands of Comments, DESERET NEWS (May 25, 2017); Rebecca Worby, Zinke Went to Bears Ears to Listen, But Supporters Felt Unheard, HIGH COUNTRY NEWS (May 12, 2017); Terry Tempest Williams, Will Bears Ears Be the Next Standing Rock? N.Y. TIMES (May 6, 2017); Amanda Paulson, Can the President Shrink – or Even Eliminate – National Monuments? CHRISTIAN SCIENCE MONITOR (Apr. 26, 2017).

Yet despite the Department's professed commitment to transparency and the broad public interest in the process, the Department has conducted its review largely in a black box. The Department has not explained what sources of information it used to inform its review of Bears Ears or identified the stakeholders it consulted in reaching its conclusions. Nor has the Department made the contents of its review public (although Requesters note that Secretary Zinke's June 10, 2017 Memorandum to the President summarizing that review is available on the Internet at <https://www.scribd.com/document/351066813/Interim-Report-EO-13792>). Disclosure of the requested records would inform the public about the Department's review and recommendations on Bears Ears, enable them to understand and assess the basis for the Department's conclusions, and help them to evaluate any actions President Trump or the federal government take with respect to Bears Ears.

Requesters do not seek the requested records for their own benefit. Rather, they seek the records to provide new information to the public about the Department's monument review and its recommendations to the President. Disclosure will make possible a more complete public understanding of the federal government's decision-making process and intent regarding current and future management of the Monument. See 43 C.F.R. § 2.48(2)(iii) (requiring 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).

As demonstrated by the foregoing, the American public has a strong interest in understanding the content of the Department's report and recommendations on Bears Ears and the full record supporting the Department's review. There is more than a reasonable likelihood that disclosure of the requested records will significantly increase public understanding of the government's actions on Bears Ears among a broad audience of interested people. See *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

3. Requesters have the ability and intent to disseminate the information to a reasonably broad audience (43 C.F.R. § 2.48(a)(2)(iv)-(v))

Requesters have both the ability and the intent to disseminate the information obtained through this request "in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject." 43 C.F.R. § 2.48(a)(2)(iv); see also *id.* § 2.48(a)(2)(v) (considering requester's "ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject"). In addition, as discussed further in Section III below, Requesters qualify as "representative[s] of the news media" who are "presume[d] to have that ability and intent." *Id.* § 2.48(a)(2)(v).

Requesters have extensive experience disseminating public records and analysis to the public, media and decision

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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.

NRDC has extensive communications capabilities and a proven history of disseminating information of public interest, including information obtained from FOIA requests. NRDC uses numerous modes of communication to disseminate information to its members and the public at large. These include: (1) NRDC's website (<http://www.nrdc.org>), which is updated daily and draws approximately 1.7 million page views and 1.5 million unique page views per month, and which features NRDC staff blogs, original reporting on environmental news stories, and in-depth analyses on topics of public interest; (2) NRDC's Activist email list, which includes more than 2.4 million subscribers who receive regular communications on urgent environmental issues; (3) NRDC Insider (<http://www.nrdc.org/newsletter>), a monthly electronic environmental newsletter distributed by email to more than 1.47 million subscribers; (4) NRDC's Facebook page, with 873,128 followers; (5) NRDC's Twitter handle, with 261,395 followers; (6) NRDC's Instagram feed, with 95,841 followers; (7) NRDC's YouTube channel (<https://www.youtube.com/user/NRDCflix>), with 20,837 subscribers; and (8) online media outlets like Medium (<https://medium.com/natural-resources-defense-council>) and Huffington Post (<http://www.huffingtonpost.com/topic/natural-resources-defense-council>). NRDC also publishes legal and scientific analyses, policy documents, and reports; issues press releases; and directs and produces movies (including *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*). NRDC has more than fifty staff members dedicated to communications work.

