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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

HIGH SIERRA HIKERS ASSOCIATION,  
INC.,

Plaintiff,

v.

NATIONAL PARK SERVICE,

Defendant.

Case No. 3:16-cv-2609

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Freedom of Information Act  
Administrative Procedure Act

## INTRODUCTION

1  
2       1.       This action, through which Plaintiff High Sierra Hikers Association, Inc.  
3 (“HSHA,” or “Plaintiff”) seeks access to government records relating to the Defendant United  
4 States Department of Interior National Park Service’s Wilderness Stewardship Plan for Sequoia  
5 and Kings Canyon National Parks and the accompanying Final Environmental Impact Statement  
6 (collectively the “WSP”), is premised upon, and consequent to, violations of the federal  
7 Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq. and Department of Interior FOIA  
8 regulations promulgated thereunder, 43 C.F.R. Subtitle A, Part 2, §§ 2.1-2.290, violations  
9 which also constitute agency action unlawfully withheld or unreasonably delayed and/or are  
10 arbitrary, capricious, or otherwise not in accordance with law under the Administrative  
11 Procedure Act (“APA”), 5 U.S.C. § 701 et seq. This action challenges the unlawful failure of the  
12 Defendant, the United States Department of Interior National Park Service and Sequoia and  
13 Kings Canyon National Parks (collectively, “NPS”, the “Agency” or “Defendant”) to abide by  
14 the statutory requirements of the FOIA, and applicable regulatory requirements, and further  
15 challenges the actions and omissions underlying such claims under the APA.

16       2.       Defendant is unlawfully withholding from public disclosure information sought by  
17 HSHA, information to which HSHA is entitled and for which no valid disclosure exemption  
18 applies or has been properly asserted. In particular, Defendant has violated, and remains in  
19 violation of, the statutory mandates imposed by the FOIA and the APA by: (Count I) failing to  
20 provide a timely final determination; (Count II) failing to comply with, and provide, a renewed  
21 estimated completion date; (Count III) failing to conduct a reasonably adequate search; (Count  
22 IV) failing to provide non-exempt public records; (Count V) unlawfully withholding documents  
23 from public disclosure for which no valid disclosure exemption applies or has been properly  
24 asserted, or to provide the reasonably segregable portions of those records; and (Count VI)  
25 taking such actions and omissions detailed in Counts I through V, which, in the alternative,  
26 constitute agency action unlawfully withheld or unreasonably delayed and/or which are  
27 arbitrary, capricious, or otherwise not in accordance with law under the APA, and are therefore  
28 actionable thereunder.



## PARTIES

12. Plaintiff HSHA is a 501(c)(3) non-profit corporation organized under the laws of the State of California. HSHA is a volunteer organization dedicated to improving management practices on federal lands in the Sierra Nevada.

13. HSHA submitted a FOIA request to NPS on May 2, 2015 seeking nine categories of records regarding and related to the WSP and NPS's planning process for the WSP, and more specifically focusing in on the issues central to HSHA's mission: informing its members, public officials, and the public about environmental issues pertaining to the Sierra Nevada. NPS has been developing the WSP for decades; HSHA's May 2, 2015 FOIA is targeted to assess the factors that NPS considered in its ultimate decision on the WSP.

14. Defendant National Park Service is an agency within the U.S. Department of Interior and is responsible for managing all national parks in the United States, including the Sequoia and Kings Canyon National Parks.

15. Defendant is an "agency" under the FOIA, the records sought are "records" under the FOIA, and as Defendant is in possession and control of the records sought by HSHA, Defendant is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

## LEGAL FRAMEWORK

16. The FOIA requires U.S. government agencies to promptly make public records available to any person if that person makes a request which (1) reasonably describes the records sought and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. § 552(a)(3)(A).

17. The FOIA requires an agency to issue a final determination on any such information request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a). In issuing a final determination, an agency is required to inform the requester of three things: (1) the agency's determination of whether or not to comply with the request; (2) the reasons for its decision; and (3) notice of the right of the requester to appeal to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i).

18. The FOIA allows an agency to extend the twenty-day determination deadline,

1 however, by ten working days when “unusual circumstances” exist and when the agency so  
2 notifies a requester in writing. 5 U.S.C. § 552(a)(6)(B)(i)-(iii); 43 C.F.R. §§ 2.16(a), 2.19. A  
3 notice informing a requester of the invocation of the “unusual circumstances” provision must  
4 specify the applicable “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(i)-(iii); 43 C.F.R.  
5 § 2.19(a).

6 19. Permissible “unusual circumstances” are limited to: (1) the need to search for and  
7 collect the requested records from field facilities or other establishments that are separate from  
8 the office processing the request; (2) the need to search for, collect, and appropriately examine a  
9 voluminous amount of separate and distinct records which are demanded in a single request; or  
10 (3) the need for consultation, which shall be conducted with all practicable speed, with another  
11 agency having a substantial interest in the determination of the request or among two or more  
12 components of the agency having substantial subject-matter interest therein. 5 U.S.C.  
13 § 552(a)(6)(B)(iii).

14 20. An agency is entitled to one ten-business day extension. 5 U.S.C.  
15 § 552(a)(6)(B)(i). The written notice provided to the requester must specify the specific unusual  
16 circumstances justifying the extension and the date on which a final determination is expected to  
17 be dispatched. Id; 43 C.F.R. § 2.19(a).

18 21. In some circumstances, the FOIA allows an agency to invoke an extension beyond  
19 ten days. To invoke a longer extension, the FOIA requires an agency to provide written  
20 notification to the requester that (1) offers the requester an opportunity to limit the scope of the  
21 request so that it may be processed within that time limit, or (2) offers the requester an  
22 opportunity to arrange with the agency an “alternative time frame” for processing the request. 5  
23 U.S.C. § 552(a)(6)(B)(ii); 43 C.F.R. § 2.19(b).

24 22. As part of invoking an “alternative time frame” extension, the agency must also  
25 make available to the requester its FOIA Public Liaison, who is tasked to resolve any dispute  
26 between the requester and the agency. 5 U.S.C. § 552(a)(6)(B)(ii); 43 C.F.R. § 2.19(b)(2).

27 23. FOIA Public Liaisons “shall serve as supervisory officials” and “shall be  
28 responsible for assisting in reducing delays, increasing transparency and understanding of the

1 status of requests, and assisting in the resolution of disputes.” 5 U.S.C. § 552(l); 43 C.F.R.  
2 § 2.66(c).

3 24. Even when an “unusual circumstances” extension is made, the agency must still  
4 notify the requester of its expected date on which a final determination will be dispatched. 5  
5 U.S.C. § 552(a)(6)(B)(i).

6 25. “Exceptional circumstances” for failure to comply with applicable time limits  
7 “does not include a delay that results from predictable agency workload of requests under this  
8 section, unless the agency demonstrates reasonable progress in reducing its backlog of pending  
9 requests.” 5 U.S.C. § 552(a)(6)(C)(ii).

10 26. NPS regulations allow for a “temporary” suspension of the FOIA’s twenty-day  
11 determination deadline when the agency reasonably asks a requester for clarifying information.  
12 43 C.F.R. § 2.18(a). This “temporary” suspension is limited to the time it takes a requestor to  
13 respond to one (1) written communication from the agency. *Id.*

14 27. The FOIA permits agencies to promulgate regulations “providing for multitrack  
15 processing of requests for records based on the amount of work or time (or both) involved in  
16 processing requests.” 5 U.S.C. § 552(a)(6)(D)(i).

17 28. Agency regulations “may provide a person making a request that does not qualify  
18 for the fastest multitrack processing an opportunity to limit the scope of the request in order to  
19 qualify for faster processing.” 5 U.S.C. § 552(a)(6)(D)(ii); 43 C.F.R. § 2.15(e).

20 29. Multitrack processing “shall not be considered to affect” the due diligence  
21 requirements of an agency’s duties to respond within the applicable time limits. 5 U.S.C.  
22 § 552(a)(6)(D)(iii); *see also* 43 C.F.R. § 2.15(f).

23 30. NPS regulations have established four basic processing tracks, based on factors  
24 “such as the number of pages involved in processing the request or the need for consultations.”  
25 43 C.F.R. § 2.15(b), (c).

26 31. Final determinations by NPS concerning the granting or denial of a FOIA request  
27 must be made in writing. 43 C.F.R. § 2.21(a). If an agency fails to provide a final determination  
28 on a FOIA request within the statutory timeframe, the requester is deemed to have exhausted its

1 administrative remedies and may immediately file suit against the agency. 5 U.S.C.  
2 § 552(a)(6)(C)(i).

3 32. The FOIA also requires agencies to provide “an estimated date on which the  
4 agency will complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii); *see also* 5 U.S.C.  
5 § 552(a)(6)(B)(i).

6 33. Agencies shall make reasonable efforts to maintain their records so they are  
7 reproducible for FOIA purposes, and “shall make reasonable search efforts” for responsive  
8 records. 5 U.S.C. § 552(a)(3)(B), (C). The term “search” “means to review, manually or by  
9 automated means, agency records for the purpose of locating those records which are responsive  
10 to a request.” 5 U.S.C. § 552(a)(3)(D).

11 34. In furnishing records responsive to a request under the FOIA, an agency may, for a  
12 limited set of categories of information, exclude or withhold such information from disclosure.  
13 5 U.S.C. § 552(b). However, even where proper justification exists for withholding such  
14 information, the agency must provide the remaining portions of records that are reasonably  
15 segregable from the properly withheld portions thereof. *Id.*

16 35. Except in certain circumstances, when an agency produces a record in response to  
17 a FOIA request but withholds a portion thereof, the agency must indicate the volume of  
18 information withheld and the exemption under which such information has been withheld. *Id.*;  
19 5 U.S.C. § 552(a)(6)(F).

20 36. An agency that withholds public records from a requestor under the FOIA bears  
21 the burden of sustaining the legality of its action. 5 U.S.C. § 552(a)(4)(B).

## 22 **STATEMENT OF OPERATIVE FACTS**

23 37. In 1964 Congress passed the Wilderness Act, 16 U.S.C. § 1131 et seq., Pub. L. 88-  
24 577 (Sept. 3, 1964). The Wilderness Act authorizes Congress to designate “wilderness areas”  
25 that “shall be administered for the use and enjoyment of the American people in such manner as  
26 will leave them unimpaired for future use as wilderness, and so as to provide for the protection  
27 of these areas, the preservation of their wilderness character, and for the gathering and  
28 dissemination of information regarding their use and enjoyment as wilderness....” 16 U.S.C.



§ 1131(a). In 1984 Congress passed the California Wilderness Act, Pub. L. 98-425 (Sept. 28, 1984) § 105, amended by Pub. L. 103-437 (Nov. 2, 1994), thereby designating the Sierra Crest portion of the Sequoia and Kings Canyon National Parks as “wilderness.” *See* 16 U.S.C. § 80. In 2009, Congress expanded the Sequoia and Kings Canyon Wilderness Area, and designated the John Krebs Wilderness Area. *See* Omnibus Public Land Management Act of 2009 Pub. L. 111-11 (Mar. 30, 2009). The Sequoia and Kings Canyon total designated wilderness area is now 808,078 acres, or approximately 93.3% of the total park acreage of 865,964 acres. Sequoia and Kings Canyon National Parks also contain several “proposed” wilderness and “designated as proposed” wilderness areas. In total, 97% of the Sequoia and Kings Canyon National Parks’ acreage is designated, or proposed, wilderness area.

38. Pursuant to the Wilderness Act, NPS is the agency that administers the Sequoia and Kings Canyon National Parks, and NPS is to develop special protections for wilderness areas to preserve their wilderness character. *See* 16 U.S.C. § 1133(b). Over nearly a 45-year period, NPS developed several management plans; and, HSHA has only twice sought information regarding these management plans from NPS through the FOIA.

