

FREEDOM OF INFORMATION APPEAL

FOIA APPEAL OF THE DEPARTMENT OF INTERIOR'S FEE WAIVER DENIAL
FOR BUFFALO FIELD CAMPAIGN

FILE Control Number OS-2005-00358

By Email and Fax

June 16, 2005

Ms. Darrell Strayhorn
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Dear Ms. Darrell Strayhorn,

This letter constitutes an appeal of the Department of Interior's denial of our fee waiver which was made in our April 28, 2005 Freedom of Information Act request pursuant to 5 U.S.C. s 551, et seq. ("FOIA") FILE Control Number OS-2005-00358. The decision to deny our FOIA fee waiver request was made by FOIA Officer Sue Ellen Sloca, Office of the Secretary, US Department of Interior.

By this letter, and for all of the reasons set forth in our appeal, we ask that the Department of Interior's decision to deny Buffalo Field Campaign a fee waiver be overturned.

Public disclosure of the records sought through a fee waiver is consistent with the spirit and intent of the Freedom of Information Act and the Department of Interior's regulations which state:

§ 2.2 It is our policy to make records of the Department available to the public consistent with the spirit of the FOIA and the Privacy Act.(Federal Register / Vol. 67, No. 203 / Monday, October 21, 2002 / Rules and Regulations 64531)

(4)(A)(iii) Documents shall be furnished without any charge or at a charge reduced below the fees

established under clause (ii) if 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 and is not primarily in the commercial interest of the requester. (THE FREEDOM OF INFORMATION ACT 5 U.S.C. § 552 As Amended in 2002
<http://www.usdoj.gov/04foia/foiastat.htm>)

We submit the following facts of why we believe the denial of our fee waiver request is in error, how we meet and fulfill the public interest criteria for a fee waiver, and why we should be granted a fee waiver in full:

Department of Interior's FOIA regulations state:

(a) The statutory requirement for granting a fee waiver is that release of the information must be in the public interest because it—

(1) Is likely to contribute significantly to public understanding of the operations and activities of the Government;

Disclosure of public records will shed light on the operations and activities of the Department of Interior, a public lands agency that contributed taxpayer and Congressionally appropriated funds to land conservation agreements on the Royal Teton Ranch and Devil's Slide. Over \$13,000,000 in taxpayer funds were used to secure these lands for their public interest and wildlife habitat values in the Yellowstone ecosystem. Through expenditure of these funds, and in its role as a public lands agency, the Department of Interior has an on-going public trust responsibility for the Royal Teton Ranch and the Devil's slide land conservation agreements. Disclosure of these records will provide meaningful information to the public on the origin and execution of these land agreements and how they are being monitored and managed for their intended purposes. (See enclosure: GAO-FEIS References to the Royal Teton Ranch, June, 2005).

Additional supporting information on how disclosure will contribute significantly to public understanding of these land agreements is discussed throughout our appeal. We ask that the Department of Interior consider the entirety of our arguments of how a fee waiver and disclosure of the requested records to Buffalo Field Campaign will contribute significantly to the

public's understanding of the government's role in this important land agreement.

(2) Is not primarily in your commercial interest.

Buffalo Field Campaign is a nonprofit organization incorporated in the state of Montana in 1997 whose projects educate and involve the public in finding solutions to the Yellowstone bison slaughter. As part of our mission to involve and educate the American people in important land management decisions impacting the Yellowstone bison herd's historic and native range, we actively develop, promote and support programs involving a diverse and broad section of the public at large. These programs include outreach through our web site, online news and list serve capabilities that reach tens of thousands of people who, through their involvement, have demonstrated significant concern over the government's actions and activities impacting our country's last wild bison herd. We seek disclosure of these records for their educational and informative value.

The Buffalo Field Campaign has no commercial interest in the records requested, and the waiver of fees we seek is consistent with the public interest criteria of the Freedom of Information Act.

(1) How do the records concern the operations or activities of the Government?

