

To: Peg Romanik[peg.romanik@sol.doi.gov]; Mariagrazia Caminiti[marigrace.caminiti@sol.doi.gov]
From: Moore, Angela
Sent: 2017-08-31T13:47:49-04:00
Importance: Normal
Subject: FOIA Request SOL-2017-00230
Received: 2017-08-31T14:17:57-04:00
[FOIA Request SOL-2017-00230 \(Kushner\).pdf](#)

Good afternoon Peg and Marigrace,
The SOL FOIA Office received a FOIA request (attached) in which the requester seeks:

"...all records and information relating to the development and issuance of Secretary Zinke's briefings to any members of Congress - including Utah Senator Orrin Hatch - regarding his August 24, 2017 report to President Trump and the Secretary's review of the national monuments designated or expanded since 1996 under the Antiquities Act..."

Please advise whether your respective offices have responsive documents for this request by Friday, September 8.

Thanks,
Angela

Angela Moore
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August 28, 2017

VIA ELECTRONIC MAIL AND CERTIFIED MAIL

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Re: Freedom of Information Act Request / Expedited Processing Requested

Dear FOIA Officers:

I write on behalf of the Conservation Lands Foundation (“CLF”) to request information pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) from the United States Department of the Interior (“DOI”), including the Bureau of Land Management (“BLM”), and from each of the above-specified components, relating to the briefings provided to various

members of Congress on Secretary Zinke's draft report to President Trump on August 24, 2017, provided in response to President Trump's Executive Order directing the Secretary to review national monuments designated or expanded since 1996 under the Antiquities Act of 1906 (Executive Order 13792 (April 26, 2017)). Though Secretary Zinke has kept his report to President Trump from public view, various media outlets have reported that he has briefed Senator Hatch and other members of Congress on the contents of his report.

As you are aware, the FOIA Improvement Act of 2016 codified the presumption of openness policy for releasing Government information under FOIA. The intent of this law is to "mandate[] that an agency may withhold information only if it reasonably foresees a specific identifiable harm to an interest protected by an exemption, or if disclosure is prohibited by law." *See* S. Rep. No. 114-4 at 4 (2015). In establishing this policy, President Obama stated that agencies may not withhold information from the public "merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears." President Barack Obama, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act* (Jan. 21, 2009). The FOIA Improvement Act of 2016 establishes a new, rigorous standard for disclosure by requiring that "an agency shall withhold information under this section only if (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption . . . or (II) disclosure is prohibited by law." 5 U.S.C. § 552(a)(8)(A)(i)(I)–(II). In the context of existing FOIA disclosure requirements, this amendment requires that agencies must explain the basis for reasonably foreseeing a specific identifiable harm to a protected interest—with respect to *each portion* of withheld records—in the course of designating reasonably segregable portions for release. Similarly, FOIA provides that if only a portion of a record qualifies for exemption from release pursuant to one of the exemptions listed under section 552(b) *and* the standards established in section 552(a)(8), all reasonably segregable portions must still be provided. *See id.* § 552(b). CLF expects these standards to be rigorously applied and thoroughly documented in processing this request.

Accordingly, I hereby request all records and information relating to the development and issuance of Secretary Zinke's briefings to any members of Congress—including Utah Senator Orrin Hatch—regarding his August 24, 2017 report to President Trump and the Secretary's review of the national monuments designated or expanded since 1996 under the Antiquities Act. This request includes but is not limited to:

1. Secretary Zinke's August 24, 2017 report on his national monuments review.
2. Any copies of Secretary Zinke's August 24, 2017 report—including any prior drafts or other versions—that were shared with any members of Congress or congressional staff members, including Utah Senator Orrin Hatch.

3. All documents used during Secretary Zinke's briefings with any members of Congress or congressional staff members—including Utah Senator Orrin Hatch and his staff—regarding the Secretary's national monuments review and his August 24, 2017 report to the President on the review. This request includes, but is not limited to, any memoranda, talking points, PowerPoint presentations or the like, and any meeting notes and the contents thereof.
4. All records relating to communications involving Secretary Zinke and/or other DOI personnel with any members of Congress or congressional staff members—including Utah Senator Orrin Hatch and his staff—conducted formally or informally, regarding the national monuments review process and the Secretary's August 24, 2017 report on the national monuments review. This request includes, but is not limited to, memoranda, phone logs, meeting notes, calendar entries, schedules, requests for meetings, and any event planning documents including talking points and also includes any information provided by congressional representatives or their staff on the land and uses (existing or proposed) within the national monuments under review, including with regard to the boundaries of the monuments.

This FOIA Request is not meant to be exclusive of any other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request, including any information related to the preparation and issuance of Executive Order 13792. With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), I request that responsive documents be provided electronically in text-searchable, static-image format (PDF), in the best image quality in the agencies' possession. I further request that reasonable metadata be transmitted along with responsive documents, including but not limited to email attachments, author and recipient information, date and time stamps, and the like.

Defined Terms

The term "DOI" as used herein refers to the U.S. Department of the Interior and includes all offices, and all officers, staff, agents, consultants, political appointees, and employees thereof.