39. Several NPS plans proposed preparing further plans, including a 2006 proposal to prepare a wilderness stewardship plan. *See, e.g.*, NPS, Management Policies at Ch. 6 (2006) available at <https://www.nps.gov/policy/mp2006.pdf>. The wilderness stewardship plan would focus on implementing wilderness stewardship as well as stock use practices within wilderness. *Id.* at Ch. 4, 6, 8.

40. In April 2015 the NPS finally issued the WSP, and on May 27, 2015 NPS issued the WSP’s Record of Decision (“ROD”), finalizing the WSP. The WSP puts forth a framework for NPS’s management and preservation of the Sequoia and Kings Canyon National Parks for the next 15 to 20 years in order for NPS to meet the mandates of the 1964 Wilderness Act and the 1984 California Wilderness Act. The WSP contains provisions relating to the commercial, administrative, and private use of stock animals (horses, mules, burros, llamas) in the High Sierra, activities and policies that are of particular interest to HSHA.

41. On May 2, 2015, HSHA sent a FOIA request to the Freedom of Information Act



Officer at the Sequoia and Kings Canyon National Parks setting forth an enumerated nine-part request for records regarding and related to the WSP, and more specifically focusing in on the issues central to HSHA's mission as stated above. *See* ¶ 13. Despite the long history of the WSP, HSHA limited its request to records dating from 2004 and 2009 to 2015. HSHA included a Request for Fee Waiver with its May 2, 2015 FOIA request. A true and correct copy of this FOIA request is attached to this Complaint as **Exhibit A**.

42. By letter dated May 29, 2015, NPS stated that it had received HSHA's FOIA request on May 4, 2015. A true and correct copy of this letter is attached to this Complaint as **Exhibit B**.

43. By letter dated May 29, 2015, NPS:

a. Assigned HSHA's FOIA request tracking number NPS-2015-00581. **Ex. B at 1**.

b. Informed HSHA that "unusual circumstances" prevented NPS from responding within the twenty-day timeframe mandated by the FOIA. *Id.* NPS generally asserted that "such circumstances exist" but did not specify what the "unusual circumstances" were that prevented issuance of a final determination. **Ex. B**.

c. Assigned HSHA's FOIA request to NPS's "Exceptional/Voluminous" track. *Id.* at 5; 43 C.F.R. § 2.15(c)(4) (reserved for "very complex processing challenges").

d. Granted HSHA's request for a fee waiver. **Ex. B at 5**.

e. Requested that HSHA clarify and limit its FOIA request for eight of the nine categories of records requested. **Ex. B at 1** (referencing all categories but Category # 4).

f. Indicated that the twenty-day statutory timeframe mandated by the FOIA would be suspended pending HSHA's response pursuant to 43 C.F.R. § 2.18(a), and that HSHA's requests would take "more than sixty workdays to process." **Ex. B at 1, 5**.

g. Stated that once NPS received the requested "clarifying information" that it would then process the FOIA request and "transmit responsive records on a rolling basis." **Ex. B at 5**.

44. NPS's May 29, 2015 letter did not include a date certain by which HSHA could

1 expect NPS to dispatch a final determination with respect to its FOIA requests. This omission  
2 violated the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(6)(B)(i) (when invoking  
3 “unusual circumstances,” an agency must specify “the date on which a determination is expected  
4 to be dispatched”); *see also* 43 C.F.R. §§ 2.16(a), 2.19(a)(2).

5 45. NPS’s May 29, 2015 letter did not inform HSHA that a FOIA Public Liaison was  
6 being made available to it. This omission violated the statutory mandates of the FOIA. 5 U.S.C.  
7 § 552(a)(6)(B)(ii) (when invoking “unusual circumstances,” an agency must “make available its  
8 FOIA Public Liaison”); 43 C.F.R. § 2.19(b)(2).

9 46. Pursuant to the FOIA, Defendant was required to issue a final determination on the  
10 FOIA request within twenty business days, or by June 2, 2015. 5 U.S.C. § 552(a)(6)(A)(i); 43  
11 C.F.R. § 2.16(a).

12 47. Defendant’s May 29, 2015 letter sought to narrow HSHA’s request. **Ex. B at 2-5.**  
13 The request to narrow the search temporarily suspended the timeframe for NPS to respond to  
14 HSHA’s FOIA request. 5 U.S.C. § 552(a)(6)(B)(ii).

15 48. On August 11, 2015 HSHA clarified and limited the scope of its FOIA request by  
16 agreeing to certain search terms. *See Ex. C at 2.*

17 49. HSHA did not receive communication from NPS that its FOIA request had been  
18 re-classified to a different processing track as a result of HSHA’s willingness to narrow its  
19 request.

20 50. Under the FOIA, Defendant had ten working days from August 11, 2015 to issue  
21 its final determination, or until August 25, 2015. 5 U.S.C. § (a)(6)(B)(i).

22 51. Defendant failed to issue a timely final determination on HSHA’s FOIA request  
23 by August 25, 2015.

24 52. By letter dated November 4, 2015, NPS indicated that it was issuing an “interim  
25 response” to HSHA’s FOIA request. A true and correct copy of this letter is attached to this  
26 Complaint as **Exhibit C**. This interim response addressed the production of records, exemptions  
27 claimed, an estimated date of completion extension, and information on how to conduct an  
28 administrative appeal. **Ex. C.**

53. By the November 4, 2015 “interim response” letter, NPS informed HSHA that NPS was taking a “ninety workday extension” pursuant to 43 C.F.R. § 2.19(b) due to the “need to search for, collect, and examine a voluminous amount of separate and distinct records demanded in a single request.” **Ex. C at 5.**

54. NPS’s November 4, 2015 letter did not inform HSHA whether a FOIA Public Liaison was being made available to HSHA when Defendant invoked a ninety workday extension. This omission violated the statutory mandates of the FOIA and the requirements of the NPS Regulations. 5 U.S.C. § 552(a)(6)(B)(ii) (when invoking “unusual circumstances,” an agency must “make available its FOIA Public Liaison”); 43 C.F.R. § 2.19(b)(2).

55. NPS indicted in the November 4, 2015 “interim response” letter that it would issue a final determination of HSHA’s FOIA request on or before March 21, 2016. **Ex. C at 5.**

56. NPS’s November 4, 2015 letter claimed to have produced and enclosed 692 pages of documents in response to the HSHA’s FOIA Request Category # 4. **Ex. C at 2.** NPS described Category # 4 documents as being “released in part” and noted that portions of the documents released were withheld pursuant FOIA exemptions (b)(3), (b)(5), (b)(6), and (b)(7)(F). **Ex. C at 2.** NPS’s letter also indicated that 314 pages of material were being withheld in their entirety, but did not clarify whether these records were the same, or different, from the “released in part” records. **Ex. C at 2.**

57. NPS’s November 4, 2015 letter in fact did not enclose any responsive records.

58. On December 4, 2015 HSHA informed NPS of its failure to enclose the records with the November 4, 2015 letter. A true and correct copy of HSHA’s letter is attached to this Complaint as **Exhibit D.**

59. On December 10, 2015 NPS sent hyperlinks to HSHA with electronically downloadable records for Category # 4 (*see Exhibit E*, a true and accurate copy of the e-mail to HSHA dated December 10, 2015 with the hyperlinks), stating in the accompanying email that “[d]ue to an oversight, the CD containing the released records listed in the letter was not included.” **Ex. E.**

60. NPS’s December 10, 2015 production of Category # 4 records did not include any

1 records from 2010, 2014, or 2015.

2 61. Failure to indicate whether responsive records are disclosed violates the statutory  
3 mandates of the FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i), (a)(6)(F) (in denying a request for records,  
4 in whole or in part, the agency shall make a reasonable effort to estimate the volume denied  
5 records); 43 C.F.R. § 2.21 (requiring agencies to indicate whether documents sent to a  
6 requesting party constitute all of the records in the agency's files responsive or whether the  
7 agency intends to partially grant the request or withhold any records).

8 62. The Category # 4 records produced were heavily redacted, including the redaction  
9 of entire pages of records.

10 63. NPS redacted and withheld information, for which no valid exemption applies,  
11 from the documents produced by NPS and described in NPS's November 4, 2015 letter. This  
12 action and omission violated the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(3).

13 64. By Defendant's improper and overly broad redaction of the documents, Defendant  
14 has failed to provide reasonably segregable portions of responsive records with respect to  
15 Category # 4. These actions and omissions violate the mandates of the FOIA. 5 U.S.C. § 552(b).

16 65. By letter dated December 17, 2015, NPS informed HSHA that it was providing a  
17 second "interim response" to HSHA's FOIA request. HSHA received this letter via email on  
18 December 21, 2015. A true and correct copy of the letter is attached to this Complaint as  
19 **Exhibit F**.

20 66. NPS's December 17, 2015 letter claimed to have enclosed 873 pages of  
21 documents as a "partial response" to Category # 6. **Ex. F at 2**.

22 67. In its December 17, 2015 letter, NPS stated that certain documents were, again,  
23 being withheld: 156 pages withheld pursuant to exemption (b)(5) and 11 pages withheld  
24 pursuant to exemption (b)(6). **Ex. F at 2**.

25 68. NPS made the Category # 6 documents released under its second "interim  
26 response" available to HSHA via email dated December 21, 2015. A true and correct copy of the  
27 email is attached to this Complaint as **Exhibit G**. These documents NPS produced also were  
28 heavily redacted, including pages redacted in their entirety.

69. Although NPS's December 17, 2015 letter stated that portions of the materials disclosed were being withheld, it did not specify whether any other responsive documents were being withheld.

70. NPS's failure to indicate whether documents sent to a requesting party constitute all of the records in the agency's files responsive or whether the agency intends to withhold any records violates the statutory mandates of the FOIA, 5 U.S.C. § 552(a)(6)(a)(1) and NPS regulations, 43 C.F.R. § 2.21.

71. NPS redacted and withheld information, for which no valid exemption applies, from the documents produced by NPS and described in NPS's December 17, 2015 letter. This action and omission violated the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(3).

72. By Defendant's improper and overly broad redaction of the documents described in NPS's December 17, 2015 letter, NPS has failed and refused to provide reasonably segregable portions of responsive records with respect to Category # 6. These actions and omissions violate the mandates of the FOIA. 5 U.S.C. § 552(b).

73. Defendant's productions of Category #4, #5 (discussed in ¶ 89 *infra*), and #6 records are incomplete in that they skip years covered by the request, appear to have pages missing from the record productions, and are ambiguous as to records withheld versus records produced in redacted format.

74. Although NPS acknowledged in the second "interim response" letter dated December 17, 2015 that the response described therein was only partial and "interim," as opposed to a final determination of HSHA's FOIA request, the letter also instructed HSHA that it had the right to appeal the interim determinations included therein. **Ex. F at 4.**

75. On January 8, 2016 HSHA spoke with NPS staff Mr. Jason Watkins at the NPS Three Rivers, California Office and Mr. Andrew Muñoz at the Seattle Office. HSHA was directed to contact Ms. Deborah Bardwick, Assistant Field Solicitor for the Department of the Interior. With each of these individuals, HSHA discussed (a) the administrative appeal deadline, (b) the substance of the exemptions claimed to date, and (c) the "rolling basis" schedule for completion of the record production by March 21, 2016.

1           76. On January 19, 2016 HSHA and Ms. Bardwick conferred telephonically. Later  
2 that day, HSHA emailed Ms. Bardwick memorializing: (1) NPS's representation that it would  
3 send a letter confirming that the administrative appeals were not yet ripe as the production was  
4 not final; (2) concern that NPS would not meet its own 90-day extension deadline for  
5 production; in keeping with this concern, HSHA requested dates for subsequent productions so  
6 NPS would demonstrate its ability to meet its own deadline; (3) HSHA's need for clarification  
7 regarding documents withheld versus documents redacted; (4) HSHA's request for a Vaughn  
8 index; (5) HSHA's concern that NPS had applied FOIA exemptions in an improper and overly  
9 broad manner. HSHA requested confirmation from Ms. Bardwick of the substance of the  
10 discussion. A true and correct copy of this email is attached hereto as **Exhibit H at 2-4**. HSHA  
11 did not receive any confirmation, or rejection, from Ms. Bardwick of the telephone conference  
12 or email.