In addition, NRDC employees and representatives are widely quoted in the news media; participate in interviews on television, radio, and web broadcasts; appear at conferences; provide congressional testimony; and contribute articles and op-eds to numerous national newspapers, magazines, academic journals, and books. See, e.g., Zoe Carpenter, *After Promising a "Fair Hearing" on Monuments, Secretary Zinke Shuts Out the Public*, THE NATION (May 18, 2017) (quoting NRDC Land and Wildlife Program Director Sharon Buccino); Op-Ed, *Don't Take Bears Ears Away from Us*, SALT LAKE TRIBUNE (May 6, 2017) (contributed by NRDC trustee Robert Redford); Research Article, *The Requirement To Rebuild U.S. Fish Stocks: Is It Working?* MARINE POLICY (July 2014) (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell); Transcript, *Conservationists Call For Quiet: The Ocean Is Too Loud*, ALL THINGS CONSIDERED (July 28, 2013) (featuring NRDC Marine Mammal Protection Program Director Michael Jasny); Testimony of Johanna Wald, NRDC Senior Attorney, before the U.S. Senate Committee on Energy and Natural Resources, Hearing on the California Desert Protection Act of 2010 (May 20, 2010).

NRDC's legal and scientific experts routinely analyze information obtained through FOIA and use it to inform the public about a variety of environmental issues. See, e.g., Theo Spencer, *The Fight to Stop a Strip Mine Near Bryce Canyon: A History*, NRDC Blog (June 5, 2017) (analyzing documents obtained through partner organization's FOIA request regarding a proposed expansion of an open pit strip mine in Utah); Kevin Bogardus et al., "Homework Assignment": How Pebble Lobbied Trump's EPA, E&E NEWS (June 8, 2017) (quoting NRDC staff discussing results of a FOIA seeking communications between EPA and Pebble Mine developers); Tom Neltner et al., *Generally Recognized as Secret: Chemicals Added to Food in the United States*, NRDC Report (2014) (analyzing FOIA documents relating to potentially unsafe chemicals added to food); Carmen Cordova, *Playing Chicken with Antibiotics*, NRDC Issue Brief (2014) (describing FDA records, obtained through FOIA, which show widespread violations of the agency's safety standards for antibiotic feed additives); Dan Flynn, *NRDC Releases FSIS Inspection Reports on Foster Farms*, FOOD SAFETY NEWS (Sept. 12, 2014) (reporting on documents NRDC obtained through FOIA relating to safety violations by poultry company, and linking to the documents); Mae Wu et al., *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, NRDC Report (2010) (analyzing White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine).

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and disseminate information obtained through FOIA to a broad audience of interested persons. Here, NRDC intends to disseminate any newsworthy information in the released records, along with its analysis of such records, to its members and to the broader public through one or more of the many communications channels referenced below. NRDC frequently publicizes newsworthy information for free, and it does not intend to resell the information requested here. NRDC has more than two million members and online activists, tens of thousands of whom have responded to action alerts relating to Bears Ears in particular. These members and activists, when combined with NRDC's communications to the public at large, clearly constitute "a reasonably broad audience of persons interested in the subject." 43 C.F.R. § 2.48(a)(2)(iv), (v).

SUWA works to protect the outstanding redrock wilderness of the American southwest. Since its founding in 1983, it has become Utah's most prominent environmental organization, with more than 13,000 members. SUWA worked with the Bears Ears Inter-Tribal Coalition in the campaign to create the Bears Ears National Monument, and its website contains extensive information about Bears Ears and other national monuments. See, e.g., SUWA, *Bears Ears Is Utah's Newest National Monument* (2016), at <https://suwa.org/issues/bears-ears/>; SUWA, *Bears Ears Archives*, at

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<https://suwa.org/category/bears/>; SUWA, Antiquities Act Archives, at <https://suwa.org/category/antiquities-act/>. SUWA frequently posts blogs and other items of public interest on its blog (<https://suwa.org/blog/>), and it publishes a periodic newsletter, Redrock Wilderness, which is available free to the public on its website (<https://suwa.org/newsletter-archive/>). SUWA also communicates with the public through its Facebook page, which has 136,669 followers, as well as its newsletter, which has a distribution of more than 25,000 copies. SUWA disseminates this information to its membership through publication on its website, action-alerts, public service announcements, tabling, and other grassroots outreach activities.