The term "BLM" as used herein refers to the U.S. Bureau of Land Management and includes all offices, as well as all officers, staff, agents, consultants, political appointees, and employees thereof.

The term "Recipients" as used herein means all entities, department, agencies, and/or bureaus of the U.S. Federal Government to which this FOIA request is directed, including DOI and BLM.

The term "records" as used herein includes the original and all non-identical copies, however produced or reproduced, of any written or graphic matter, as well as computer files,

including but not limited to writings, handwritings, drawings, graphs, charts, maps, correspondence, faxes, electronic mail (i.e., e-mails), attachments to electronic mail, any other electronic communications, notes of telephone conversations or of meetings or conferences, minutes of meetings, interoffice communications, memoranda, studies, analyses, results of investigations, photographs, sound recordings, electronically stored information, other data compilations from which information can be obtained, and any other documentary material, regardless of physical form or characteristics.

The term “relating to” as used herein means addressing, constituting, mentioning, discussing, describing, reflecting, identifying, dealing with, consisting of, explaining, referring to, containing, enumerating, or in any way concerning or pertaining to, in whole or in part, directly or indirectly.

FOIA Response

The records requested herein relate to the briefings Secretary Zinke gave to members of Congress or congressional staff members—including Utah Senator Orrin Hatch—relating to the Secretary’s review of national monuments designated or expanded since 1996 under the Antiquities Act of 1906, and the Secretary’s August 24, 2017 report on that review.

These records are not exempt from disclosure. If Recipients should deny access to any records covered by this request, however, please describe in detail each of those records and specify the statutory basis claimed for denial as well as any reasons for asserting that claim. Specifically, please provide an exemption log identifying each document for which the exemption is claimed, together with the following information: date, sender, recipient, type (e.g. letter, memorandum, telegram, chart, photograph, etc.), subject matter of the document, the basis on which exemption is claimed, and the paragraph or paragraphs of this request to which the document responds. As described above, FOIA provides that if only a portion of a record is exempt from release, all reasonably segregable portions shall be provided. Thus, if Recipients assert that a portion of a record that I have requested is exempt, please provide me with a copy of the remainder of the record and provide in the exemption log the information specified above for the portion being treated as exempt. If Recipients assert that the exempt portions cannot be reasonably redacted, please state in detail the reasons for that assertion.

Please provide the requested material as soon as possible, but no later than FOIA’s applicable deadline(s) for a response, and please provide the required response within the twenty (20) day period prescribed by FOIA. Please forward currently available records as soon as possible and others as they become available.

Request for a Fee Waiver

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii); 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. § 2.45, 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).

A. 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 Executive Order 13792 and, specifically, Secretary Zinke's August 24, 2017 report on national monuments designated or expanded since 1996 under the Antiquities Act of 1906. The lands within the monuments under review are federal lands, administered, in part, by the BLM. Accordingly, the records requested bear directly on the operations and activities of the Federal government in its ongoing and future management of these lands for the public. Furthermore, the records requested are directly related to the future actions of the President of the United States and the United States Congress. Thus, all of the records requested concern the operations or activities of the Federal government.

B. Disclosure is likely to contribute to public understanding of those operations or activities.

The records requested contain meaningful information that has not been made available to the public, to CLF, or—to the best of CLF's knowledge—other organizations. Furthermore, as discussed above, these records are directly related to the activities of the Federal government in its ongoing and future management of public lands, as these records will help shed light on Secretary Zinke's report on his national monuments review and the related predecessor directive,

Executive Order 13792. Secretary Zinke's recommendations are of supreme interest to the public. The disclosure of the requested records will increase the public's understanding of these issues through increased transparency as to the bases for Secretary Zinke's recommendations to President Trump, which have, so far, been kept from the public.

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. Accordingly, the requested records will be disclosed to the public in a manner that assists the public in understanding the Bears Ears review process.

C. Disclosure will significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to CLF's individual understanding.

CLF anticipates that the majority of the records requested will consist of recently produced documents related to Secretary Zinke's national monuments review that are not otherwise publicly available. As explained above, because CLF is in a position to effectively disseminate the requested records, disclosure of these records to CLF will significantly and meaningfully increase the public's understanding of Secretary Zinke's review and recommendations.

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

This FOIA request seeks records unavailable by any other means concerning the operations and activities of the Federal government. 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 the ongoing and future management of the public lands contained in national monuments reviewed by Secretary Zinke. Furthermore, CLF is qualified and experienced in these issues, and thereby well-situated to review, analyze, and summarize the requested records, and does not seek this information for commercial purposes.

For all of the above 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.

Expedited Processing

I 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. § 2.20(a)(2).

As discussed in detail above, the records requested here concern a matter that has generated considerable public interest and are necessary to ensure that the public is sufficiently informed about Secretary Zinke’s national monuments review and his report to the President on August 24, 2017. Ensuring that any actions taken to alter, change, or otherwise affect the protection and management of these public lands is not detrimental to the prehistoric, historic, and scientific areas identified within the national monuments under review is of critical and immediate importance. And while CLF is not a representative of the news media, as described above, a primary focus and purpose of the organization is the publication of information on the National Landscape Conservations System and wilderness, including online information accessible for free to the public-at-large and newsletters to members of the organization. Accordingly, CLF’s FOIA request meets the requirements for expedited processing established in 43 C.F.R. § 2.20.