13           77. By January 25, 2016, one day before the purported administrative appeal deadline,  
14 HSHA had not received a response to its inquiries, including the issue regarding the  
15 administrative appeal. HSHA thus incurred attorney time preparing an administrative appeal to  
16 preserve its rights. After subsequent emails from HSHA, and less than two hours before an  
17 administrative appeal would be due, **Ex. C at 5** (noting administrative appeals are due by  
18 5:00 p.m. Eastern), HSHA and Ms. Bardwick spoke via telephone on January 26, 2016. During  
19 this telephone conference, NPS agreed that an administrative appeal was not yet due, inasmuch  
20 as Category # 4 and # 6 responses were interim and incomplete responses, and that documents  
21 for the remaining seven categories had not yet been produced. In reliance on this statement,  
22 HSHA agreed not to file an administrative appeal.

23           78. NPS followed-up to this telephone conference by email on January 26, 2016 at  
24 12:41 p.m. stating that confirmation regarding the administrative appeal not being due until a  
25 final determination had been made would be forthcoming in writing "within the next hour."  
26 **Ex. H at 2.**

27           79. Only 36 minutes before an administrative appeal would be due, Ms. Bardwick  
28 wrote to HSHA at 1:24 p.m. on January 26, 2016 that "[b]y this email, NPS agrees that no



1 administrative appeal will be due until, as is set forth in the regulations, the final production is  
2 complete.” *Id.*

3 80. Despite not mentioning this delay during their telephone conference moments  
4 earlier, Ms. Bardwick also now indicated in her email that NPS would not be able to meet its  
5 March 21, 2016 estimated completion date. **Ex. H at 1** (“Since our last letter to you, which  
6 anticipated that the final production would be completed by March 21, 2016, it has become  
7 apparent that another extension will be needed. The Park will contact you by letter revising its  
8 determination date.”).

9 81. Had HSHA known that NPS would, moments later, seek to revoke its March 21,  
10 2016 deadline, HSHA would not have agreed to refrain from filing its administrative appeal.

11 82. HSHA engaged in follow-up emails with NPS between January 26, 2016 and  
12 January 29, 2016 regarding the estimated date of completion, but received no response. *Id.*

13 83. Since the January 26, 2016 email, HSHA has not received an estimated date of  
14 completion, a final determination, nor has it received further correspondence regarding its  
15 concerns.

16 84. Ms. Bardwick’s January 26, 2016 email also informed HSHA that NPS  
17 “apologizes for leaving out the name of our FOIA liaison” and, albeit well outside the statutory  
18 timeframe, provided the FOIA Liaison’s contact information. *Id.*

19 85. On February 19, 2016, FOIA Liaison Ms. Charis Wilson and HSHA spoke by  
20 telephone. HSHA reiterated the issues of (1) incomplete productions of Categories # 4 and # 6;  
21 (2) overly broad and improperly claimed exemptions in Category # 4 and # 6 productions; (3)  
22 documents improperly withheld from the productions; (4) NPS’s failure to provide a renewed  
23 estimated date of completion for production and final determination; and (5) NPS’s failure to  
24 produce any documents since the December 17, 2015 interim response for the remainder of the  
25 Categories of records sought. In this discussion, HSHA agreed to prioritize its enumerated  
26 requests in an effort to assist NPS in responding, and to provide the FOIA Liaison with  
27 examples of overly broad redacted records. The FOIA Liaison agreed to investigate within the  
28 Agency regarding the exemptions claimed in the productions of Categories # 4 and # 6.



1           86.     On March 11, 2016, HSHA left a voicemail for the FOIA Liaison; as of the date of  
2 this Complaint, there has been no response from the FOIA Liaison.

3           87.     On March 13, 2016, HSHA provided HSHA's "priority list" to the FOIA Liaison  
4 and memorialized the substance of the February 13, 2016 discussion; HSHA also noted that  
5 NPS had not issued a renewed estimated date of completion. A true and correct copy of this  
6 letter is attached to this Complaint as **Exhibit I**.

7           88.     On April 14, 2016, HSHA provided examples of improper redactions to the FOIA  
8 Liaison and Ms. Bardwick, requested an estimated date of completion, and indicated it would be  
9 filing suit to enforce its rights under FOIA and the APA. A true and correct copy of this letter is  
10 attached to this Complaint as **Exhibit J**.

11           89.     On April 22, 2016, NPS produced 168 pages of records "released in part, in partial  
12 response to item 5." NPS's letter stated that "Portions of this material have been withheld under  
13 FOIA exemption 5 (27 pages), FOIA exemption 6 (nine pages), and 1 page under FOIA  
14 exemption 7 (A)." A true and correct copy of the letter accompanying this production is attached  
15 to this Complaint as **Exhibit K**.

16           90.     As of the date of this complaint, HSHA has not received any further  
17 communication from NPS or the FOIA Liaison, nor has HSHA received any further document  
18 productions, or the new estimated date of completion letter promised on January 26, 2016.

19           91.     The Agency has not shown due diligence in responding to the request. 5 U.S.C.  
20 § 552(a)(6)(C)(i).

21           92.     To date, HSHA has not received a final determination on its FOIA request  
22 containing (1) NPS's determination of whether or not to comply with the request; (2) the reasons  
23 for NPS's decision; and (3) notice of the right to appeal to the head of the agency, particularly  
24 since HSHA agreed on January 26, 2016 not to administratively appeal because the March 21,  
25 2016 deadline was still intact. These failures violate the statutory mandates of the FOIA.  
26 5 U.S.C. §§ 552(a)(6)(A)(i), (a)(7)(B)(ii).

27           93.     HSHA is deemed to have constructively exhausted its administrative remedies.  
28 *See* 5 U.S.C. §§ 552(a)(6)(A)(i), (a)(6)(C)(i).

1       94. No responsive documents were produced to HSHA until seven months after  
2 receipt of its FOIA request.

3       95. Defendant produced incomplete documents in December 2015. Defendant did not  
4 produce any other documents for a four-month period, even though such documents were to be  
5 provided on a rolling basis per Defendant's own representations. Defendant belatedly produced  
6 partial documents in response only to Category #5 in April, 2016. These failures violate the  
7 statutory mandates of the FOIA. 5 U.S.C. § 552(a)(3).

8       96. The March 21, 2016 estimated completion date has passed, without "completion."

9       97. Defendant has improperly and unlawfully failed to meet NPS's own estimated  
10 date of completion. This action and omission violates the statutory mandates of the FOIA.  
11 5 U.S.C. § 552(a)(7)(B)(ii); *see also* 5 U.S.C. § 552(a)(6)(B)(i).

12       98. Defendant has improperly and unlawfully failed to issue a renewed estimated date  
13 of completion. This action and omission violates the statutory mandates of the FOIA. *Id.*

14       99. Defendant has failed to conduct a reasonably adequate search. This action and  
15 omission violates the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(3).

16       100. Defendant has improperly and unlawfully withheld documents responsive to  
17 HSHA's FOIA request. This action and omission violates the statutory mandates of the FOIA.  
18 5 U.S.C. § 552(a)(3).

19       101. Defendant has improperly and unlawfully failed to produce reasonably segregable  
20 records in response to HSHA's FOIA request. This action and omission violates the statutory  
21 mandates of the FOIA. 5 U.S.C. §§ 552(a)(3) and 552(b).

22       102. Defendant has failed to produce non-exempt records. This action and omission  
23 violates the statutory mandates of the FOIA. 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(F), and 552(b).

24       103. Defendant has failed to issue a final determination of HSHA's FOIA request by  
25 the deadline of March 21, 2016 as set forth in its letter dated November 4, 2016. This failure  
26 violates the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(6)(A)(i), (B).

27       104. Defendant's actions constitute agency action unlawfully withheld and  
28 unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or

1 otherwise not in accordance with law, 5 U.S.C. § 706(2), in violation of the APA.

2 105. HSHA has been forced to retain the services of counsel and to expend funds  
3 litigating NPS's unlawful actions and omissions under the FOIA and the APA.

## 4 CAUSES OF ACTION

### 5 COUNT I

#### 6 VIOLATIONS OF THE FREEDOM OF INFORMATION ACT 7 AND NATIONAL PARK SERVICE REGULATIONS:

#### 8 FAILURE TO PROVIDE TIMELY FINAL DETERMINATION

9 106. The allegations made in all preceding paragraphs are realleged and incorporated  
10 by reference herein.

11 107. HSHA has a statutory right to have Defendant process its FOIA request in a  
12 manner that complies with the FOIA. HSHA's rights in this regard were violated by NPS's  
13 failure to provide a timely and legally adequate final determination.

14 108. It has been more than one year since HSHA submitted its FOIA request to NPS,  
15 and HSHA is still awaiting a final determination and production of records.

16 109. NPS has partially responded to Categories # 4, # 5, and # 6 but NPS has neither  
17 produced records for the remaining six categories of HSHA's FOIA request nor offered any  
18 explanation for its failure to disclose any of the remaining records requested.

19 110. NPS failed to properly invoke and comply with the "unusual circumstances"  
20 exception of the FOIA, and NPS failed to comply with the agreed-upon "alternative time for  
21 processing" under NPS Regulations. 5 U.S.C. § 552(a)(6)(B); 43 C.F.R. §§ 2.19 and 2.19(b)(1)  
22 (an "alternative time for processing" may be reached by agreement).

23 111. NPS is well outside the time limits for lawfully responding to and providing a final  
24 determination on HSHA's request. 5 U.S.C. §§ 552(a)(6)(A), (B).

25 112. NPS's actions in responding to HSHA's request have been untimely. For example,  
26 beyond failing to provide NPS with a timely final determination, NPS has failed to provide  
27 HSHA with any schedule for its production of responsive records despite HSHA's requests;  
28

1 NPS has failed to confirm what is keeping NPS from meeting its statutory obligations of timely  
2 response and record production under the FOIA.

3 113. There is no reasonable basis for NPS's failure to issue a timely final determination  
4 on HSHA's requests and to fully produce all responsive, non-exempt records.

5 114. When an agency invokes the "unusual circumstances" exception, it must provide  
6 written notification to the requester containing, inter alia, "the date on which a determination is  
7 expected to be dispatched." 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.19(a). A notice informing  
8 a requester of the invocation of the "unusual circumstances" provision must specify the  
9 applicable "unusual circumstances." *Id.* Under the FOIA, permissible "unusual circumstances"  
10 are limited to: (1) the need to search for and collect the requested records from field facilities or  
11 other establishments that are separate from the office processing the request; (2) the need to  
12 search for, collect, and appropriately examine a voluminous amount of separate and distinct  
13 records which are demanded in a single request; or (3) the need for consultation, which shall be  
14 conducted with all practicable speed, with another agency having a substantial interest in the  
15 determination of the request or among two or more components of the agency having substantial  
16 subject-matter interest therein. 5 U.S.C. § 552(a)(6)(B); *see also* 43 C.F.R. §§ 2.16, 2.19(a).

17 115. NPS Regulations further allow for the "basic time limit" to be "temporarily  
18 suspended" for the time it takes a requestor "to respond to one written communication from the  
19 bureau reasonably asking for clarifying information." 43 C.F.R. § 2.18(a).

20 116. When invoking "unusual circumstances," the agency shall also make available to  
21 the requester its FOIA Public Liaison. 5 U.S.C. § 552(a)(6)(B)(ii); 43 C.F.R. § 2.19(b)(2).

