

March 30 2005

Becki J. Heath
Forest Supervisor
Gallatin National Forest
10 East Babcock
PO Box 130
Bozeman MT 59771

RE: Gallatin National Forest Conduct and Treatment of Citizen's Inspecting Agency
Records under the Freedom of Information Act

Dear Becki J. Heath,

This letter is in response to your February 28, 2005 letter (File Code 5400/6270-1) regarding my visit to the Gallatin National Forest office in Bozeman and the Gardiner Ranger District to inspect and review agency records on cattle grazing allotments and the Royal Teton Ranch land agreement, and to document the agency's conduct and treatment of citizen's exercising our right to know what government agencies are doing as Congress intended under the Freedom of Information Act.

The narrative below is based on notes and letters documenting my visits to the Bozeman and Gardiner offices of the Gallatin National Forest.

TUESDAY FEBRUARY 22 2005

I (Darrell Geist) visited the Gallatin National Forest Bozeman office to see if Bob Dennee, Lands Staff, was in, or another Forest Service person who could assist me in reviewing and inspecting agency records on the \$13 million dollar conservation agreement funded by Congress to purchase lands, acquire an easement and to consolidate ownership of land on the Royal Teton Ranch to benefit native Yellowstone wildlife. This visit was to follow-up on a records review made in June 2004. I also intended to gather information on grazing allotments within Yellowstone bison's native and historic range on the Gallatin National Forest.

I arrived at the Bozeman office on Tuesday morning. I signed in with the Secretary, got my ID badge, and asked her if Bob Dennee was in the office. The Secretary said that Bob was in a meeting. I left a written message including my cell phone number for Bob asking him to call me about my visit to Bozeman to inspect the Royal Teton Ranch files.

I also asked the Secretary if there was someone at the Forest in charge of the grazing allotment program. She said Jim Devitt, Forest Planning, was in and I asked to see if he was available. I then met with Jim for about twenty minutes to discuss the status and time line of the Gallatin Forest Plan (originally set for revision in 2005; funding for planning is behind schedule of appropriations from Congress, and it is questionable if funding will be there for FY 2006). Jim also provided me with the names of Gallatin National Forest personnel working on cattle grazing allotments. I also received a copy of the Gallatin Forest Plan later that day.

I returned to the Secretary's office and waited for Bob Dennee. Bob came out to say that he would be in meetings all day. I asked if he or anyone else from the Gallatin Forest would be available to let me review the Royal Teton Ranch files during my visit. He said he would have to check with his FOIA officer and get back to me.

I spoke with Bob Dennee by phone later that day. In our phone conversation, Bob said that: The Gallatin National Forest has been very accommodating in allowing me access to the Royal Teton Ranch files; that "this is an unusual request" - to review and inspect the Royal Teton Ranch files again. Bob told me that in 29 years of working for the Forest Service he has never encountered this kind of request. "You just don't walk in and rifle through agency files." "I think enough is enough." There has been "no news" since my last inspection (June 2004) and no new agency records created. He asked that if I had specific requests for files or that if it was a broad request that I put it in writing. "You just don't waltz in and inspect files. That's not the way we do business." His FOIA officer advised him that I needed to make an appointment. That if my question is can I gain access to records today, "the answer is NO."

I then spoke with Steve Christiansen, Gallatin National Forest FOIA officer, by phone. Steve said that notice is required in advance to inspect agency files. I responded that FOIA requires the agency to let the public review and inspect files during normal business hours (I also told this to Bob). He asked for the citation. Steve said I should have given the Forest Service a couple of weeks notice; that the Forest Service needs people to supervise me as records are inspected; that the Forest Service needs to make arrangements to accommodate my visit; and is sensitive to this, given our prior litigation over bison management; and that the Forest Service has files that are private.

I then called Bob Dennee back to let him know that I was putting my request in writing. He mentioned that the Royal Teton Ranch files "are in disarray" and that I should identify specific topics for records I wished to see.

Tuesday afternoon I emailed Bob Dennee my request to review and inspect Gallatin National Forest files on the Royal Teton Ranch project noting my availability February 23 and 25. (A copy of the email is enclosed.)

That afternoon, I called the Gardiner Ranger District and spoke with the Secretary and left a message for Ken Britton, Gardiner District Ranger, of my intent to follow up on our review of files on the Royal Teton Ranch and cattle grazing allotments on the District. The Secretary said that Ken is in Bozeman and that it will be up to Ken if I can review District files again. I also sent an email to Ken letting him know that I would be in Gardiner Thursday February 24, that I wanted to follow-up on our visit in September 2004 to review files and meet with him if he was available. (A copy of the email is enclosed.)

Tuesday evening Ken Britton called me and we spoke about my return visit to Gardiner to follow-up on a previous visit in September to inspect the cattle grazing allotment and Royal Teton Ranch files. He approved of my visit to inspect the files at the District office and we scheduled a visit for Thursday morning around 10 am.

WEDNESDAY FEBRUARY 23 2005

Wednesday morning I received an email from Bob Dennee in response to my written request to inspect files, stating: "We are seeking advice on this request." (A copy of the email is enclosed along with my reply.)