SUWA representatives have been quoted widely in media reports regarding Bears Ears and other environmental issues. See, e.g., Phil Taylor, Battle Over Bears Ears Intensifies in Utah, E&E NEWS (May 18, 2016) (quoting SUWA Legal Director Stephen Bloch); Bobby Magill, Why an Attack on Monuments Is an Attack on the Climate, ONEARTH (Apr. 26, 2017) (quoting SUWA Legal Director Stephen Bloch); Op-Ed: PLI Fails to Protect America's Treasures, Including Bears Ears, So Obama Should, SALT LAKE TRIBUNE (Feb. 6, 2016) (contributed by SUWA Executive Director Scott Groene); Amy Joi O'Donoghue, A Bears Ears Primer: How Obama's Pen Could Affect Southern Utah, DESERET NEWS (Dec. 18, 2016) (quoting SUWA Executive Director Scott Groene). SUWA regularly seeks documents through FOIA and uses them to inform its members and the general public about conservation-related issues. See, e.g., Southern Utah Wilderness Alliance v. U.S. Bureau of Land Management, 402 F.Supp.2d 82, 88 (D.D.C. 2005) (concluding that SUWA was entitled to fee waiver because the record demonstrated SUWA's "expertise in analyzing and disseminating records pertaining to cultural resources"); see also SUWA, Wilderness: A Sanctuary for Utah's Ancient Treasures, REDROCK WILDERNESS (Autumn 2002) (describing cultural resources in Utah's public lands).

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. 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. See Grand Canyon Trust, The Bears Ears Cultural Landscape, at <http://www.grandcanyontrust.org/bears-ears-cultural-landscape>. The Trust also maintains a blog (<http://www.grandcanyontrust.org/blog>), publishes a member magazine called The Advocate (<http://www.grandcanyontrust.org/advocatemag>), sends e-newsletters and action alerts to subscribers (<http://grandcanyontrust.nonprofitsoapbox.com/email-signup>), and hosts public events and panel discussions. It has featured numerous articles about Bears Ears and other national monuments in its member magazine. See, e.g., Rep. Raul Grijalva, In Defense of the Antiquities Act, THE ADVOCATE (Spring/Summer 2017); Hillary Hoffman, Of Dinosaurs and Sagebrush, THE ADVOCATE (Spring/Summer 2017); Charles Wilkinson, The Proposed Bears Ears National Monument, THE ADVOCATE (Fall/Winter 2016).

Grand Canyon Trust Executive Director Bill Hedden has penned editorials about Bears Ears in the Salt Lake Tribune. See Terry Tempest Williams and Bill Hedden, Op-ed: "Midnight Monument?" No, Utah Leaders Had Years to Make a Bears Ears Deal, SALT LAKE TRIBUNE (Dec. 20, 2016); Bill Hedden, Op-ed: Tribes' Involvement Would Make Bears Ears Monument Historic and Unique, SALT LAKE TRIBUNE (May 14, 2016). Bill Hedden's words, and those of other Trust officers, have also appeared in many regional articles and publications. See, e.g., Molly Marcello, Trump Order Puts Utah Monuments in Crosshairs, THE TIMES-INDEPENDENT (May 4, 2017).

In sum, each of the Requesters has the expertise and capacity effectively to analyze the requested records and to distribute the information contained therein to a broad audience. See 43 C.F.R. § 2.48(a)(2)(iv)-(v). Requesters intend to disseminate this information to their members, online activists and readers, and the general public in a manner that will meaningfully enhance the public's understanding of the federal government's decision-making process. Requesters' synthesis and dissemination of the information will contribute not just to their own understanding, but to the understanding of their members, other stakeholders, lawmakers, and a broad national audience of people who are interested in the fate of Bears Ears. Requesters do not seek records that have been previously disclosed to the public. See *id.* §§ 2.48(a)(3)(i), (iv), 2.48(a)(4)(b). Their disclosure may therefore confirm, clarify, or contradict documents or statements in the public domain or actions taken by the federal government, and it will enable the public to better evaluate the federal government's actions. *Id.* § 2.48(3)(ii)-(iii).

Accordingly, the Requesters have met the first prerequisite for a fee waiver request under the FOIA.

B. Disclosure is not primarily in the commercial interest of Requesters

Second, Requesters have no commercial interests that would be furthered by the requested disclosure. See 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(a)(4)(b). Therefore, they satisfy the second prerequisite for a fee waiver request under the FOIA.