22 117. At the time Defendant invoked the "unusual circumstances" exception on May 29,  
23 2015, it did not specify the "unusual circumstances" justifying the delay of a final determination  
24 of HSHA's FOIA request beyond the statutory twenty-day determination period. Instead,  
25 Defendant referred to NPS's "temporary suspension" regulation, 43 C.F.R. § 2.18, permitting  
26 suspension of the 20-day response time "for the time it takes you to respond to one written  
27 communication from the bureau reasonably asking for clarifying information." HSHA provided  
28 the requested clarifying information on August 11, 2015. NPS's November 4, 2015

1 communication did not specify the “unusual circumstances,” but announced the Agency was  
2 taking a 90 workday extension, after HSHA had already provided the clarifying information  
3 requested.

4 118. Defendant’s failures and unlawful actions have prejudiced HSHA’s ability to  
5 timely obtain public records.

6 119. The March 21, 2016 deadline set by NPS for provision of a final determination on  
7 HSHA’s FOIA request has passed. HSHA has been without a date certain by which to expect a  
8 final determination on its FOIA request since Ms. Bardwick announced on January 26, 2016 that  
9 NPS would fail to meet the March 21, 2016 deadline. HSHA still does not know when it should  
10 expect a final determination on its FOIA requests.

11 120. Defendant invoked the “unusual circumstances” exception on May 29, 2015 but  
12 did not provide access to a FOIA Public Liaison until eight months later, on January 26, 2016.  
13 Defendant thus failed to make a FOIA Public Liaison available to HSHA at the time they  
14 invoked the “unusual circumstances” exception, and Defendant’s “unusual circumstances” claim  
15 was contrary to the requirements of the FOIA.

16 121. HSHA has constructively exhausted its administrative remedies with respect to  
17 this claim.

18 122. HSHA is entitled to injunctive relief to compel NPS to provide, and comply with,  
19 a final determination.

20 123. Based on the nature of HSHA’s organizational activities, HSHA will continue to  
21 employ FOIA’s statutory and NPS’s regulatory provisions in information requests to NPS in the  
22 foreseeable future. These activities will be adversely affected if Defendant is allowed to  
23 continue to illegally invoke and apply the “unusual circumstances” and “temporary suspension”  
24 provisions, and to fail to provide a final determination as to HSHA’s FOIA request.

25 124. Unless enjoined and made subject to a declaration of HSHA’s legal rights by this  
26 Court, NPS will continue to violate the rights of HSHA to receive public records under the  
27 FOIA.

**COUNT II**

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:**

**FAILURE TO COMPLY WITH, AND TO PROVIDE,  
A RENEWED ESTIMATED COMPLETION DATE**

125. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

126. HSHA has a statutory right to have Defendant process its FOIA requests in a manner that complies with the FOIA. Defendant violated HSHA's rights by failing to comply with its own estimated date of completion, and by failing to provide a renewed estimated date of completion. 5 U.S.C. § 552(a)(7)(B)(ii), *see also* 5 U.S.C. § 552(a)(6)(B)(i).

127. By letter dated November 4, 2015, NPS proposed the March 21, 2016 estimated date of completion to HSHA.

128. On January 26, 2016, NPS informed HSHA that it would not be complying with NPS's own estimated date of completion of March 21, 2016. Since January 26, 2016, NPS has not provided an updated estimated date of completion, even after HSHA engaged in follow-up communications with NPS on January 26-29, 2016, and requested an estimated date of completion on March 13, 2016, and again on April 14, 2016.

129. Under the FOIA and NPS' regulations, a requestor may qualify for faster processing by limiting the scope of the request. 5 U.S.C. § 552(a)(6)(D)(ii); 43 C.F.R. § 2.15(e). Defendant failed to change the processing track in response to HSHA's compliance with Defendant's request to tailor the FOIA request.

130. Defendant has failed to offer any justification for its inability to not meet the deadline of March 21, 2016, prior or subsequent to the passing of that deadline.

131. NPS's failure to comply with or provide a renewed estimated date of completion on HSHA's FOIA request is unlawful under the FOIA and has prejudiced HSHA's ability to timely obtain public records.

132. HSHA has constructively exhausted its administrative remedies with respect to this claim.

133. HSHA is entitled to injunctive relief to compel NPS to provide, and comply with, an estimated date of completion.

134. Based on the nature of HSHA's organizational activities, HSHA will continue to employ FOIA's statutory and NPS's regulatory provisions in information requests to NPS in the foreseeable future. These activities will be adversely affected if Defendant is allowed to continue to fail to adhere to its own estimated date of completion, and to fail to provide renewed estimated dates of completion.

135. Unless enjoined and made subject to a declaration of HSHA's legal rights by this Court, NPS will continue to violate the rights of HSHA to receive public records under the FOIA.

### COUNT III

#### **VIOLATIONS OF THE FREEDOM OF INFORMATION ACT AND NATIONAL PARK SERVICE REGULATIONS:**

##### **FAILURE TO CONDUCT REASONABLY ADEQUATE SEARCH**

136. The allegations made in all the preceding paragraphs are realleged and incorporated by reference herein.

137. HSHA has a statutory right to have Defendant process its FOIA request in a manner that complies with the FOIA. HSHA's rights in this regard were violated when NPS failed to conduct a reasonably adequate search for responsive records. 5 U.S.C. § 552(a)(3).

138. NPS is required to conduct a search for records that is reasonably calculated to discover all relevant documents. A review of the records NPS produced in Categories # 4, # 5, and # 6 demonstrate that NPS failed to disclose records falling into numerous categories and time periods of information that are responsive to HSHA's FOIA Request.

139. NPS has not produced any responsive documents for all other categories of HSHA's request.

140. For all categories of HSHA's request, NPS has not conducted a reasonably adequate search.

141. This failure and unlawful action has prejudiced HSHA's ability to timely obtain



1 public records.

2 142. NPS's failure to conduct a reasonably adequate search is unlawful under the  
3 FOIA. 5 U.S.C. § 552(a)(3).

4 143. HSHA has constructively exhausted its administrative remedies with respect to  
5 this claim.

6 144. HSHA is entitled to injunctive relief to compel NPS to conduct a reasonably  
7 adequate search for responsive records.

8 145. Based on the nature of HSHA's organizational activities, HSHA will continue to  
9 employ FOIA's statutory and NPS's regulatory provisions in information requests to NPS in the  
10 foreseeable future.

11 146. Unless enjoined and made subject to a declaration of HSHA's legal rights by this  
12 Court, NPS will continue to violate the rights of HSHA to receive public records under the  
13 FOIA.

#### 14 **COUNT IV**

#### 15 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**

#### 16 **FAILURE TO PROVIDE NON-EXEMPT PUBLIC RECORDS**

17  
18 147. The allegations made in all preceding paragraphs are realleged and incorporated  
19 by reference herein.

20 148. HSHA has a statutory right to have Defendant process its FOIA request in a  
21 manner that complies with FOIA.

22 149. HSHA's rights in this regard were violated when Defendant failed to promptly  
23 provide public, non-exempt records to HSHA, 5 U.S.C. § 552(a)(3)(A), § 552(b), and to provide  
24 a reasonable estimate of the volume of withheld records. 5 U.S.C. § 552(a)(6)(F).

25 150. For Categories # 4, # 5, and # 6, Defendant has failed to produce all responsive,  
26 non-exempt records in violation of 5 U.S.C. § 552(a)(3).

27 151. For Categories # 1 through # 3, and # 7 through # 9, Defendant has not produced  
28 records responsive to HSHA's FOIA request, in violation of the statute. 5 U.S.C. § 552(a)(3).

1           152. Defendant is unlawfully withholding public disclosure of information sought by  
2 HSHA, information to which it is entitled and for which no valid disclosure exemption applies.

3           153. Defendant has failed to produce any responsive records for all but two of HSHA's  
4 nine enumerated categories of requests under its FOIA request in violation of 5 U.S.C.  
5 § 552(a)(3).

6           154. Defendant has failed to make a reasonable effort to estimate the volume of  
7 requested, non-exempt records, for Categories # 4, # 5, and # 6 to which HSHA has been denied  
8 access.

9           155. HSHA has constructively exhausted its administrative remedies with respect to  
10 this claim.

11           156. HSHA is entitled to injunctive relief to compel production of all non-exempt,  
12 responsive records.

13           157. Based on the nature of HSHA's organizational activities, it will undoubtedly  
14 continue to employ FOIA's provisions in information requests to Defendant in the foreseeable  
15 future.

16           158. HSHA's organizational activities will be adversely affected if Defendant is  
17 allowed to continue violating FOIA's response deadlines as it has in this case.

18           159. Unless enjoined and made subject to a declaration of HSHA's legal rights by this  
19 Court, Defendant will continue to violate the rights of HSHA to receive public records under the  
20 FOIA.

21 ///

22 ///

23 ///

24 ///

**COUNT V****VIOLATIONS OF THE FREEDOM OF INFORMATION ACT:****UNLAWFUL WITHHOLDING OF RESPONSIVE RECORDS  
AND FAILURE TO PROVIDE REASONABLY SEGREGABLE  
PORTIONS OF RECORDS THAT ARE NOT EXEMPT**

160. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

161. HSHA has a statutory right to have Defendant process its FOIA request in a manner that complies with FOIA.

162. HSHA's rights in this regard were violated when Defendant unlawfully withheld and redacted information for which no lawful disclosure exemption applies. 5 U.S.C. § 552(a)(3); 5 U.S.C. § 552(b).

163. NPS also failed to reasonably segregate exempt and non-exempt records by, inter alia, its use of full-page redactions.

164. Under FOIA, NPS bears a heavy burden to establish the claimed exemption applies to the records that it continues to withhold. 5 U.S.C. § 552(a)(4)(B) ("[T]he burden is on the agency to sustain its action."). In the present case, NPS has not met the burden necessary to justify its withholding of records under the FOIA exemptions claimed (in the productions to date, being exemptions (b)(3), (b)(5), (b)(6), and (b)(7)(F)), nor has it reasonably or with specific detail explained how the information withheld logically falls within the claimed exemption.

165. In the event the FOIA exemptions claimed reasonably apply to any of the records NPS is currently withholding, NPS must provide HSHA with any releasable and reasonably segregable non-exempt portions of those records. 5 U.S.C. § 552(b).

166. HSHA has constructively exhausted its administrative remedies with respect to this claim.

167. HSHA is entitled to injunctive relief to compel production of all non-exempt, responsive records.

1 168. Based on the nature of HSHA's organizational activities, it will undoubtedly  
2 continue to employ FOIA's provisions in information requests to Defendant in the foreseeable  
3 future.

4 169. HSHA's organizational activities will be adversely affected if Defendant is  
5 allowed to continue violating the FOIA Liaison statutory duties under the FOIA as it has in this  
6 case.

7 170. Unless enjoined and made subject to a declaration of HSHA's legal rights by this  
8 Court, Defendant will continue to violate the rights of HSHA to receive public records under the  
9 FOIA.

## 10 **COUNT VI**

### 11 **(In the Alternative to Counts I through V)** 12 **VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT**

13 171. The allegations made in all preceding paragraphs are realleged and incorporated  
14 by reference herein.

15 172. Defendant has failed to act in an official capacity under color of legal authority by  
16 violating the requirements of the FOIA. In particular, Defendant is: failing to provide a timely  
17 final determination; failing to comply with, and provide, a renewed estimated completion date;  
18 failing to conduct a reasonably adequate search; failing to provide non-exempt public records;  
19 unlawfully withholding documents from public disclosure for which no valid disclosure  
20 exemption applies or has been properly asserted, and unlawfully withholding the reasonably  
21 segregable portions of those records. As a result, Defendant continues to unlawfully withhold  
22 documents from public disclosure and/or unlawfully delay the disclosure thereof.

23 173. Defendant has unlawfully withheld and/or delayed agency action by failing to  
24 comply with the mandates of FOIA consequent to their following actions and omissions: failing  
25 to provide a timely final determination; failing to comply with, and provide, a renewed  
26 estimated completion date; failing to conduct a reasonably adequate search; failing to provide  
27 non-exempt public records; unlawfully withholding documents from public disclosure for which  
28 no valid disclosure exemption applies or has been properly asserted, and unlawfully withholding

1 the reasonably segregable portions of those records.