By codifying the presumption of openness through the FOIA Improvement Act of 2016, Congress has “put[] the force of law behind the notion that sunshine, not secrecy, is the default setting of our government.” *See* Con. Rec. S3825 (daily ed. June 13, 2016 (statement of Sen. Leahy)). I look forward to your response regarding our request for expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 43 C.F.R. § 2.20(d). I further look forward to receiving your response to this Request itself within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i) and 43 C.F.R. § 216(a). I reserve the right to appeal a decision to withhold any information, a denial of our request for expedited processing, or denial of our request for a waiver or limitation of fees.

Please furnish all responsive records electronically to:

Adam Kushner
adam.kushner@hoganlovells.com

James Banks
james.banks@hoganlovells.com

Peter Whitfield
peter.whitfield@hoganlovells.com

Houston Shaner
houston.shaner@hoganlovells.com

Should you need to communicate with me regarding this request, please contact me by email or phone using the information provided below. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'AC 1/11', is positioned above the typed name and contact information.

Adam Kushner
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(202) 637-5724



The Honorable Ryan Zinke
U.S. Department of the Interior
1849 C Street N.W.
Washington, DC 20240

May 5, 2017

Dear Secretary Zinke:

On April 26, 2017, the Trump administration took unprecedented steps to issue an Executive Order targeting the Antiquities Act. Aside from the Organic Act, no law has had greater influence on the National Park System than the Antiquities Act.

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our more than 1.2 million members and supporters nationwide, I write in support of the Antiquities Act and to inquire about the Department of Interior's process and implementation of national monument reviews as laid out in Executive Order.

For over one hundred years, the Antiquities Act has been used as a bipartisan conservation tool. The law was created by Congress to allow the president to permanently protect federally owned historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest as national monuments. The Antiquities Act has been used by eight Republican and eight Democratic presidents, who have designated a total of 157 national monuments under this authority. This includes nationally significant cultural, historical, and natural sites such as, the Grand Canyon and Acadia National Parks, Statue of Liberty and Muir Woods National Monuments, and the Chesapeake and Ohio Canal National Historical Park. In fact, many of our nation's most popular and iconic national parks were first protected using the Antiquities Act. More recently, the Antiquities Act has help safeguard and honor more diverse stories in the National Park System through the designations of Stonewall, Belmont-Paul Women's Equality, and César E. Chávez National Monuments. Imagine what our country would be like without these incredible places, protected just as they should be.

According to the Executive Order, as written and available from the White House, your office is responsible for reviewing national monument sites designated after January 1, 1996 that are more than 100,000 acres, or where you determine the designation or expansion was made without "adequate public outreach and coordination with relevant stakeholders." While NPCA, like hundreds of other organizations, is deeply troubled by the premise of this Executive Order, we are also unclear how the review will be executed. Based on the Executive Order alone, it is unclear how many monuments will be considered for review, how many will actually be reviewed and what the process for that review might be.

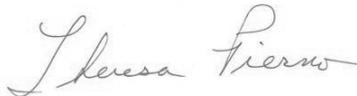
As your office undertakes the Executive Order on the Antiquities Act, with the 45 and 120-day reporting requirements quickly approaching, NPCA would appreciate your clarification on the following issues:

1. Which monuments designated after January 1, 1996 will be under review?
2. How exactly will you determine if the national monument designation or expansion was made “without adequate public outreach and coordination with relevant stakeholders”?
3. How will your office’s decisions for 1. and 2. above be made public?
4. Will there be formal stakeholder engagement or public comment opportunities prior to the 45 and 120-day reporting periods required by the Executive Order?
5. How will the National Park Service (NPS) and other land management agencies be engaged and consulted during the review process? Will they provide written comments?
6. Once reviews of national monuments are completed, how will the reports (at 45 and 120-days) be shared with the agencies and with the public?
7. Following the submission of reports to the Office of Management and Budget, how will your department pursue the recommendations included in the report(s)? Will there be a special executive team to fulfill the recommendations, should you have any?

As you know, national monuments are very popular with the American public. The Colorado College’s Conservation in the West Poll found 80% of western voters support keeping existing national monuments protections in place while only 13% of western voters supported removing protections for existing monuments. This poll reinforces other surveys that document widespread public opposition to congressional attacks on new parks, including a December 2014 Hart Research Poll where 90% of Americans support the permanent protection of some public lands, monuments, wildlife refuges and wilderness. Because of the near universal support of our nation’s monuments, it is imperative that our public land and water management agencies maintain a transparent process when considering their review.

Thank you for your consideration and clarification of how your office will engage with the April 26, 2017 Executive Order on the Antiquities Act. We look forward to hearing back from you.

Sincerely,

A handwritten signature in cursive script that reads "Theresa Pierno".

Theresa Pierno, President & CEO