



September 27, 2017

VIA ELECTRONIC MAIL

Beth Ransel
District Manager
Bureau of Land Management
California Desert District Office
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553
BLM CA Web CD@blm.gov

Re: Freedom of Information Act Request: Cadiz Water Project and Institutional Memoranda UPDATE

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), from the Center for Biological Diversity (“Center”), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORDS

The Center requests the following records from the Bureau of Land Management (“BLM”), California Desert District Office, from November 9, 2016 to the date of this search:

1. All records of communications and any attachments and/or records referenced in the communications mentioning, including and/or referencing the rescission of Instructional Memoranda “IM 122-2014” and “IM 2011-038;”
2. All records of communications and any attachments and/or records referenced in the communications mentioning, including or referencing the Cadiz Valley Water Conservation, Recovery and Storage Project (“Cadiz Water Project”), Cadiz Inc., and/or its associated infrastructure including pipelines;
3. All records of communications, attachments, and/or records referenced in the communications mentioning, including and/or referencing the Cadiz Water Project and/or the reversal of Instruction Memoranda “IM 122-2014” and “IM 2011-038” and David Bernhardt (now Deputy Secretary of the Interior); and

4. All records of communications mentioning, including and/or referencing the September 1, 2017 Solicitor's Opinion concerning the Cadiz Water Project. *See* U.S. Department of Interior Memorandum, "Withdrawal of Solicitor's Opinion M-37025 issued on November 4, 2011, and Partial Withdrawal of Solicitor's Opinion M-36964 issued on January 5, 1989," <https://www.doi.gov/sites/doi.gov/files/uploads/m-37048.pdf> (last visited September 11, 2017).

For this request, the term "all records" refers to, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, telephone records, telephone notes, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, telephone logs, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

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).

Should you decide to invoke a FOIA exemption, 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.

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).

The Center is willing to receive records on a rolling basis.

Finally, FOIA's "frequently requested record" provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give "reading room" treatment to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records." See 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA's Rule of 3 requires all federal agencies to proactively "make available for public inspection in an electronic format" "copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times." 5 U.S.C. § 552(a)(2)(D)(ii)(II). Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

FORMAT OF REQUESTED RECORDS

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."). "Readily accessible" means text-searchable and OCR-formatted. See 5 U.S.C. § 552(a)(3)(B). We ask that you please provide all records in an electronic format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or Excel spreadsheet, or; (2) for files that are in .PDF format, without any "portfolios" or "embedded files." Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or "batched," .PDF file. We appreciate the inclusion of an index.

If you should seek to withhold or redact any responsive records, we request that you: (1) identify each such record with specificity (including date, author, recipient, and parties copied); (2) explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the records for which you claim a specific exemption. 5 U.S.C. § 552(b). Please correlate any redactions with specific exemptions under FOIA.

REQUEST FOR FEE WAIVER

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). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA's

fee waiver provision was intended “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and *non-profit public interest groups*.” *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, “[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information” 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party 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). Interior FOIA regulations that govern BLM FOIA requests at 43 C.F.R. § 2.48(a)(1)-(4) establish the same standard.

Thus, BLM must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. 43 C.F.R. § 2.48(a)(1)-(4). As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns “The Operations and Activities of the Government.”

The subject matter of this request concerns the operations and activities of the Bureau. The Center requested from BLM, California Desert District Office, from November 9, 2016 to the date of this search: (1) all records of communications and any attachments and/or records referenced in the communications mentioning, including and/or referencing the rescission of Instructional Memoranda “IM 122-2014” and “IM 2011-038;” (2) all records of communications and any attachments and/or records referenced in the communications mentioning, including or referencing the Cadiz Water Project, Cadiz Inc., and/or its associated infrastructure including pipelines; (3) all records of communications, attachments, and/or records referenced in the communications mentioning, including and/or referencing the Cadiz Water Project and/or the reversal of Instruction Memoranda “IM 122-2014” and “IM 2011-038” and David Bernhardt (now Deputy Secretary of the Interior); and (4) all records of communications mentioning, including and/or referencing the September 1, 2017 Solicitor’s Opinion concerning the Cadiz Water Project. *See* U.S. Department of Interior Memorandum, “Withdrawal of Solicitor’s Opinion M-37025 issued on November 4, 2011, and Partial Withdrawal of Solicitor’s Opinion M-36964 issued on January 5, 1989,” <https://www.doi.gov/sites/doi.gov/files/uploads/m-37048.pdf> (last visited September 11, 2017).