2 174. HSHA has been adversely affected and aggrieved by Defendant's failure to  
3 comply with the mandates of FOIA and NPS Regulations. Defendant's failure and refusal to  
4 issue a timely final determination on HSHA's information request has injured HSHA's interests  
5 in public oversight of governmental operations and constitute a violation of Defendant's  
6 statutory duties under the APA.

7 175. HSHA has suffered a legal wrong as a result of Defendant's failure to comply with  
8 the mandates of FOIA and applicable regulations. Defendant's failure and refusal to issue a  
9 timely final determination on HSHA's information request has injured HSHA's interests in  
10 public oversight of governmental operations and constitute a violation of Defendant's statutory  
11 and regulatory duties under the FOIA and NPS Regulations, and the APA.

12 176. Defendant's failures and refusal to provide a timely final determination; to comply  
13 with, and provide, a renewed estimated completion date; to conduct a reasonably adequate  
14 search; to provide non-exempt public records; and unlawful withholding documents from public  
15 disclosure for which no valid disclosure exemption applies or has been properly asserted, and  
16 unlawful withholding of the reasonably segregable portions of those records, constitutes agency  
17 action unlawfully withheld or unreasonably delayed and is therefore actionable pursuant to the  
18 APA. 5 U.S.C. § 706(1).

19 177. Alternatively, Defendant's failures and refusal to provide a timely final  
20 determination; to comply with, and provide, a renewed estimated completion date; to conduct a  
21 reasonably adequate search; to provide non-exempt public records; and unlawful withholding of  
22 documents from public disclosure for which no valid disclosure exemption applies or has been  
23 properly asserted, and/or unlawful withholding of the reasonably segregable portions of those  
24 records are each arbitrary, capricious, an abuse of discretion or otherwise not in accordance with  
25 law and are therefore actionable pursuant to the APA. 5 U.S.C. § 706(2).

26 178. HSHA is entitled to judicial review under the APA. 5 U.S.C. §§ 702, 706.

27 179. HSHA is entitled to costs of disbursements and costs of litigation, including  
28 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C.

§ 2412.

### REQUEST FOR RELIEF

Wherefore, HSHA prays that this Court:

1. Order Defendant to promptly provide HSHA all of the information sought in this action and to immediately disclose the requested documents in unredacted format unless an exemption is properly claimed and properly applies.

2. Declare Defendant's failure to provide HSHA with a final determination as unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

3. Declare Defendant's failure to comply with its estimated completion date as unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

4. Declare Defendant's failure to issue a renewed estimated completion date as unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

5. Declare Defendant's failure to provide HSHA with non-exempt records as unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

6. Declare Defendant's unlawful withholding of responsive records from HSHA to be unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

7. Declare Defendant's failure to disclose the reasonably segregable information in records requested by HSHA to be unlawful under the FOIA, as well as agency action unlawfully

1 withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of  
2 discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

3 8. Award HSHA its reasonable attorney's fees and costs pursuant to 5 U.S.C.  
4 § 552(a)(4)(E) or 28 U.S.C. § 2412.

5 9. Grant such other and further relief to HSHA as the Court may deem just and  
6 proper.

7 DATED: May 17, 2016

SHUTE, MIHALY & WEINBERGER LLP

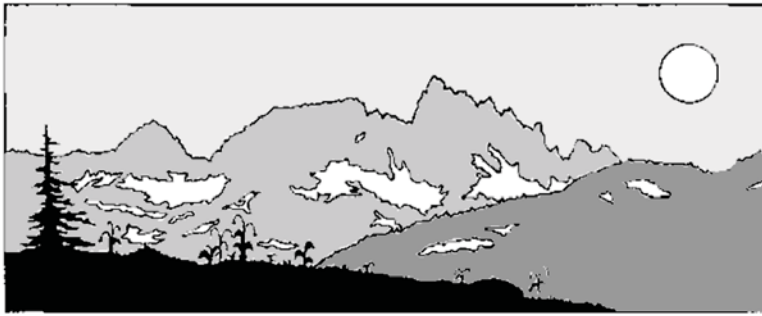
8  
9 By: /s/  
10 LAURA D. BEATON

11  
12 Attorneys for HIGH SIERRA HIKERS  
13 ASSOCIATION, INC.

14 784410.1



# **EXHIBIT A**



# HIGH SIERRA HIKERS ASSOCIATION

PO Box 1453, Lafayette, CA 94549

May 2, 2015

USDI National Park Service  
Attn: Freedom of Information Act Officer  
Sequoia and Kings Canyon National Parks  
47050 Generals Highway  
Three Rivers, California 93271

## **SUBJECT: FREEDOM OF INFORMATION ACT REQUEST AND REQUEST FOR FEE WAIVER**

Dear Freedom of Information Act Officer:

The High Sierra Hikers Association (High Sierra) is a nonprofit all-volunteer public benefit organization that educates its members, public officials, and the public at large about issues affecting the High Sierra, and that addresses (via education and advocacy) the impacts of agency management decisions on the Sierra Nevada. Consistent with our mission and pursuant to the Freedom of Information Act as amended and applicable regulations (5 U.S.C. § 552 and 43 C.F.R. Subtitle A, Part 2, §§ 2.1 to 2.290), we request the following records from January 1, 2005 to the present:

1. All communications, minutes of meetings, and all other records regarding stock- or meadow-management issues (including the WSP/DEIS and WSP/FEIS planning process), between NPS personnel and commercial packstock enterprises that operate within SEKI. Packstock "enterprises" includes broadly all owners, employees, and representatives of commercial outfits that utilize packstock (horses, mules, burros, llamas) within SEKI.
2. Any and all records and communications regarding the WSP/DEIS and WSP/FEIS planning process, or other stock- or meadow-management issues that are germane to the WSP between the NPS and the Backcountry Horsemen of California, the Backcountry Horsemen of America, and elected officials; and
3. All internal NPS communications regarding the WSP/DEIS and development of the WSP/DEIS and the WSP/FEIS that were created prior to the date of this letter; and
4. All backcountry ranger reports from 2004 through 2014, inclusive; and
5. All reports, memoranda, and other internal NPS communications regarding meadow management and/or stock management issues from 2004 through the date of this letter; and

6. The annual “Minutes and Background Information, Meadow Management Meeting,” from 2009 through 2015, inclusive, and any/all minutes and other records from other meetings attended by SEKI staff where meadow management and/or stock management were discussed or addressed.

7. All “records” created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP, including all records regarding the criteria they employed and how the criteria were weighted.

8. All records related to the examination, monitoring, and/or evaluation of individual meadows, from 2009 to the date of this letter. These were on at least some occasions performed using standard forms, noting the condition of the meadow(s)—amount and type of growth, amount of bare ground, etc. These forms have had at least three different titles: **Meadow Assessment Form; Meadow Capacity Assessment Form; and Meadow Monitoring Trip Report.** (The first two may be the same thing, or may not be. The third one is a different category). We request all records related to the examination, monitoring, and/or evaluation of meadows and other areas grazed by domestic stock animals within SEKI (both wilderness and non-wilderness, including all living and non-living features, attributes, residents, occupants, and components of meadows and other forage areas) from 2009 through the present.

9. All records, including emails and other communications to, from, and between all those on the **LIST OF PREPARERS AND CONSULTANTS** that appears on pages 597, 598, and 599 of Volume 1 of the WSP/FEIS dated April 2015, that include, mention, discuss, address, reference, or analyze topics or issues related to stock management, stock numbers, stock limits, meadow condition, meadow management, commercial stock services, trail suitability for stock use, campsite suitability for stock users, documented and potential environmental impacts of stock use, and all other topics related to stock and meadow management within SEKI.

To save DOI’s resources and mailing expenses, please produce responsive records in electronic format where readily available.

“Records” includes but is not limited to all documents, correspondence, minutes, memoranda, communications, agreements, contracts, comments, reports, studies, sampling, maps, plans, drawings, databases, intra-agency or inter-agency documents, emails, text messages, transcripts, and phone notes. This request includes all records that have ever been within your custody or control, whether they exist in agency “working”, case, investigative, retired, electronic mail, or other files currently or at any other time. “Records” also covers any non-identical duplicates of records that by reason of notation, attachment, or other alteration or supplement, include any information not contained in the original record. Additionally, this request is not meant to be exclusive of other records that, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

High Sierra requests this information in light of the President’s “Memorandum for the Heads of Executive Departments and Agencies” dated January 21, 2009, which states:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.... In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in the FOIA, and to usher in a new era of open Government. The presumption of disclosures should be applied to all decisions involving the FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

Exec. Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4,683 (Jan. 21, 2009). This request is being sent to you with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

High Sierra emphasizes that this request applies to all described documents the disclosure of which is not expressly prohibited by law. If you should seek to prevent disclosure of any of the requested records, we request that you: (1) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (2) explain in full the basis on which nondisclosure is sought; and (3) provide us with any segregable portions of the records for which you do not claim a specific exemption.

## **REQUEST FOR FEE WAIVER**

The High Sierra Hikers Association requests that you waive all search, duplication, review, and clerical and other fees associated with providing information responsive to this request. The FOIA requires the federal government to furnish documents to public interest groups free of charge, or at a reduced rate, "if disclosure of the information is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). Such disclosure is in the public interest if "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." *Id.*; 43 C.F.R. § 2.45. The FOIA carries a presumption of disclosure, and the fee waiver was designed specifically to allow nonprofit public interest groups, such as the High Sierra Hikers Association, access to government documents without the payment of fees. The courts have stated that the statute "is to be liberally construed in favor of waivers for noncommercial requesters." *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (stating "that Congress amended FOIA to ensure that it is 'liberally construed in favor of waivers for noncommercial requesters'"). As explained below, High Sierra's request meets the test for a fee waiver established in the FOIA, and in the DOI's accompanying regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.48(a)(1)–(4).

High Sierra requests that the requested information be provided free of charge, pursuant to the Freedom of Information Act (FOIA), the Department of Interior's regulations implementing the FOIA, and the Council on Environmental Quality's regulations implementing the National Environmental Policy Act (NEPA) to which many of the requested documents pertain.† *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.19; 43 C.F.R. Part 2, Appendix D; 40 C.F.R. § 1506.6(f).† High Sierra does not authorize any charges for the requested information.

High Sierra is a nonprofit public-benefit organization that educates its members, public officials, and the public-at-large about issues affecting hikers, backpackers, and the Sierra Nevada, and that advocates the protection of park values and preservation of wilderness character in the Sierra for the public benefit. High Sierra has members in 29 states, the District of Columbia, and three foreign countries, and represents thousands of citizens living throughout the United States who use and enjoy areas within Sequoia and Kings Canyon National Parks for hiking, backpacking, climbing, mountaineering, cross-country skiing, wildlife viewing, photography, and other recreational pursuits, as well as to seek solitude, quietude, and spiritual refreshment.

**Records Requested Concern the Operations or Activities of the Government. 43 C.F.R. § 2.48(a)(1)**

The USDI National Park Service (NPS), a Government agency, is the key agency conducting operations and activities in connection with the WSP/DEIS. It will prepare the final WSP/EIS, and then implement the final plan. NPS is authorized under the Organic Act of 1916, as amended, 16 U.S.C. § 1 *et seq.* to administer the Sequoia and Kings Canyon National Parks. In that role NPS's mandate is:

to conserve the scenery and the natural and historic objects and the wild life herein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.  
16 U.S.C. § 1

The NPS is also authorized under NEPA to undertake the environmental analysis process. *See* 42 U.S.C. § 4332 (all agencies of the Federal Government shall undertake NEPA analysis, studies, and reporting for major Federal actions significantly affecting the quality of the human environment). In connection with the WSP/DEIS process, since the 1980s the NPS has been planning and preparing to draft the WSP/DEIS. The NPS prepared a 15-step process for the WSP, including scoping, developing preliminary alternatives, selecting a preferred alternative, drafting a plan and submitting it for public comment. The NPS has also hosted public meetings on the WSP/DEIS. The NPS has gathered the requested information to ascertain public opinion about the WSP/DEIS. The next steps in the NPS's process are to prepare and release a final plan, prepare a record of decision, notify the public, and implement the selected alternative. The records that High Sierra requests include the input of all commenters to the Government's WSP/DEIS, the planning process documents, and communications. The NPS is required to review the requested records as a basis for any further action it may take on the WSP/DEIS. Thus, the records requested concern the operations or activities of the Government.