The records are part of the Department of Interior's project or administrative record for the Royal Teton Ranch and Devil's Slide land agreements subject to public disclosure and scrutiny under the Freedom of Information Act.

(2) If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?

Releasing the records can clarify for the public - who financed the agreement - what we got out of the land deal, how the agency represented the public interests at stake, and what monitoring is in place to ensure that the public interest and wildlife habitat values of the agreements are being realized and protected.

These records will shed light on the public interest at stake by opening to scrutiny the government's role in this \$13,000,000 land agreement - an agreement made with taxpayer funds. The public clearly has a compelling interest in complete disclosure

of records gathered, maintained, and collected by the Department of Interior to fully understand how this taxpayer financed project is protecting native wildlife and the ecosystems upon which they depend.

The public interest and understanding of these land agreements is served by full and complete public disclosure of the government's actions. Granting a fee waiver will enable the public to thoroughly gather more information about the substance, context, purpose and on-going commitments of this multi-million dollar taxpayer financed land conservation agreement.

(i) How are the contents of the records you are seeking meaningfully informative on the Department's or a bureau's operations and activities? Is there a logical connection between the content of the records and the operations or activities you are interested in?

The records requested will help provide a baseline of information for the public to understand the terms and conditions placed on the lands acquired and under easement by the government, and how this land is being managed for its public benefit. Full and complete disclosure will provide meaningful information on the government's role and responsibility in negotiating, acquiring, and managing the natural resources and wildlife habitat values of the Royal Teton Ranch and the Devil's Slide. The content of these records is connected to our concern for public lands management, native wildlife habitat and the public interest in the Department of Interior's lead role in reaching these land agreements.

(ii) Other than enhancing your knowledge, how will disclosure of the requested records contribute to the understanding of the public at large or a reasonably broad audience of persons interested in the subject?

Given what little information is readily available to the public from the Department of Interior's project record for the Royal Teton Ranch and Devil's Slide land conservation agreements, withholding a fee waiver has already had adverse implications on the public's knowledge of how the government is living up to its public trust responsibilities.

Withholding vital information from the public impairs our ability to monitor and ensure that the government fulfills the public benefits enumerated in the land agreements. Disclosure will contribute significantly to and enhance the public's

understanding of the government's role in negotiating, conserving, and managing land conservation agreements for native wildlife in the Yellowstone ecosystem.

Buffalo Field Campaign has demonstrated its capability to reach out to and include the public at large and a broad audience of people who have an active interest and concern for Yellowstone's bison herd and the ecosystem they depend on for their survival. Our programs reach and involve the public at large in all 50 states, and abroad in various countries, through our newsletter, web site, email list serve, public events outreach and programmatic capabilities.

Disclosing these records through a fee waiver to Buffalo Field Campaign will contribute significantly to the public's understanding of activities on our public lands that are impacting Yellowstone's bison herd, and the bison's ability to migrate and occupy its native range including public lands set aside for native wildlife through land conservation agreements reached by the Department of Interior.

(iii) Your identity, vocation, qualifications, and expertise regarding the requested information (whether you are affiliated with a newspaper, college or university, have previously published articles, books, etc.) may be relevant factors. However, merely stating that you are going to write a book, research a particular subject, or perform doctoral dissertation work, is insufficient, without demonstrating how you plan to disclose the information in a manner which will be informative to a reasonably broad audience of persons interested in the subject.

Through Freedom of Information Act requests to the US Forest Service, and the agency's partial disclosure of records on the Royal Teton Ranch/Devil's Slide - which was facilitated by a fee waiver - Buffalo Field Campaign is informing a broad audience of people through our web site who can access informative documents we have put together and publicly released. Buffalo Field Campaign's web site contains organized and readily available information, including information derived from agency records, about government activities within the Yellowstone bison's native range including land conservation agreements on public lands. This information is freely available, and accessed by, the public on the world wide web: www.buffalofieldcampaign.org

Additionally, information we derive from the Department of Interior's records will be included in our annual newsletter that has a print and distribution run of 100,000. Our newsletter

reaches the public in all 50 states and includes a broad section of people of diverse backgrounds including teachers, students, tribal and indigenous societies, people from business, academic, nonprofit, and public interest communities, the news media, in short, the public at large who continue to gather information that our group provides on government activities and operations in Yellowstone.