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow the Center to convey information to the public about the political pressure that is likely pushing the Cadiz Water Project forward, and the decision allowing the Cadiz Water Project to avoid federal review when routing its water pipeline along an existing federal railroad right of way. Once the information is made available, the Center will analyze it and present it to its 1.5 million members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of this topic.

Thus, the requested records are likely to contribute to an understanding of BLM operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons’ Understanding of the Cadiz Water Project

The requested records will contribute to public understanding of how the recent decision to reverse requiring further environmental review for the Cadiz Water Project’s use of a railroad right of way to pump water out of the Mojave Desert are consistent with the BLM’s mission to sustain the health, diversity, and productivity of America’s public lands for the multiple use and enjoyment of present and future generations.¹ As explained above, the records will contribute to public understanding of this topic.

Federal groundwater mining projects generally, and specifically the adverse ecological impacts of the Cadiz Water Project are areas of interest to a reasonably broad segment of the public. The Center will use the information it obtains from the disclosed records to educate the public at large about whether inappropriate political pressure has pushed this environmentally harmful groundwater mining project forward. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) (“... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.”).

Through the Center’s synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own

¹ *U.S. Department of the Interior, Bureau of Land Management, Who We Are: What We Do*, <https://www.blm.gov/about/our-mission>, (last visited September 11, 2017).

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").

Indeed, the public does not currently have an ability to easily evaluate the requested records, which concern the Cadiz Water Project that are not currently in the public domain. *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 Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), "[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... ."²

Disclosure of these records is not only "likely to contribute," but is certain to contribute, to public understanding of the decision allowing the Cadiz Water Project to move forward without federal review. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about the environmental impacts and possible political collusion surrounding this groundwater mining project.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public's understanding of the decision overturning the requirement that the Cadiz Water Project undergo federal review when routing its water pipeline along an existing federal railroad right of way as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal more about the possible political pressure that pushed this ecologically unsound groundwater mining project.

The records are also certain to shed light on the BLM's compliance with its own mission.³ Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

² In this connection, it is immaterial whether any portion of the Center's request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

³ *See supra* note at 1.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been substantially involved in the activities of numerous government agencies for over 25 years, and has consistently displayed its ability to disseminate information granted to it through FOIA.

In consistently granting the Center's fee waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the records requested here similarly. The Center's work appears in more than 2,500 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, *The Guardian*, and *Los Angeles Times*. Many media outlets have reported on environmental health utilizing information obtained by the Center from federal agencies including the BLM. In 2016, more than 2 million people visited the Center's extensive website, viewing a total of more than 5.2 million pages. The Center sends out more than 277 email newsletters and action alerts per year to more than 1.5 million members and supporters. Three times a year, the Center sends printed newsletters to more than 61,443 members. More than 233,000 people have "liked" the Center on Facebook, and there are regular postings regarding water integrity and environmental protections. The Center also regularly tweets to more than 52,200 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of the BLM's duties is absolutely necessary. In determining 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 Center need not show how it intends 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 Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.5 million

members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee waiver. We hope that the BLM will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret E. Townsend". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org



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VIA ELECTRONIC MAIL

Bureau of Land Management
California State Office
2800 Cottage Way Suite W1623
Sacramento, CA 95825
BLM_CA_Web_SO@blm.gov

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Should you decide to invoke a FOIA exemption, 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.

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).

The Center is willing to receive records on a rolling basis.

Finally, FOIA's "frequently requested record" provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give "reading room" treatment to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records." See 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA's Rule of 3 requires all federal agencies to proactively "make available for public inspection in an electronic format" "copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times." 5 U.S.C. § 552(a)(2)(D)(ii)(II). Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

FORMAT OF REQUESTED RECORDS

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."). "Readily accessible" means text-searchable and OCR-formatted. See 5 U.S.C. § 552(a)(3)(B). We ask that you please provide all records in an electronic format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or Excel spreadsheet, or; (2) for files that are in .PDF format, without any "portfolios" or "embedded files." Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or "batched," .PDF file. We appreciate the inclusion of an index.