Each Requester is a not-for-profit organization. None of the Requesters acts as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted);

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see also *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (recognizing that "[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 particular those from journalists, scholars and nonprofit public interest groups." (internal quotation marks omitted)). Requesters wish to serve the public by reviewing, analyzing, and disseminating newsworthy and presently non-public information about the protection of national monuments, and this is precisely the sort of "investigation[]" of "governmental choices and highlighting [of] possible abuses" for which the fee waiver was enacted. *Better Gov't Ass'n*, 780 F.2d at 93.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Requesters' role of educating their members and the general public. Collectively, Requesters have well over two million members and online activists dedicated to the protection of public lands, wild places, wildlife, and sites of historic and scientific significance. Requesters have no commercial interest in the disclosure of the records, and they will realize no commercial benefit or profit from the disclosure of the requested records. In addition, as discussed further in Section III below, Requesters qualify as "representative[s] of a news media organization" for whom the Department "presume[s] that the public interest outweighs [any] commercial interest." 43 C.F.R. § 2.48(b)(3)(ii).

For these reasons, Requesters are entitled to a fee waiver under the FOIA.

III. Request for a Reduction of Fees

In the alternative, even if the Department denies Requesters' fee waiver request, Requesters qualify as "representative[s] of the news media" who are entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (granting NRDC media requester status).

Each Requester is in part organized and operated to gather and publish or transmit news to the public. As described in detail in Section II above, Requesters publish original reports and analyses on conservation-related topics on their websites, in their newsletters and magazines, and in blog posts; they contribute articles and op-eds to a variety of online and print platforms; and they maintain free online libraries of documents, publications, and other information of interest to the general public. These types of publications and media sources constitute news media outlets for purposes of FOIA. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"). Public interest organizations performing these sorts of public communication functions "are regularly granted news representative status." *Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 287-89 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union); see also *Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 164 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it "distributes work to an audience and is especially organized around doing so").

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by Requesters to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of their publications or other suitable media channels. Requesters will not resell the information obtained through this FOIA request to other media organizations. For these reasons, even if the Department denies Requesters' fee waiver request, it should grant a fee reduction consistent with 5 U.S.C. § 552(a)(4)(A)(ii).

IV. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, Requesters will, if necessary and under protest, pay fees in accordance with the Department's FOIA regulations at 43 C.F.R. § 2.37 et seq. Please contact me, however, before doing anything that would cause the fee to exceed \$250. Requesters reserve the right to seek administrative or judicial review of any fee waiver denial.

The results of this submission may be viewed at:
<https://www.doi.gov/node/11498/submission/240491>

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**Department of the Interior
FREEDOM OF INFORMATION ACT
REQUEST CONTROL FORM**

FOIA Request Control Number

OS-2017-00733

Requester's Name

Lisa Lambert

Action Office(s)

OS**Curr nt Date**

6/19/17

Du Date

7/05/17

OS FOIA Contact (MIB 7328)

Cindy Sweeney

Instructions to Action Office. To meet the statutory twenty (20) workday response requirement, your search for responsive documents should be completed and dated no later than the "Document Search Due Date" shown above.

SEARCH METHODS

SEARCHER Name	OFFICE LOCATION What Office	MANUAL <input checked="" type="checkbox"/> if done	ELECTRONIC <input checked="" type="checkbox"/> if done	BOTH <input checked="" type="checkbox"/> if both	TERMS USED electronic search, list terms	RECORD TYPE e.g., Calendar, Ltr., Rpt	DOCS FOUND <input checked="" type="checkbox"/> if found
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
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Note: If space is insufficient to document your search efforts, please reproduce this page for additional needed space.

THIS SEARCH WAS ADEQUATE AND REASONABLY CALCULATED TO UNCOVER ALL RESPONSIVE RECORDS
BECAUSE _____.

Please note that if you do not provide the OS with the information requested on this form at this time, and an appeal challenging the sufficiency of the search is filed, you may then be required to reconstruct or duplicate your entire search efforts. In addition, you may be asked to certify that the search done was reasonably conducted to locate all responsive records.

Search Coordinated By (Signature)	Please Print Your Name Here	Date
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TOTAL SEARCH TIME EXPENDED

Please indicate time to within ¼ hour

Clerical Search Time
Managerial Search Time

Professional Search Time
Any other Costs (Identify)