(iv) Do you have the ability and intention to disseminate the information to the general public or a reasonably broad audience of persons interested in the subject?

There are a number of specific ways in which the public interest is served, and continues to be served, by Buffalo Field Campaign's demonstrated ability to communicate information about government actions to a broad section of the American people including through our newsletter, email list serve, web site, and program work which directly reaches the public at large. Significant efforts to involve and educate the public about the government's activities are made through our outreach at public meetings and public events we sponsor and participate in, our video showings and public presentations throughout the United States, distribution of our news materials to broadcast networks, tv reporters, and journalists who, by their communications capabilities, reach other broad sections of the public who are interested in newsworthy information.

Buffalo Field Campaign is a significant source of information for the public about the Royal Teton Ranch and Devil's Slide conservation land agreements, land use and management within the Yellowstone ecosystem. For example, our web site is providing to interested members of the public ready access to information we've gathered through the Freedom of Information Act - facilitated by fee waivers - from the US Forest Service, on cattle grazing allotments, land conservation agreements, maps and other resources. The public at large accesses our web site daily, and in the last year received over 100,000 unique visitors, including visits by the public to gather information on the Royal Teton Ranch/Devil's Slide land agreements. (See enclosures:

Yellowstone Bison Land Use Fact Sheet, Buffalo Field Campaign
<http://www.buffalofieldcampaign.org/factsheets/bisonlanduse.html>
Royal Teton Ranch - Devil's Slide Land Conservation and Wildlife Habitat Agreement in Yellowstone Fact Sheet
<http://www.buffalofieldcampaign.org/factsheets/royalteton.html>
Devil's Slide Conservation Easement Fact Sheet
<http://www.buffalofieldcampaign.org/factsheets/devilsslide.html>)

(A) How and to whom do you intend to disseminate the information?

(B) How do you plan to use the information to contribute to public understanding of the Government's operations or activities?

How we plan to use the requested information, and how and to whom and we will distribute the information released about the government's activities, are connected and we will answer these together.

Buffalo Field Campaign newsletter. Each year we print and distribute over 100,000 copies of our newsletter to the public in all 50 states providing information on how citizens can get involved including measures to provide habitat for Yellowstone's bison herd. Land conservation agreements are critical components of this issue, and we believe the public has limited knowledge of the government's activities. The BFC newsletter is a direct means of communication with a public who has a significant interest in the government's land management decisions, and we intend to include new information for the public on the Royal Teton Ranch and Devil's Slide land protection agreements.

Buffalo Field Campaign email list serve. Our electronic list serve reaches a broad section of the American people on a regular basis disclosing important information about government agency's operations and activities, including those of the Department of Interior, and the agency's role through the National Park Service in managing public lands for indigenous wildlife species including Yellowstone bison. Thousands of people receive our list serve postings and represent a broad section of the public including businesses, nonprofit and public interest groups, scientists, tribal members, members of the media, educators, and students, among others.

Buffalo Field Campaign web site. Very little information is readily accessible to the public concerning the government's role in land use and land conservation agreements impacting Yellowstone bison habitat. Information that we compile from our FOIA records request is being posted to our web site, contributing significantly to the body of information available to the public in a forum that is readily accessible, without the public and the agency having to incur the cost and time involved in making and responding to a FOIA request. In April 2005, our web site was visited by 15,000 people who freely access the information we post about land conservation and land use in Yellowstone, information we rely on from the government to shed

light on its activities. We believe the number and breadth of people visiting our web site will increase as more information becomes available to the public about the government's activities in Yellowstone.