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Thus, BLM must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. 43 C.F.R. § 2.48(a)(1)-(4). As shown below, the Center meets each of these factors.

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Through the Center’s synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own

¹ *U.S. Department of the Interior, Bureau of Land Management, Who We Are: What We Do*, <https://www.blm.gov/about/our-mission>, (last visited September 11, 2017).

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").

Indeed, the public does not currently have an ability to easily evaluate the requested records, which concern the Cadiz Water Project that are not currently in the public domain. *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 Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), "[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... ."²

Disclosure of these records is not only "likely to contribute," but is certain to contribute, to public understanding of the decision allowing the Cadiz Water Project to move forward without federal review. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about the environmental impacts and possible political collusion surrounding this groundwater mining project.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public's understanding of the decision overturning the requirement that the Cadiz Water Project undergo federal review when routing its water pipeline along an existing federal railroad right of way as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal more about the possible political pressure that pushed this ecologically unsound groundwater mining project.

The records are also certain to shed light on the BLM's compliance with its own mission.³ Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

² In this connection, it is immaterial whether any portion of the Center's request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

³ *See supra* note at 1.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been substantially involved in the activities of numerous government agencies for over 25 years, and has consistently displayed its ability to disseminate information granted to it through FOIA.

In consistently granting the Center's fee waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the records requested here similarly. The Center's work appears in more than 2,500 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, *The Guardian*, and *Los Angeles Times*. Many media outlets have reported on environmental health utilizing information obtained by the Center from federal agencies including the BLM. In 2016, more than 2 million people visited the Center's extensive website, viewing a total of more than 5.2 million pages. The Center sends out more than 277 email newsletters and action alerts per year to more than 1.5 million members and supporters. Three times a year, the Center sends printed newsletters to more than 61,443 members. More than 233,000 people have "liked" the Center on Facebook, and there are regular postings regarding water integrity and environmental protections. The Center also regularly tweets to more than 52,200 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of the BLM's duties is absolutely necessary. In determining 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 Center need not show how it intends 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 Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.5 million

members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee waiver. We hope that the BLM will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret E. Townsend", with a long horizontal flourish extending to the right.

Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org



September 27, 2017

VIA ELECTRONIC MAIL

Ryan Witt, FOIA Officer
Bureau of Land Management, Headquarters
1849 C. Street NW, Rm. 2134LM
Washington, DC 20240
rwitt@blm.gov
BLM_WO_FOIA@blm.gov

Re: Freedom of Information Act Request BLM-2017-00653: Supplement and Request for Estimated Date of Completion

Dear FOIA Officer:

I write to supplement the above-referenced request to add the following items to our records request dated May 3, 2017, BLM-2017-00653 (Cadiz Water Project and Institutional Memoranda):

1. All records of communications, attachments, and/or records referenced in the communications mentioning, including and/or referencing the Cadiz Water Project and/or the reversal of Instruction Memoranda “IM 122-2014” and “IM 2011-038” between Deputy Secretary of the Interior David Bernhardt, Department of Interior employees, Department of Interior Secretary Ryan Zinke, and/or President Donald Trump; and
2. All records that Interior relied upon when generating, and all records generated in connection with, the September 1, 2017 Solicitor’s Opinion concerning the Cadiz Water Project. *See* U.S. Department of Interior Memorandum, “Withdrawal of Solicitor's Opinion M-37025 issued on November 4, 2011, and Partial Withdrawal of Solicitor's Opinion M-36964 issued on January 5, 1989,” <https://www.doi.gov/sites/doi.gov/files/uploads/m-37048.pdf> (last visited September 11, 2017); and
3. All records that Interior relied upon when generating, and all records generated in connection with, the November 4, 2011 Solicitor’s Opinion M-37025, and/or the January 5, 1989 Solicitor's Opinion M-36964.