**Disclosure of the Records Requested Will Likely Contribute to the Public Understanding of these Operations and Activities**  
**(43 C.F.R. § 2.48(2)(i)-(v)).**

- (i) *The contents of the records will be meaningfully informative for High Sierra and for the general public.* The requested records will contain public comments from various stakeholders throughout the development of the WSP/DEIS, planning process documents throughout the requested time period, and communications by and between NPS staff members. These records will include, for example, criticisms, suggestions, identifications of issues to be addressed, the suggested weight to be allocated to these issues, studies and reports and evaluations, and the NPS's communications to and from other agencies and members of the public. The WSP/DEIS project has been underway for many years, and since the agency is currently developing responses and preparing a final plan during the next few months, the information requested will be meaningfully informative about the Government's operations and activities to High Sierra (a public-benefit organization), and to the public. Notably, the requested record will help the public understand the facts and considerations behind the NPS's process.
- (ii) *There is a logical connection between the content of the records and the operations or activities of the Government.* The requested records will contain planning process documents, communications, comments, criticisms, and suggestions gathered by the NPS regarding its WSP/DEIS process, and other records directly related to the development of the WSP/DEIS. High Sierra is interested in: (1) the process being used by the NPS to develop its WSP/DEIS and final EIS; (2) the substance of the comments, criticisms, and suggestions that the NPS has received to date regarding its WSP/DEIS, and the planning process for the WSP; and (3) to what extent the final decision that will be forthcoming in a few months' time will reflect the comments, criticisms, and suggestions received by the Government. The records are directly connected to these interests, and to High Sierra's desire to inform the public-at-large about the comments received by the NPS and how the draft and final WSP/DEIS are or are not correlated to public opinion and input received from certain interest groups and elected officials.
- (iii) *The disclosure of the requested records will contribute to the understanding by a reasonably broad audience of persons interested in the subject.* High Sierra intends to review, synthesize, and summarize the records, and to publish its findings in its newsletter and its action alerts, and to post its findings on its public website ([www.highsierrahikers.org](http://www.highsierrahikers.org)). Furthermore, High Sierra intends to present its findings at any public hearing(s) on this matter, and also to distribute its findings to environmental news reporters on the staffs of major California media outlets. The dissemination of this information by High Sierra will thus enable a broad audience to understand the comments, criticisms, and suggestions received or discussed by the Government regarding the WSP/DEIS, and also to understand the extent to which the draft and final WSP/DEIS reflect the content of those comments, criticisms, and suggestions. The operations and activities of the NPS will be disclosed to the public in the manners discussed in this letter, and in a manner that helps the public understand the issues.



- (iv) *High Sierra's identity, vocation, qualifications, and expertise described below support how it plans to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject.* High Sierra was founded in 1991 to educate its members, public officials, and the public-at-large about issues affecting hikers and the Sierra Nevada, and to advocate the protection of park values and the preservation of wilderness character in the Sierra for the public benefit. High Sierra represents thousands of hikers who use and enjoy SEKI. Since that time it has published a periodic newsletter that is circulated to the membership and is also distributed free of charge to the public-at-large (i.e., to anyone who requests a copy.) Information is also posted on High Sierra's website. High Sierra's members and a significant segment of the public-at-large are keenly interested in management issues at Sequoia-Kings Canyon National Parks (SEKI) and the WSP/DEIS being developed for those parks. High Sierra is experienced and well-qualified to disclose the requested information that relates to operations and activities of NPS to a reasonably broad audience.
- (v) *High Sierra has the ability and intention to disseminate the information to a reasonably broad audience of persons interested in the subject.* As discussed above, High Sierra intends to review, synthesize, and summarize the records, and to publish its findings in its newsletter, and at High Sierra's publicly available website ([www.highsierrahikers.org](http://www.highsierrahikers.org)). Furthermore, High Sierra intends to present its findings at any public hearing(s) on this matter, and to distribute its findings also to environmental news reporters on the staffs of major California media outlets. All of these efforts will increase the circulation of this information pertaining to government operations and activities at SEKI. This will also inform a broad audience not only about the WSP/DEIS specifically, but also about on-going natural resource management issues at SEKI.

**Disclosure is likely to Significantly Contribute to the  
Understanding of a Reasonably Broad Audience of  
Persons Interested in the Subject (43 C.F.R. § 2.48(a)(3))**

- (i) *The information being requested is new.* The public comment period on the draft WSP/DEIS just concluded in Fall 2014, and that information is new to the record. So are any planning documents, comments, or communications received since then. Similarly, High Sierra has not submitted a FOIA request to NPS on this topic since 2005, and is not aware of any other group that has submitted a FOIA request on the WSP/DEIS, or that has disseminated the information to the public. Since 2005, NPS has prepared and released the draft WSP/DEIS, and is now in the process of preparing the final WSP/EIS. Thus the information will be new to High Sierra and to the public.
- (ii) *The information being requested would confirm and clarify some information publicly-disclosed.* The NPS's website contains background information on the WSP/DEIS project, a limited number of planning documents, and some public comments. It does not contain any of the planning records, comments, or the communications with NPS that are responsive to High Sierra's request. Thus to properly understand the information that NPS has selected to post on its website, High Sierra's FOIA request is necessary. Given High Sierra's



membership, newsletter distribution, and website traffic, the requested information will confirm and clarify the limited information that has been publicly disclosed.

- (iii) *Disclosure will increase the level of public understanding of the operations or activities of the Government.* Currently only NPS-selected documents are available on the NPS's website. High Sierra has designed this FOIA request to target records that are not available on SEKI's website nor anywhere else, and which will provide information on the operations and activities of the Government. As High Sierra has explained above, it is well-qualified and experienced in reviewing, synthesizing, and summarizing NPS records, and it has the capacity, experience, and ability to disclose the information to the public. Furthermore, High Sierra will provide this information to the public in a way that it believes its members and the public can readily understand.
- (iv) *The information requested is not already publicly available.* The NPS's website on the WSP/DEIS project contains background information, a limited number of planning documents, and some public comments. It does not contain the great majority of the planning records, comments, or the communications with NPS that are responsive to High Sierra's request, and the requested information is not already publicly available.

**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)(4))**

Currently only NPS-selected documents are available on the NPS's website. High Sierra has designed this FOIA request to target records not available on the website and which will provide information on the operations and activities of the Government. As High Sierra has explained above, it is well-qualified and experienced in reviewing, synthesizing, and summarizing NPS records, and it has the capacity and experience and access to disclose the information to the public. Furthermore, High Sierra will provide this information to its members and the public in such a form that can readily be comprehended. Its website contains information organized and presented in a manner that its membership and the public can readily understand, without the need to be a specialist in administrative law, NEPA, or stock-animal impacts in SEKI. Thus High Sierra's request, the NPS's disclosure of the information, and High Sierra's review, synthesis, and summary of the information will significantly enhance the public's understanding of the issues. Additionally, the WSP/DEIS record contains a significant amount of information, and High Sierra believes that very few interested members of the public will take the time thoroughly to review and analyze the WSP/DEIS and all the accompanying comments (254). Thus High Sierra's role in distilling the information and making it easily publicly accessible will significantly enhance the public's understanding of the issues.

## **No Commercial Interest**

The release of this information would contribute significantly to public understanding of the operations and activities of the government. High Sierra does not seek this information for commercial purposes (43 C.F.R. § 2.48(b)), and will not sell this information.†

FOIA Request May 2, 2015 - 8

Because the comments on the WSP/DEIS should already be compiled in one place, it should not be time-consuming or expensive to assemble the requested materials. Again, High Sierra requests a full fee waiver as allowed by the FOIA and the NEPA, since many of the materials requested under this FOIA request fall under 42 C.F.R. § 1506.6(f). If you anticipate any charge(s), please contact me so that we may confirm, amend, or withdraw a request before you process it and send us a bill.† We do not authorize any charges for the requested information. Additional information supporting our request for a fee waiver is provided above.

If you deny all or any part of this request, please cite each specific document that you believe is exempt, and the exemption that you believe justifies your refusal to release the information, and notify me immediately of any appeal procedures available under the law.

As required under the Freedom of Information Act, we look forward to your response within 20 (twenty) working days. 5 U.S.C. § 552(a)(6)(A)(i). Thank you in advance for your attention to this request. Please contact me directly should you have any questions regarding this request.

Would you please supply a date when SEKI's response to our FOIA request will be completed. Thank you.

Sincerely yours,

Peter Browning, President  
High Sierra Hikers Association

## **EXHIBIT B**



## United States Department of the Interior

NATIONAL PARK SERVICE  
Sequoia and Kings Canyon National Parks  
47050 Generals Highway  
Three Rivers, California 93271-9651  
(559) 565-3341



IN REPLY REFER TO:  
9.C (NPS PWR-2015-00581)

May 29, 2015

High Sierra Hikers Association  
c/o Peter Browning  
PO Box 1453  
Lafayette, CA 94549

Dear Mr. Browning:

On May 4, 2015 the National Park Service (NPS) received your Freedom of Information Act (FOIA) request via certified mail and assigned it request number NPS-2015-00581. Please use this reference this number on any future correspondence concerning this FOIA request.

Thank you for your interest in our wilderness planning effort and in promoting the transparency of our planning process. Our Administrative Officer, Jason Watkins, will be coordinating the park's response to your FOIA request. Our goal is to be open, responsive, and timely throughout this process.

You addressed your FOIA request to Sequoia and Kings Canyon National Parks (SEKI). Per 43 CFR 2.4A, we will limit our search to the records available at SEKI. You requested nine sets of records. Because the requested sets of records have varying scopes and levels of clarity, I am structuring my response accordingly.

Please be aware that per 43 CFR 2.5(d), we will be unable to comply with your FOIA request unless you respond with the additional clarifying information requested below within 20 workdays of the receipt of our letter in your PO box, as documented by certified mail.

Ordinarily, the NPS has 20 workdays after the date of receipt to determine whether to comply with a FOIA request (for example, grant, partially grant, or deny), but unusual circumstances may allow the bureau to take longer than 20 workdays (43 CFR 2.16(a)). In this case, such circumstances exist. The regulations state that the basic time limit in §2.16 of this part may be temporarily suspended for the time it takes you to respond to one written communication from the bureau reasonably asking for clarifying information (43 CFR 2.18(a)). This letter constitutes such written communication seeking clarification for the following requests: one, two, three, five, six, seven, eight, and nine.

You will notice that most of our requests for clarification center on the need for specificity. Our ability to conduct a reasonable search of email records depends upon having specific search terminology. Overly broad terms, such as stock or meadow will not yield quality search results. They will capture a high number of irrelevant records. The term stock has multiple meanings, forms of speech, and operational uses. Similarly, we use meadows as geographic locators, so the term meadow permeates our daily operating communications. It is not reasonable for our employees to search through ten years of email records for individual messages related to an undefined series of stock- or meadow-management issues. We need specific issues and specific search terminology in order to conduct reasonable searches using the search engine functionality of our email system.

Your first request is for:

1. *All communications, minutes of meetings, and all other records regarding stock- or meadow-management issues (including the WSP /DEIS and WSP /FEIS planning process), between NPS personnel and commercial packstock enterprises that operate within SEKI. Packstock "enterprises" includes broadly all owners, employees, and representatives of commercial outfits that utilize packstock (horses, mules, burros, llamas) within SEKI.*

The date range you requested for these records is January 1, 2005 to May 2, 2015. Your first request does not adequately describe the records sought, therefore, we are unable to process it as requested and seek additional following clarification.

