

To: Pentecost, Brian M -FS[bpentecost@fs.fed.us]
From: Ashcroft, Tyler
Sent: 2017-05-22T17:56:37-04:00
Importance: Normal
Subject: Re: BENM FOIA
Received: 2017-05-22T17:56:46-04:00
[CLF FOIA Request.PDF](#)

We have only received one FOIA to date. It was from the Conservation lands foundation back in January. We responded that we did not have any responsive records. I will forward you our initial monument Department data call related to monuments that was issued last week our responses.

On Mon, May 22, 2017 at 3:49 PM, Pentecost, Brian M -FS <bpentecost@fs.fed.us> wrote:

Tyler,

We got a note from the RO/WO today advising that there is a 2-agency FOIA ref records, info, messages, etc about National Monuments. Then.....goes on to say, they will let us know what to do later.

Can you give us a copy of the one you have. We are guessing it's the same FOIA request and we would like to start organizing data fetchers.

Would appreciate any help.

tk



Mark Pentecost
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Forest Service

Manti-La Sal National Forest

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January 25, 2017

VIA ELECTRONIC MAIL AND CERTIFIED MAIL

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January 25, 2017

Re: Freedom of Information Act Request: Bears Ears National Monument and Gold Butte National Monument

Dear Sirs/Madams:

On behalf of the Conservation Lands Foundation ("CLF"), we hereby request access to the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the pertinent Department of Interior regulations, 43 C.F.R. § 2.1 *et seq.*

THE REQUESTED RECORDS

This FOIA request seeks information related to the Establishment of the Bears Ears National Monument (Proclamation 9558, 82 Fed. Reg. 1139 (Jan. 5, 2017)) and to the Establishment of the Gold Butte National Monument (Proclamation 9559, 82 Fed. Reg. 1149 (Jan. 5, 2017)), including but not limited to documents, correspondence, and other written and electronic communications described in the following list. This request is limited to records created or modified within the last five years.

1. All records discussing or otherwise related to the determination of a boundary for the Bears Ears National Monument or the Gold Butte National Monument pursuant to the Antiquities Act of 1906 (54 U.S.C. § 320301);
2. All records pertaining to the identification of historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest within the boundaries of the designated Bears Ears National Monument or designated Gold Butte National Monument; this request includes records describing habitat of specific species referenced in the Proclamations establishing the National Monuments, locations of areas of archeological, paleontological, cultural, historical, ecological, or aesthetic importance, and related records describing scientific areas of interest within the National Monuments; and
3. All records pertaining to impacts, threats, or dangers to historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest within the boundaries of the designated Bears Ears National Monument or the designated Gold Butte National Monument.

REQUEST FOR A FEE WAIVER

We respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a). CLF is a 501(c)(3) non-profit organization incorporated under the laws of Delaware and headquartered in Durango, Colorado. CLF's organizational purpose is to promote environmental conservancy through assisting the National Landscape Conservations System (or the National Conservation Lands) and preserving open space and wilderness. The National Conservation Lands encompass 31 million acres and 2,400 river miles of National Monuments, National Conservation Areas, Wilderness and Wilderness Study Areas, Wild and Scenic Rivers, National Scenic and Historic Trails, and other special designations. To fulfill its organizational purpose, CLF works to protect, restore, and expand the National Conservation Lands through education, advocacy, and partnership. CLF requests a fee waiver under 43 C.F.R. § 2.19, as all of the documents requested are likely to contribute significantly to public understanding of the

operations and activities of the Government, and release of the documents is not in the commercial interest of CLF.

Under DOI regulations, a party seeking a fee waiver must show (1) how the records concern the operations or activities of the Federal government; (2) how disclosure is likely to contribute to public understanding of those 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 your individual understanding; and (4) how the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure. 43 C.F.R. § 2.48(a).

How the records concern the operations or activities of the Federal government:

The records CLF seeks are records either created or solicited by the Federal Government in support of the proclamation establishing the Bears Ears National Monument and the proclamation establishing of the Gold Butte National Monument. The lands in question are administered, in part, by the Bureau of Land Management (along with the United States Forest Service).¹ Records prepared by the Bureau of Land Management, as well as any and all records prepared by the Solicitor's Office and Office of the Secretary of the Interior, bear directly on the operations and activities of the Federal government in its ongoing management of these lands for the public. These records are directly related to the ongoing management of these lands by the Federal Government.

How disclosure is likely to contribute to public understanding of those operations or activities:

First, the records here contain meaningful information that has not been made available to the public, to CLF, or—to the best of CLF's knowledge—other organizations.

Second, these records are directly related to the activities of the Federal Government in its ongoing management of public lands, and these records will explain the bases of the Proclamations establishing the Bears Ears and Gold Butte National Monument.