Furthermore, pursuant to FOIA, 5 U.S.C. § 552(a)(6)(A)(i), a determination on this request was due 20 business days after your receipt of the request, or June 1, 2017. FOIA allows an agency to extend the decision deadline beyond the 20 workdays only with “written notice to the person making such request setting forth unusual circumstances for the requested extension and the date

on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days” 5 U.S.C. § 552(a)(6)(B)(i). BLM has provided neither a specific assertion of an “unusual circumstance” that would delay a decision on this request, nor did it include an estimated date of completion. Moreover, we are now well past the limited extension of ten working days that 5 U.S.C. § 552(a)(6)(B)(i) allows.

For any response taking longer than ten days, BLM must provide the requester “(i) the date on which the agency originally received the request; and (ii) an estimated date on which the agency will complete action on the request.” *Id.* at § 552(a)(7)(B). Therefore, as required by 5 U.S.C. § 552(a)(7)(B)(ii), we request that BLM immediately provide an estimated date by which we can expect completion of the agency’s unlawfully delayed response to our FOIA request. The Center is mindful that we have legal options available if BLM fails to respond. *See, e.g., Muttitt v. U.S. Central Command*, 813 F.Supp.2d 221 (D.D.C. 2011) (requester permitted to bring free-standing FOIA claim for agency’s failure to provide ECD).

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret E. Townsend". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org



September 27, 2017

VIA ELECTRONIC MAIL

Clarice Julka, FOIA Officer
U.S. Department of Interior
MS-7328, MIB
1849 C Street, NW
Washington, DC 20240
os_foia@ios.doi.gov

Re: Freedom of Information Act Request OS-2017-00514: Supplement and Request for Estimated Date of Completion

Dear FOIA Officer:

I write to supplement the above-referenced request to add the following items to our records request dated May 3, 2017, OS-2017-00514 (Cadiz Water Project and Institutional Memoranda):

1. All records of communications, attachments, and/or records referenced in the communications mentioning, including and/or referencing the Cadiz Water Project and/or the reversal of Instruction Memoranda “IM 122-2014” and “IM 2011-038” between Deputy Secretary of the Interior David Bernhardt, Department of Interior employees, Department of Interior Secretary Ryan Zinke, and/or President Donald Trump; and
2. All records that Interior relied upon when generating, and all records generated in connection with, the September 1, 2017 Solicitor’s Opinion concerning the Cadiz Water Project. *See* U.S. Department of Interior Memorandum, “Withdrawal of Solicitor's Opinion M-37025 issued on November 4, 2011, and Partial Withdrawal of Solicitor's Opinion M-36964 issued on January 5, 1989,” <https://www.doi.gov/sites/doi.gov/files/uploads/m-37048.pdf> (last visited September 11, 2017); and
3. All records that Interior relied upon when generating, and all records generated in connection with, the November 4, 2011 Solicitor’s Opinion M-37025, and/or the January 5, 1989 Solicitor's Opinion M-36964.

Furthermore, pursuant to FOIA, 5 U.S.C. § 552(a)(6)(A)(i), a determination on this request was due 20 business days after your receipt of the request, or June 1, 2017. FOIA allows an agency to extend the decision deadline beyond the 20 workdays only with “written notice to the person making such request setting forth unusual circumstances for the requested extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that

would result in an extension for more than ten working days” 5 U.S.C. § 552(a)(6)(B)(i). Interior did invoke a 10-workday extension, moving the statutory deadline to June 15, 2017. However, we are now well past the limited extension of ten working days that 5 U.S.C. § 552(a)(6)(B)(i) allows.

For any response taking longer than ten days, Interior must provide the requester “(i) the date on which the agency originally received the request; and (ii) an estimated date on which the agency will complete action on the request.” *Id.* at § 552(a)(7)(B). Therefore, as required by 5 U.S.C. § 552(a)(7)(B)(ii), we request that Interior immediately provide an estimated date by which we can expect completion of the agency’s unlawfully delayed response to our FOIA request. The Center is mindful that we have legal options available if Interior fails to respond. *See, e.g., Muttitt v. U.S. Central Command*, 813 F.Supp.2d 221 (D.D.C. 2011) (requester permitted to bring free-standing FOIA claim for agency’s failure to provide ECD).

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

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