This request contains the following overly broad language, "*stock- or meadow-management issues.*" We understand the term issues to mean important topics. Your request does not identify what specific important topics you are interested in. Consequently, we do not have sufficient information to carry out a responsive search.

Based on your request, we could conduct the following search. Using the email addresses of commercial packstock operators, we could search our email records for messages to and from commercial packstock operators (both owners and employees), using the following search terms: WSP, Wilderness Stewardship Plan, stock, and meadow. We would also collect any relevant "*minutes of meetings*" and "*other records*" transmitted between the NPS and commercial packstock operators. Please confirm that this search satisfies your request, or provide the additional clarification requested.

Your second request is for:

2. *Any and all records and communications regarding the WSP /DEIS and WSP /FEIS planning process, or other stock- or meadow-management issues that are germane to the WSP between the NPS and the Backcountry Horsemen of California, the Backcountry Horsemen of America, and elected officials; and*

The date range you requested for these records is January 1, 2005 to May 2, 2015. Your second request does not adequately describe the records sought, therefore, we are unable to process it as requested and seek additional following clarification.

This request contains the following overly broad language, "*stock- or meadow-management issues.*" We understand the term issues to mean important topics. Your request does not identify what specific important topics you are interested in. Consequently, we do not have sufficient information to carry out a responsive search.

Based on your request, we could conduct the following search. Using the email domains and email addresses for the Backcountry Horsemen of California (BCHC), the Backcountry Horsemen of America (BCHA), and elected officials, we could search our email records for messages to and from those parties, using the following search terms: WSP, Wilderness Stewardship Plan, stock, and meadow. We would also collect any relevant "*records*" transmitted between the NPS and those parties. Please confirm that this search satisfies your request, or provide the additional clarification requested.

Additionally, your second request overlaps with your sixth request. As written, any meeting minutes or records of meetings attended by SEKI staff between January 1, 2009 and May 2, 2015 regarding the BCHC, BCHA, or elected officials, and “stock- or meadow-management issues” would also be captured under your sixth request. Please clarify these requests so that we can provide responsive records without unnecessary and non-responsive duplication.

Your third request is for:

3. *All internal NPS communications regarding the WSP /DEIS and development of the WSP /DEIS and the WSP /FEIS that were created prior to the date of this letter; and*

The date range you requested for these records is January 1, 2005 to May 2, 2015. In anticipation of the Record of Decision (ROD), the NPS is compiling a WSP/DEIS Decision File that consists of all substantive documents and materials considered by the NPS during the decision-making process. Typical documents contained in a decision file include technical publications and references used to prepare the NEPA document, meeting minutes, public comments, natural and cultural resource data, agency correspondence, and decision documents. A decision file does not include records that do not document the agency’s decision-making process, such as e-mails sent solely for the purpose of scheduling meetings and drafts of documents that only reflect minor grammatical edits.

The WSP/DEIS Decision File contains all the records of substance, including internal NPS communications, regarding the WSP/DEIS and its development. Please confirm that the internal NPS communications compiled in the WSP/DEIS Decision File satisfy your third request.

Your fourth request is for:

4. *All backcountry ranger reports from 2004 through 2014, inclusive; and*

The date range for this request is January 1, 2004 to December 31, 2014. We believe we have documents that are responsive to this request.

Your fifth request is for:

5. *All reports, memoranda, and other internal NPS communications regarding meadow management and/ or stock management issues from 2004 through the date of this letter; and*

The date range for this request is January 1, 2004 to May 2, 2015. Your fifth request does not adequately describe the records sought; therefore, we are unable to process it as requested and seek additional clarification.

This request contains the following overly broad language, “*meadow management and/ or stock management issues.*” We understand the term issues to mean important topics. Your request does not identify what specific important topics you are interested in. Consequently, we do not have sufficient information to carry out a responsive search.

Your sixth request is for:

6. *The annual "Minutes and Background Information, Meadow Management Meeting," from 2009 through 2015, inclusive, and any and all minutes and other records from other meetings attended by SEKI staff where meadow management and/ or stock management were discussed or addressed.*

The date range for this request is January 1, 2009 to May 2, 2015. We believe we have documents that are responsive to the first part of your sixth request (minutes and background information from our Meadow Management Meetings, 2009 to the present).

However, the phrase “*any and all minutes and other records from other meetings attended by SEKI staff where meadow management and/ or stock management were discussed or addressed*” does not adequately describe the



records sought; therefore, we are unable to process it as requested and seek additional clarification on the terms “*meadow management and/ or stock management*.” Elements of meadow- and stock-management permeate our operations, and as umbrella terms meadow and stock are much too broad to deliver a reasonable or responsive search. Similar to the preceding requests, this request does not identify the specific meadow- and stock-management issues you are interested in. Consequently, we do not have sufficient information to carry out a responsive search.

Additionally, your sixth request overlaps with your first and second requests. As written, any meeting minutes or records of meetings attended by SEKI staff regarding meadow- and stock-management and commercial users, BCHA, BCHC, or elected officials, between January 1, 2009 and May 2, 2015, would also be captured under your first and second requests. Please clarify these requests so that we can provide responsive records without unnecessary and non-responsive duplication.

Your seventh request is for:

7. *All "records" created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP, including all records regarding the criteria they employed and how the criteria were weighted.*

The date range for this request is January 1, 2005 to May 2, 2015. Per 43 CFR 2.4A, we will limit our search to the records available at SEKI. Your seventh request does not adequately describe the records sought, therefore, we are unable to process it as requested and seek additional following clarification.

Your request is for “*all ‘records’ created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP.*” This request is overly broad given that the vast majority of the records “*created or maintained*” by these individuals do not relate to the WSP.

Your eighth request is for:

8. *All records related to the examination, monitoring, and/ or evaluation of individual meadows, from 2009 to the date of this letter. These were on at least some occasions performed using standard forms, noting the condition of the meadow(s)-amount and type of growth, amount of bare ground, etc. These forms have had at least three different titles: Meadow Assessment Form; Meadow Capacity Assessment Form; and Meadow Monitoring Trip Report. (The first two may be the same thing, or may not be. The third one is a different category). We request all records related to the examination, monitoring, and/ or evaluation of meadows and other areas grazed by domestic stock animals within SEKI (both wilderness and non-wilderness, including all living and non-living features, attributes, residents, occupants, and components of meadows and other forage areas) from 2009 through the present.*

The date range for this request is January 1, 2009 to May 2, 2015. This request has the potential to overlap significantly with your fifth request, once clarified. Please clarify these requests such that we can provide responsive records without unnecessary and non-responsive duplication.

We believe we have documents that are responsive to your request for our standard monitoring forms, from January 1, 2009 through May 2, 2015. We also believe we have memos and reports relating to the “*examination, monitoring, and/ or evaluation*” of grazed areas in both Wilderness and non-Wilderness, from January 1, 2009 through May 2, 2015. Additionally, we can conduct the following search of our email records over the same time period. We can search our email records for messages that include either of the terms meadow OR grazing, AND one or more of the terms examination, monitoring, or evaluation. Please confirm that this search satisfies your request.

Your ninth request is for:



9. *All records, including emails and other communications to, from, and between all those on the LIST OF PREPARERS AND CONSULTANTS that appears on pages 597, 598, and 599 of Volume 1 of the WSP/FEIS dated April 2015, that include, mention, discuss, address, reference, or analyze topics or issues related to stock management, stock numbers, stock limits, meadow condition, meadow management, commercial stock services, trail suitability for stock use, campsite suitability for stock users, documented and potential environmental impacts of stock use, and all other topics related to stock and meadow management within SEKI.*

The date range for this request is January 1, 2005 to May 2, 2015. Per 43 CFR 2.4A, we will limit our search to the records available at SEKI. Your ninth request does not adequately describe the records sought, therefore, we are unable to process it as requested and seek additional following clarification.

This request has the potential to overlap significantly with your fifth request, once clarified. Please clarify these requests such that we can provide responsive records without unnecessary and non-responsive duplication.

Furthermore, this request contains the following overly broad language, “*topics or issues related to stock management... meadow management... and all other topics related to stock and meadow management within SEKI.*” As discussed above, these general terms – “*stock management*” and “*meadow management*” – are overly broad and do not provide sufficient specificity to conduct a reasonable search of email of other records. Consequently, we do not have sufficient information to carry out a responsive search.

Based on the more specific elements of this request, we could conduct the following search. We could search our email records for messages to and from those individuals on the “*LIST OF PREPARERS AND CONSULTANTS*” without nps.gov domains, using the following search terms: “*stock numbers,*” “*stock limits,*” “*meadow condition,*” “*commercial stock services,*” “*trail suitability for stock use,*” “*campsite suitability for stock users,*” and “*environmental impacts of stock use.*” This search would exclude the internal NPS communications captured by your fifth request. Please confirm that this search satisfies your request, or provide the additional clarification requested.

We use Multitrack Processing to process FOIA requests. The Simple track is for requests that can be processed in one to five workdays. The Normal track is for requests that can be processed in six to twenty workdays. The Complex track is for requests that can be processed in twenty-one to sixty workdays. The Exceptional/Voluminous track is for requests requiring more than sixty workdays for processing. The Expedited track is for requests that have been granted expedited processing. Given the volume of records you have requested, your request falls into the Exceptional/Voluminous track. Once we receive the requested additional clarifying information and proceed with your FOIA request, we will transmit responsive records to you on a rolling basis.

You have asked us to waive the fees for processing your request. Our FOIA regulations state that bureaus will waive, or partially waive, fees if disclosure of all or part of the information is:

1. In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and
2. Not primarily in your commercial interest.

Our FOIA regulations also provide four specific criteria that are used to determine whether these two requirements are met. Your request addresses these criteria and provides sufficient evidence to support your request for a fee waiver. Therefore, your fee waiver request has been accepted.

If you have any questions, please contact Jason Watkins, Administrative Officer, at 559-565-3107, or [jason\\_watkins@nps.gov](mailto:jason_watkins@nps.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Woody Smeck". The signature is written in a cursive, somewhat stylized font.

for Woody Smeck  
Superintendent

cc: PWR, FOIA Officer

## **EXHIBIT C**



## United States Department of the Interior

NATIONAL PARK SERVICE  
Pacific West Region  
333 Bush Street, Suite 500  
San Francisco, CA 94104-2828



IN REPLY REFER TO:  
9.C. (PWR-PI)  
NPS-2015-00581

04 NOV 2015

**COPY FOR YOUR  
INFORMATION**

Peter Browning  
High Sierra Hikers Association  
PO Box 1453  
Lafayette, CA 94549

Dear Mr. Browning:

This is an interim response to your Freedom of Information Act (FOIA) request submitted to the National Park Service (NPS), Sequoia and Kings Canyon National Parks dated May 2, 2015 and received on May 4, 2015. The Department of the Interior (DOI) FOIA tracking number for this request is NPS-2015-00581. Please cite this tracking number in any future communications with our office regarding your request.

You requested:

1. All communications, minutes of meetings, and all other records regarding stock- or meadow-management issues (including the WSP/DEIS and WSP/FEIS planning process), between NPS personnel and commercial packstock enterprises that operate within SEKI. Packstock "enterprises" include broadly all owners, employees, and representatives of commercial outfits that utilize packstock (horses, mules, burros, llamas) within SEKI.
2. Any and all records and communications regarding the WSP/DEIS and WSP/FEIS planning process, or other stock- or meadow-management issues that are germane to the WSP between NPS and the Backcountry Horsemen of California, the Backcountry Horsemen of America, and elected officials; and
3. All internal NPS communications regarding the WSP/DEIS and development of the WSP/DEIS and the WSP/FEIS that were created prior to the date of this letter; and
4. All backcountry ranger reports from 2004 through 2014, inclusive; and
5. All reports, memoranda, and other internal NPS communications regarding meadow management and/or stock management issues from 2004 through the date of this letter; and
6. The annual "Minutes and Background Information, Meadow Management Meeting," from 2009 through 2015, inclusive, and any/all minutes and other records from other meetings attended by SEKI staff where meadow management and/or stock management were discussed or addressed.