I spoke by phone with Bob Dennee and Steve Christiansen in response to my written request to inspect and review agency files on the Royal Teton Ranch. My notes follow:

Bob Dennee

We sought advice from the Washington Office FOIA coordinator who advised us that the CFR you cited does not apply to "working case files". Two ways to proceed that the Forest has to use: 1) Arrange a mutually agreeable time in mid-March to review and inspect files. This gives us time to organize files. 2) Submit a FOIA request for documents and the Forest will review files and make copies for records it can release. Either way this is a "significant impact to our staff". This is the third time that you have asked to review records and it is having a significant impact on the Forest's time and resources.

Steve Christiansen

The CFR provision you cited (a)(2) describes documents that are readily available in a reading room environment. It is not inclusive of documents you are looking for. That CFR provision applies to certain things (spelled out in the FOIA). Gallatin National Forest follows a national FOIA policy (it does not have one for the Gallatin).

I asked that the Gallatin National Forest provide the policy it is following under the Freedom of Information Act allowing the public to review and inspect agency records.

Dennee's response: You're not gonna get that because its national policy. We don't know where you are going with this (records review) and you haven't described a purpose. I responded: I don't think FOIA requires that of me.

In response to a question I posed on the Gallatin's policy allowing the public to inspect and review agency records, Christiansen responded: We are not required under FOIA to allow public inspection of a project record as voluminous as the Royal Teton Ranch files. "We can deviate from that at our own discretion". The Forest will take responses to written requests for records under FOIA. The Forest has to go through and review for private or redacted records.

I asked if the Gallatin has reviewed the Royal Teton Ranch project record for private or redacted records, and Dennee responded: "No, we have not."

In response to an earlier point raised by Bob that the Gallatin's response applies to my planned visit to the Gardiner Ranger District (Thursday, Feb 24) Dennee replied, "Yes, it does." You'll get the same response: 1) mutually agreeable appointment that Bob Dennee would be present for, 2) Submit a FOIA for specific records.

I asked about the status of the Forest's review of records we had inspected in September 2004 at the Gardiner District, as we had not heard from the Forest since November. Christiansen responded that the Gallatin does not have authority to deny records - the Regional or Washington office makes that determination. Kathy Oelke is the Regional FOIA officer (406) 329-3256; Rita Morgan is the Washington FOIA officer (703) 605-4910.

I then asked that the Gallatin National Forest provide a written response recounting our discussion, that the agency provide its rationale, statutory authority, and policy on public review and inspection under FOIA, separate from FOIA records requests. I also stated that I would have to review the agency's written response before I made a decision on what to do next. (A copy of the Gallatin National Forest and Gardiner Ranger District letters are enclosed.)

After my phone call with Bob Dennee and Steve Christiansen about the new conditions for inspecting agency records, I called the District office and spoke with Pat Hoppe, who runs the cattle grazing allotments for the Gardiner Ranger District. I asked if he would be in Thursday. Hoppe had spoken with Bob Dennee and Steve Christiansen about my planned visit to Gardiner. Hoppe said that I shouldn't "waste my time in coming to Gardiner" as the restrictions imposed by the Bozeman office also applied to the cattle grazing allotment files, not just the Royal Teton Ranch files. I said that my interpretation was that Gallatin National Forest's concern was over the Royal Teton Ranch files and not the grazing allotment files, and that I would see first what Ken Britton had to say about it.

THURSDAY FEBRUARY 24 2005

Thursday morning I retrieved a phone message left on my answering service from Ken Britton, the Gardiner District Ranger, saying that he was getting mixed messages out of Supervisor's office regarding accessing the files today, and that I should call him to work this out.

Thursday morning I arrived at the Gardiner Ranger District to meet Ken Britton who was out of the office. Ken called me later by phone to say he was in. I told him I was on my way to see him. My notes with my meeting with Ken follow:

Ken: You correctly followed procedure and asked to review district files and we had agreed to that. Now I'm confused about the Gallatin's directive. I have to follow their direction. They have asked me to not allow you access without making another appointment or submitting a detailed FOIA request. This makes me look two-faced. And it doesn't sound right after saying yes to say no.

I discussed in detail the circumstances of our FOIA request and why I was coming back to review files: missing records, records referenced but not included, records still held for review from our September visit. I also talked in detail about how we view FOIA's review and inspect requirements, how it differs from FOIA records requests, importance of FOIA fee waiver, and equitable access to agency information on a \$13 million dollar project

funded through Congress, and that I was trying to establish a factual record for what is happening on the ground in the Yellowstone bison's native range.

Ken said that Bob Dennee is out of the office in Reno; Steve Christiansen I haven't been able to get a hold of him this morning to sort this out.

I asked Ken if the cattle grazing allotment files were open for inspection or if the new directive from the Gallatin applied. I told him I thought their concern was over the Royal Teton Ranch files. He called the Gallatin National Forest and spoke with Steve Christiansen.