Third, these issues are of supreme interest to the public, and disclosure of these records will increase the public understanding of these issues through increased transparency as to the bases for designating the Bears Ears and Gold Butte areas as National Monuments. The proper functioning of government and the protection of public lands are issues that affect the public at large; these records will therefore contribute to the public's understanding of this subject. The operations and activities of the Department of the Interior as carried out by the respective Offices and Bureaus of that Department will be disclosed to the public in a manner that assists the public in understanding the proclamation process.

Finally, as detailed above, CLF promotes environmental conservancy through assisting the National Landscape Conservations System (or the National Conservation Lands) and preserving open space and wilderness. CLF regularly publishes information on the National Landscape Conservations System and wilderness. Publications include online information accessible for free to the public-at-large and newsletters to members of the organization. With ties to other organizations, CLF is well equipped to share with and disseminate to the public the requested records.

¹ Portions of the Gold Butte National Monument were previously managed by the Bureau of Reclamation ("BOR"), but jurisdiction over BOR lands has been transferred to the Bureau of Land Management.

How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding:

First, most of the requested records are new and were created over the past year (CLF expects that many of these records relate to the determination of the boundary of the National Monuments). CLF does anticipate, however, that the record request may include some historical records that detail the historic, prehistoric, and scientific attributes of the areas of Bears Ears and Gold Butte. The majority of the records requested will comprise recently produced documents, though some historical documents may fall within the ambit of this request.

Second, the records requested would further confirm the statements included in the Proclamations establishing the National Monuments. For instance, records would demonstrate the location of specific paleontological resources or the Native American cultural resources identified in the Proclamation establishing Bears Ears National Monuments. Similarly, the records would demonstrate the location of specific archaeological sites in the Gold Butte National Monument.

Third, as explained above, these records will increase the public understanding of the Proclamation process as well as the management of public lands. These records will thereby benefit the public by illuminating the parameters and constraints on management practices of the Bureaus and Offices within the Department of the Interior.

Finally, this information is not publicly available. Though the Proclamations provide general information on the areas designated as National Monuments, the Proclamations lack specific record evidence of the historic, prehistoric, and scientific portions of these areas. Because this information is pivotal to ensuring the proper designation of National Monuments, and by association the management of public lands, it is of significant importance to the public.

How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure:

This FOIA request targets records unavailable by any other means, despite being public records related to the operations and activities of the Government. And, as indicated above, CLF intends to make the information it receives widely and easily available by, among other things, posting it on websites, and including it in reports. The records and information will thereby enhance the public understanding of the importance of National Monuments as an aspect of public lands. Furthermore, CLF is qualified and experienced in these issues, and thereby well-situated to review, analyze, and summarize the requested records. CLF, additionally, does not seek this information for commercial purposes.

For these reasons, a fee waiver is warranted in this situation. If this request is denied, please provide as required a full explanation for why the fee waiver request did not meet the fee-waiver criteria provided in the DOI regulations, as well as the name(s) and title(s) or position(s) of each person responsible for the denial; the name and title of the Office of the Solicitor attorney consulted; and a statement that the denial may be appealed within 30 workdays of the date of the denial.

LACK OF EXEMPTIONS

We believe that none of the information requested will be exempt from disclosure because the requested documents are public documents. If you should deny access to any documents

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covered by this request, please describe in detail each of those documents and specify the statutory basis for denial as well as the reasons you believe the statutory basis applies. If only a portion of a document is exempt from release, we request all reasonably segregable portions of the document as allowed by FOIA. Thus, if you believe that a portion of a document that we have requested is exempt, please redact the exempt portions and provide us with the redacted copy of the document. If you decide that exempt portions cannot be reasonably redacted, please advise us in detail of the reasons for that decision.

EXPEDITED PROCESSING

We respectfully request expedited processing of this request. FOIA provides for expedited processing of requests for agency records, and directs agencies to "process as soon as practicable any request for records to which [they have] granted expedited processing." 5 U.S.C. § 552(a)(6)(E)(iii). Expedition is available in cases in which the person requesting the records demonstrates a compelling need. *Id.* § 552(a)(6)(E)(i). A compelling need may be shown where, "with respect to a request made by a person primarily engaged in disseminating information," there is an "urgency to inform the public concerning actual or alleged Federal Government activity." *Id.* § 552(a)(6)(E)(v)(II); *see also* 43 C.F.R. § 2.14(a)(2).

The records requested here are necessary to ensure the lawful bases for establishing the Bears Ears and Gold Butte National Monuments. The current and future management of these public lands is an issue significant to the public-at-large, as well as ensuring that any actions taken to alter, change, or otherwise affect these public lands is not done so to the detriment of the prehistoric, historic, and scientific areas identified within these National Monuments.

I look forward to hearing from you regarding our request within twenty business days or earlier if possible. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas P. Wheeler". The signature is fluid and cursive, with the first name "Douglas" being the most prominent.

Douglas P. Wheeler
Partner

douglas.wheeler@hoganlovells.com
D 202-637-5556