A sample of the information we provide to the public at large – and which the public uses to inform itself about government operations can be found at:

<http://www.buffalofieldcampaign.org/factsheets/bisonlanduse.html>
<http://www.buffalofieldcampaign.org/factsheets/bisonfactsheets.html>

(3) If there is likely to be a contribution to public understanding, will release of the requested records contribute significantly to public understanding?

There is a clear public interest in granting a fee waiver which will enable us to provide more information directly to the public illuminating government involvement in activities affecting Yellowstone bison's native and historic range, including the Department of Interior's role in the Royal Teton Ranch and Devil's Slide land protection agreement.

(i) Is the information being disclosed new?

Yes. Information currently available through the Department of Interior is limited to past documents already in the public domain (See attached enclosure titled GAO-FEIS References to the Royal Teton Ranch). The project records we seek will shed light on how the government reached its decision, what the government has done since the agreements were reached, and provide the public a chance to oversee and monitor what activities the government has engaged in to implement and oversee these land conservation agreements.

(ii) Does the information being disclosed confirm or clarify data which has been released previously?

Release of the records to the public should provide confirmation and clarification of the government's public trust responsibilities not only for these land conservation agreements, but for its role in the Interagency Bison Management Plan (See attached enclosure titled GAO-FEIS References to the Royal Teton Ranch). For example, a Bison Management Plan for the acquired lands on the Royal Teton Ranch is referenced throughout the Interagency Bison Management Plan, but the public has no knowledge of what, if anything, has been done to complete, implement and monitor this plan on lands newly acquired by the

government. Disclosure of the Department of Interior's records should allow the public to confirm the status of this plan, and clarify what is being done to implement it in accordance with the land conservation agreements and the Interagency Bison Management Plan.

(iii) How will disclosure increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure?

Very little information is readily accessible to the public about the Department of Interior's involvement in land conservation agreements impacting Yellowstone bison habitat. (See attached enclosure titled GAO-FEIS References to the Royal Teton Ranch). Information that we compile from our FOIA records request is being posted to our web site, contributing significantly to the body of information available to the public in a forum that is readily accessible, without the public and the agency having to incur the cost and time involved in making and responding to a FOIA request.

The public is aware of Department of Interior's participation in the Royal Teton Ranch and Devil's Slide land agreements, but public knowledge of what has happened since the agreements were signed is limited or scarce. The records will shed light on important aspects of these agreements including letting the public know for example, the: Status and monitoring of the land for its wildlife habitat values - are the wildlife benefiting, and how? Have there been any new activities by the Department of Interior to act on its option to buy other lands from the Church Universal and Triumphant? One of the terms of the land conservation agreements called for the development of a Bison Management Plan for the acquired lands - what is the status of that plan, and how is it benefiting native wildlife? These are but a few of the questions that cannot be answered by what the public already knows from the current record available to the public through the Department of Interior.

(iv) Is the information already publicly available? If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue (e.g., the listing of the spotted owl as an endangered species), it is less likely that there will be a significant contribution from release.

No. We know of no publicly available source who holds or who has disclosed the Department of Interior's project record files we

are requesting be disclosed through a fee waiver. (See enclosure: GAO-FEIS References to the Royal Teton Ranch, June, 2005).

(4) Would disclosure be primarily in your commercial interest?

(i) Do you have a commercial interest that would be furthered by disclosure? A commercial interest is a commercial, trade, or profit interest as these terms are commonly understood. Your status as "profitmaking" or "non-profitmaking" is not the deciding factor. Not only profitmaking entities, but other organizations or individuals may have a commercial interest to be served by disclosure, depending on the circumstances involved.

Buffalo Field Campaign is a nonprofit organization incorporated in the state of Montana in 1997 whose projects educate and involve the public in finding solutions to the Yellowstone bison slaughter. As part of our mission to involve and educate the American people in important land management decisions impacting the Yellowstone bison's herd historic and native range we actively promote and support programs involving a diverse and broad section of the public at large.