Ken said the Washington office stepped in on the Royal Teton Ranch files; Gallatin wants all Royal Teton Ranch files in Bozeman to do it all at once; and they still want to talk to the Regional office on their policy. Ken then asked if I had specific questions about the grazing allotment files. I did, and told him some that I had. He pulled the Park Allotment file and asked Pat Hoppe to sit down and answer some of the questions. My notes follow:

I asked what was on page 2 of the Term Grazing Permit for the Park Allotment; Hoppe's response was it was a map included with the Gardiner's FOIA response. This map was never made for the permit that was never issued. Ken asked why the bill collections since May 1998 were not included in our FOIA and were not in the files. Hoppe: "not sure where they are at."

I asked what Attachment 2 was for the Action Plan to Modify Term Grazing Permit Allotment conditions. (It was a letter that was included with our FOIA request).

I asked what effect the December 22 2004 Term Waiver of Grazing Permit on the Park Allotment had. Hoppe's response: Church Universal and Triumphant is no longer a permittee. Non-use allows for three of ten years within the permit's terms to be not used for whatever reason, and that a fourth year requires Supervisor's signature. Waiver gives right to graze cattle on private allotment land but the public head (cattle) grazing on public land had to be taken off; no National Forest access for grazing. Permittee gives us management authority over some cooperative private/public grazing conditions. Vacant allotments are not closed. Hoppe didn't want to go through NEPA to close vacant allotments.

I asked about the jack-leg fence the Church Universal and Triumphant wants to put in on Aldridge Lake and Beattie Gulch. Ken & Pat: Church Universal and Triumphant built jack-leg along Aldridge on private Church Universal and Triumphant land. On Beattie (near Devil's Slide Conservation Easement), decided not to and will use an electric fence that will be dropped every Fall.

Ken asked me if I would like to tentatively schedule a visit to Gardiner Ranger District in mid-March to review and inspect cattle grazing allotment files. I said I wasn't sure of my availability but that we should tentatively schedule March 15 for a visit.

Ken also said, "That's the bureaucratic answer." (On why I had to re-schedule another time or submit a FOIA). I asked Ken to provide a written response recapping the

circumstances of my approved/canceled visit, and Forest policy on allowing public to inspect and review files. On my way out, Ken made a comment he made earlier how drafts in the agency's files "shouldn't be in our files. They should be destroyed or taken out of our files. They shouldn't be in there."

Clearly, the Gallatin National Forest does not understand its duty to fulfill Congress' intent in opening agency records to citizen inspection and review.

In September 2004 the Gallatin National Forest Bozeman office refused Buffalo Field Campaign representatives Dan Brister, Stephany Seay, and I the opportunity to review and inspect the Royal Teton Ranch files. (See statement of Darrell Geist, October 9, 2004 submitted as part of our appeal to the US Forest Service, Washington Office).

By all measures Gallatin National Forest staff in Bozeman have adopted an adversarial position to letting the public inspect agency records on the Royal Teton Ranch land agreement, and now, on cattle grazing allotments run by the Forest. Canceling an arranged visit with the District Ranger to look at agency records demonstrates a willingness on the part of the Gallatin National Forest office in Bozeman to impede and obstruct our ability to find out what the Forest Service is doing on a Congressionally funded land conservation agreement, and how it is managing public lands.

Congress, in passing the Freedom of Information Act, intended to require the US Forest Service to have an open door for citizens to review and inspect the agency's files. The law is clear:

THE FREEDOM OF INFORMATION ACT 5 U.S.C. § 552

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

These open door requirements are reiterated by the US Department of Agriculture in the Federal Register / Vol. 65, No. 146 / Friday, July 28, 2000 / Rules and Regulations 46337:

§ 1.3 Agency implementing regulations.

Each agency of the Department shall promulgate regulations setting forth the following:

(a) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by 5 U.S.C. 552(a)(2) and § 1.4 to be made available for public inspection and copying.

Despite our repeated requests the Gallatin National Forest has yet to state what rules it has in place to allow the public to inspect and review records at its offices as the Freedom of Information Act explicitly requires.

THE FREEDOM OF INFORMATION ACT 5 U.S.C. § 552

1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public-- (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying-- (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; (C) administrative staff manuals and instructions to staff that affect a member of the public; (D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and (E) a general index of the records referred to under subparagraph (D);

March 13-19 was the first national Sunshine Week recognizing the value of open government, and how that openness is central to holding government accountable to the people. March 16 was Freedom of Information Day, and the anniversary of James Madison's birthday, who said, "A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or tragedy or perhaps both."

The ability for citizens to inspect and review agency records is at the heart of the Freedom of Information Act. It is also the least burdensome approach on the government and its staff. We have made every effort to lessen the burden on the agency and it has responded by placing the burden on us, by canceling our visits, and by closing its doors, and ignoring the spirit and intent of the Freedom of Information Act.

Sincerely,

Darrell Geist
PO Box 7941
Missoula MT 59807
(406) 531-9284
z@wildrockies.org

/s/
Dan Brister
Buffalo Field Campaign
PO Box 957
West Yellowstone, MT 59758
(406) 646-0070
dan@wildrockies.org

cc: Senator Max Baucus; Senator Patrick Leahy; Senator John Cornyn; Ken Britton, Gardiner Ranger District; Abigail R. Kimbell, Regional Forester, US Forest Service