



Northwest
1216 Lincoln Street
Eugene, Oregon 97401
541 485-2471
fax 485-2457
eugene@westernlaw.org

Southwest
P.O. Box 1507
Taos, New Mexico 87571
505 751-0351
fax 751-1775
taos@westernlaw.org

Rocky Mountains
223 North 6th Street, Suite 300
Boise, Idaho 83702
208 342-2216
fax 424-0000
fink@westernlaw.org

www.westernlaw.org

Western Environmental Law Center

Defending the West Land, Sky, Water, Wildlife, Culture

April 5, 2005

VIA ELECTRONIC AND FIRST CLASS MAIL

Becki J. Heath
Forest Supervisor
Gallatin National Forest
US Forest Service
10 East Babcock
PO Box 130
Bozeman, Montana 59771
bjheath@fs.fed.us

**Re: Request for Clarification Regarding the Removal
and Possible Destruction of Federal Records at the
Gallatin National Forest**

Dear Ms. Heath,

I am writing on behalf of Darrell Geist and Dan Brister concerning the apparent removal and possible destruction of US Forest Service records maintained by Gallatin National Forest personnel in the Bozeman and Gardiner offices. The records, which concern the Royal Teton Ranch project and other files, are responsive to two requests that Mr. Geist made many months ago pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* ("FOIA").

Mr. Geist was first informed that the records in question had been "recycled" on Wednesday March 30, 2005, when he visited the Bozeman office of the Gallatin National Forest on a scheduled visit to review the Royal Teton Ranch files. Upon arrival, Mr. Geist was informed by Bob Dennee, an agency employee, that Mr. Dennee had spent the preceding three weeks "recycling agency files," including files from the Royal Teton Ranch project record at the Gallatin National Forest offices in Bozeman and Gardiner.

Assuming that by "recycled," Mr. Dennee means that the records were removed or even destroyed, these activities are astounding, and quite possibly illegal under the Federal Records Act ("FRA"), which provides that "records in the custody of the agency are not to be alienated or destroyed except in accordance" agency regulations. 44 U.S.C. § 3105. USDA implementing regulations for the FRA define "records" to:

include all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them.

44 U.S.C. § 3301. USDA implementing regulations for the FRA provide that “[r]ecords may not be removed from the legal custody of Federal agencies or destroyed without regard to the provisions of agency records schedules.” 36 C.F.R. § 1228.100. Moreover, the “willful and unlawful destruction, damage, or alienation of Federal records is punishable” by a \$2,000 fine, 3 years in prison, or both (18 U.S.C. 2071). 36 C.F.R. § 1228.102; see also Dep. Reg. 3080-001 (Apr. 30, 2004) at § 13(e) (“Penalties for Improper Handling”) (providing that the “concealment, mutilation, obliteration, falsification, or unauthorized removal or destruction of Federal records is against the law and may lead to a \$2000 fine, three years imprisonment, or both, and forfeiture of his position and disqualification from holding any other Federal office”).

Mr. Dennee, Ken Britton, and the staff at both offices were made aware that these records are responsive to Mr. Geist’s FOIA requests that have been pending before the agency since June 24, 2004 (Bozeman office) and September 14, 2004 (Gardiner Ranger District). By email communications, Mr. Geist informed Mr. Dennee and Mr. Britton of his interest in the information since, upon review of the relevant files during prior records inspection visits, Mr. Geist had discovered gaps in information – and, indeed, specifically requested an appointment to review the files again on that basis. Moreover, during prior attempts to review the files, Mr. Dennee, Mr. Britton, and Steve Christiansen denied Mr. Geist the opportunity to do so. Thus, there is no possibility that the agency was unaware of Mr. Geist’s interest in these records.

In light of the above, it appears that the Gallatin National Forest has acted illegally by destroying or otherwise removing records that have been, and continue to be, responsive to Mr. Geist’s FOIA requests. By destroying these records, the Gallatin National Forest is acting in a manner that jeopardizes the legal rights of Mr. Geist and Mr. Brister to access agency records under the FOIA. See, e.g., Armstrong v. Bush, 807 F. Supp. 816, 822 (D.D.C. 1992) (“where the FBI had disposition schedules that w[ere] improper under the FRA, the appropriate relief was a preliminary injunction prohibiting the FBI from destroying the records until it complied with the statute”) (citation omitted).

Accordingly, by this letter, I am requesting the immediate cessation of concealment, mutilation, obliteration, falsification, or unauthorized removal or destruction (including, *e.g.*, “recycling”) of agency records by your offices, including project records regarding the Royal Teton Ranch. In addition, I am asking you to provide all documentation that concerns these actions, including the basis, if any, that you believe has allowed you to proceed with these activities. Moreover, wherever possible, I am demanding that you take immediate steps to retrieve all responsive records that have been concealed, mutilated, obliterated, falsified, removed, or destroyed

in any way. In the absence of adequate assurances by your office that records have not been removed or destroyed, we will have no choice but to explore all options available to us to ensure your immediate compliance with the FOIA and FRA.

Finally, given the seriousness of the Gallatin National Forest's actions, please provide a complete record of the following regarding the Royal Teton Ranch project and grazing allotment files, and whether these records were also affected by the recent destruction of records:

- 1) Documentation of the authority to remove federal records, including Standard Form 115 - Request for Records Disposition Authority, if applicable;
- 2) Documentation of the criteria used to remove federal records;
- 3) Forest Service policy on the removal of federal records including any approved records schedule for the Gallatin National Forest;
- 4) File plan and retention period for these removed records; and
- 5) Disposition of the removed federal records, and the status of their availability.

Please feel free to contact me if you have any questions. Thank you for your immediate attention to this matter.

Sincerely,



Amy R. Atwood
Attorney
Western Environmental Law Center

cc: VIA ELECTRONIC AND FIRST CLASS MAIL

Darrell Geist
PO Box 7941
Missoula MT 59807
z@wildrockies.org

Dan Brister
Buffalo Field Campaign
PO Box 957
West Yellowstone, MT 59758
dan@wildrockies.org