These programs include outreach through our web site, online news and list serve capabilities that reach tens of thousands of people who, through their involvement, have demonstrated significant concern over the government's actions and activities impacting our country's last wild bison herd to continuously occupy its native range. The production and distribution of Buffalo Field Campaign's newsletter and the public events outreach we do on a year-round basis, also serve the public interest by educating and informing the public about significant operations of the government that impact Yellowstone's native wildlife including wild bison.

The Buffalo Field Campaign has no trade, for profit, or commercial interest in the records requested, and we do not believe that release of the public records would result in any for profit, trade or commercial benefits to any other party.

(ii) If you do have a commercial interest that would be furthered by disclosure, would disclosure be primarily in that interest? Would the public interest in disclosure be greater than any commercial interest you or your organization may have in the documents? If so, how would it be greater?

Buffalo Field Campaign has no commercial interest in the records. Disclosure of the records through a fee waiver would facilitate the public interest by shedding light on the government's activities and increase the detail, level and depth of information available to the larger public.

(iii) Your identity, vocation, and the circumstances surrounding your request are all factors to be considered in determining whether disclosure would be primarily in your commercial interest. For example:

(A) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

Though we are not a commercial news media organization as that term is commonly understood, Buffalo Field Campaign does have a demonstrated capacity, and a track record, for gathering and distributing newsworthy information to the public at large about the government's activities in Yellowstone.

(B) If you represent a business/corporation/ association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

Dan Brister represents the Buffalo Field Campaign as its Project and Communications Coordinator. Darrell Geist is a researcher for Darrell Geist & Associates, a sole proprietorship, hired by the Buffalo Field Campaign to assist the group in gathering, analyzing and distributing data on land use and public lands management in the Yellowstone bison's native range. Neither of the individuals are attorneys.

(c) If the bureau cannot make a determination based on the information you have provided, it may ask you for additional justification regarding your request.

The American people have a long tradition supporting the conservation of wildlife habitat, native wildlife and the ecosystems upon which they depend. The acquisition of land and conservation easements with taxpayer money appropriated by Congress is rightly the public's on-going business. Disclosure of records gathered, submitted, and shared with the Department of Interior in its cooperating role as a government agency in pursuit of such endeavors will contribute significantly to the public's understanding of how the Department of Interior is

fulfilling its obligations to native wildlife, and the ecosystems upon which they depend, through these land conservation agreements, and the agency's land management roles and decisions in Yellowstone.

Buffalo Field Campaign has a demonstrated capacity to realize the public interest benefits of a fee waiver, and we ask that the Department of Interior expeditiously grant our appeal and resolve this dispute by granting a fee waiver in full, and process our Freedom of Information Act request without further delay.

We look forward to receiving your determination on our appeal within 20 working days, as required by the FOIA, 5 U.S.C. § 552(a)(6)(B).

Sincerely,

/s/
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/s/
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Enclosures:

- 1) Darrell Geist and Dan Brister Buffalo Field Campaign, FREEDOM OF INFORMATION ACT REQUEST; FEE WAIVER REQUESTED, April 28, 2005.
- 2) Sue Ellen Sloca, Office of the Secretary FOIA Officer, U.S. Department of Interior Control Number OS-2005-00358 May 11, 2005.
- 3) Darrell Geist and Dan Brister Buffalo Field Campaign, GAO-FEIS References to the Royal Teton Ranch, June, 2005.
- 4) White House, Office of the Press Secretary Press Release PRESIDENT CLINTON AND VICE PRESIDENT GORE: PRESERVING AMERICA'S LANDS LEGACY, August 21, 1999.
- 5) Yellowstone Bison Land Use Fact Sheet, Buffalo Field Campaign <http://www.buffalofieldcampaign.org/factsheets/bisonlanduse.html>
- 6) Royal Teton Ranch - Devil's Slide Land Conservation and Wildlife Habitat Agreement in Yellowstone Fact Sheet <http://www.buffalofieldcampaign.org/factsheets/royalteton.html>
- 7) Devil's Slide Conservation Easement Fact Sheet <http://www.buffalofieldcampaign.org/factsheets/devilsslide.html>