7. All "records" created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP, including all records regarding the criteria they employed and how the criteria were weighed.
8. All records related to the examinations, monitoring, and/or evaluation of individual meadows, from 2009 to the date of this letter. These were on at least some occasions performed using standard forms, noting the condition of the meadow(s)—amount and type of growth, amount of bare ground, etc. These forms have had at least three different titles: Meadow Assessment Form; Meadow Capacity Assessment Form; and Meadow Monitoring Trip Report. (The first two may be the same thing, or may not be. The third one is a different category). We request all records related to the examination, monitoring, and/or evaluation of meadows and other areas grazed by domestic stock animals within SEKI (both wilderness and non-wilderness, including all living and non-living features, attributes, residents, occupants, and components of meadow and other forage areas) from 2009 through the present.
9. All records, including emails and other communications to, from, and between all those on the LIST OF PREPARERS AND CONSULTANTS that appears on pages 597, 598, and 599 of Volume 1 of the WSP/FEIS dated April 2015, that include, mentions, discuss, address, reference, or analyze topics or issues related to stock management, stock numbers, stock limits, meadow condition, meadow management, commercial stock services, trail suitability for stock use, campsite suitability for stock users, documented and potential environmental impacts of stock use, and all other topics related to stock and meadow management within SEKI.

In order to produce the documents requested, you agreed to the following search terms in your August 11, 2015 letter to Sequoia and Kings Canyon National Parks Superintendent Woody Smeck:

*"the names of pack stations and pack station owners," "WSP," "Wilderness Stewardship Plan," "stock, meadow," "Backcountry Horsemen," "BCHC," "BCHA," "packer," "horse," "mule," "burro," "llama," "goat," "dunnage," "packstation," "pack station," "manure, forage, grazing, hay, pellets, biomass," "hoofprint," "cowbirds," "glyphosate," "WSP/EIS," "WSP/DEIS," "WSP/FEIS," "cheatgrass," "cheat grass," "velvetgrass," "velvet grass," "hola," "holcus lanatus," "e. coli," "escherichia coli," "campylobacter," "salmonella," and "giardia."*

Sequoia and Kings Canyon National Parks staff searched for records responsive to your request, and your request has been forwarded to this office as policy requires when records must be withheld.

We have enclosed 692 pages of records responsive to item 4, which are being released to you in part. Portions of these materials are being withheld under FOIA Exemption 3 (five pages), FOIA Exemption 5 (174 pages), FOIA Exemption 6 (70 pages) and FOIA Exemption 7(F) (65 pages). See 5 U.S.C. §552(b)(1)-(9).

Exemption 3 allows the withholding of information protected by a nondisclosure provision in a federal statute other than the FOIA. See 5 U.S.C. §552(b)(3). Under 54 U.S.C. §100707, also known as section 207 of the National Parks Omnibus Act of 1998, information concerning the



nature and specific location of a National Park System resource which is endangered, threatened, rare, or commercially valuable, of mineral or paleontological objects within units of the National Park System, or of objects of cultural patrimony within units of the National Park System, may be withheld from the public in response to a FOIA request unless the Secretary of the Interior determines that (1) disclosure of the information would further the purposes of the unit of the National Park System in which the resource or object is located and would not create an unreasonable risk of harm, theft, or destruction of the resource or object, including individual organic or inorganic specimens; and (2) disclosure is consistent with other applicable laws protecting the resource or object. The information withheld under Exemption 3 pertains to the location of objects of cultural patrimony within the park; the release of which would not further the purposes of the park and would create a reasonable risk of harm, theft, or destruction of the resource. Therefore, it is withheld under Exemption 3.

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." See 5 U.S.C. §552(b)(5); see *Nat'l Labor Relations Bd. v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding recommendations and suggestions from employees to park managers regarding policy and park management strategies under Exemption 5 because it qualifies to be withheld under the deliberative process privilege.

#### *Deliberative Process Privilege*

The deliberative process privilege protects the decision-making process of government agencies and encourages the "frank exchange of ideas on legal or policy matters" by ensuring agencies are not "forced to operate in a fish bowl." See *Mead Data Cent., Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) "assure that subordinates... will feel free to provide the decision maker with their uninhibited opinions and recommendations"; (2) "protect against premature disclosure of proposed policies"; and (3) "protect against confusing the issues and misleading the public." See *Coastal States Gas Corp. v. United States Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that "reflect the give-and-take of the consultative process" and may include "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Id.*

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency's deliberative processes. Disclosure would expose the agency's decision-making process in such a way as to



discourage candid discussion within the agency, and thereby undermine the agency's ability to perform its mandated functions.

FOIA Exemption 6 allows an agency to withhold "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." See 5 U.S.C. §552(b)(6).

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. See *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information. See *United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-75 (1989).

Under the FOIA, "the only relevant public interest" to consider under the exemption is "the extent to which the information sought would 'shed light on an agency's performance of its statutory duties' or otherwise let citizens 'know what their government is up to.'" See *United States Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495-96 (1994) (quoting *Reporters Comm.*, 489 U.S. at 775). The burden is on the requester to establish that disclosure would serve the public interest. See *National Archives and Records Admin. v. Favish*, 541 U.S. 157, 171-72 (2004). When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public. See *Reporters Comm.*, 489 U.S. at 771.

The information withheld under FOIA Exemption 6 consists of names and photographs of individuals who are not NPS employees or volunteers, including park visitors and subjects of search and rescue and/or medical incidents. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

Exemption 7(F) protects law enforcement information if its release could reasonably be expected to endanger the life or physical safety of any individual. See 5 U.S.C. § 552(b)(7)(F). For the materials that have been withheld under 7(F), we have determined releasing them could reasonably be expected to endanger the life or physical safety of an individual because the information would reveal details concerning NPS communications coverage and capabilities within the park. This would compromise the safety of our employees, including NPS law enforcement personnel, and endanger the life or physical safety of individuals.



Deborah Bardwick, DOI Assistant Field Solicitor and Andrew S. Muñoz, NPS Pacific West Region FOIA Officer participated in this decision.

We use Multitrack Processing to process FOIA requests. Your request falls into the Exceptional/Voluminous processing track. The Exceptional/Voluminous track is for requests requiring more than sixty workdays for processing. Within each track, requests are usually processed on a first-in, first-out basis.

Because we will need to search for, collect, and examine a voluminous amount of separate and distinct records that are demanded in a single request, we are taking a 90 workday extension under 43 C.F.R. §2.19(b). As we complete our review of records, we will dispatch interim responses to you. We expect that we will dispatch a final determination to you on or before March 21, 2016.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this letter. Appeals arriving or delivered after 5:00 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

**Your appeal must be made in writing.** You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the NPS response is in error. You must also include with your appeal copies of all correspondence between you and the NPS concerning your FOIA request, including your original FOIA request and the NPS response. Failure to include with your appeal all correspondence between you and the NPS will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

*DOI FOIA/Privacy Act Appeals Office Contact Information*

Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.  
MS-6556 MIB  
Washington, DC 20240  
Attn: FOIA/Privacy Act Appeals Office

Telephone: 202-208-5339  
Fax: 202-208-6677  
Email: FOIA.Appeals@sol.doi.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services (OGIS)  
National Archives and Records Administration  
8601 Adelphi Road - OGIA  
College Park, MD 20740-6001

E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

If you have any questions about the processing of your FOIA request, please contact Sequoia and Kings Canyon National Parks FOIA Officer Jason Watkins at 559-565-3107, [jason\\_watkins@nps.gov](mailto:jason_watkins@nps.gov), or National Park Service, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, California 93271-9651.

Sincerely,

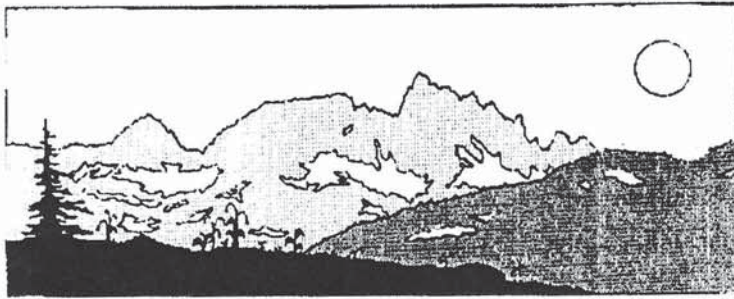


Martha J. Lee  
Acting Regional Director  
Pacific West Region

cc: Trystan Stern, Chief, Commercial Services, NPS Pacific West Region  
Woody Smeck, Superintendent, Sequoia and Kings Canyon National Parks  
Jason Watkins, FOIA Officer, Sequoia and Kings Canyon National Parks

## **EXHIBIT D**





# HIGH SIERRA HIKERS ASSOCIATION

PO Box 1453, Lafayette, CA 94549

December 4, 2015

Martha J. Lee, Acting Regional Director  
National Park Service  
Pacific West Region  
333 Bush Street, Suite 500  
San Francisco, CA 94104-2828

In reference to:  
9.C. (PWR-PI)  
NPS-2015-00581

Dear Ms. Lee:

I am writing in response to your letter to me of November 4 regarding our FOIA request.

In a letter to me of August 4, Superintendent Woody Smeck at SEKI stated: "We will release documents on a rolling basis. . . . Our goal is to begin posting responsive documents to the NPS FOIA Library within the next two weeks."

That information was false. Nothing was sent.

On October 18 I e-mailed Mr. Jason Watkins, the FOIA officer at SEKI, asking why we had not received anything nor had we received the expected notification letter stating that we would receive some of our requested FOIA materials. Mr. Watkins responded the next day, apologized for the delay, and stated: "I contacted the regional FOIA office this morning and the first batch of responsive records should clear the region next week. They will send you a CD of the records, since posting them to the FOIA Library will likely take a bit more time. The CD could arrive the first week of November."

That information was false. Nothing was sent.

In your letter to me of November 4, beginning at the second paragraph from the bottom of page 2, you stated: "We have enclosed 692 pages of records responsive to item 4, which are being released to you in part."

Inasmuch as nothing was enclosed, neither then nor in the month since then, that statement too was false.

FOIA Request December 4, 2015 - 2

It is now seven months since we initiated our FOIA request, and four months since Supt. Smeck and I agreed on the search terms. We have nothing to show for it except unfulfilled, misleading statements of intent.

Thank you for providing information about the DOI appeal process, but since we haven't received any materials, and therefore do not have anything that we might wish to appeal, I should like to note that the statement that "the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this letter" must be considered null and void.

We will appreciate being correctly informed as to when we should expect to receive the initial batch of materials per our FOIA request.

Sincerely,

Peter Browning, President  
High Sierra Hikers Association

cc: Trystan Stern, Chief, Commercial Services, NPS Pacific West Region  
Woody Smeck, Superintendent, Sequoia and Kings Canyon National Parks  
Jason Watkins, FOIA Officer, Sequoia and Kings Canyon National Parks

# **EXHIBIT E**

From: "NPS\_PWR\_FOIA@nps.gov" <nps\_pwr\_foia@nps.gov>  
Date: Thu, 10 Dec 2015 18:59:03 +0000  
Subject: FOIA # NPS-2015-00581  
To: [president@highsierrahikers.org](mailto:president@highsierrahikers.org)

You have received 5 secure files from nps\_pwr\_foia@nps.gov.  
Use the secure links below to download.  
Mr. Browning:

On November 4, 2015 an interim response to FOIA request # NPS-2015-00581 was sent to you from this office. Due to an oversight, the CD containing the released records listed in the letter was not included. Those records are attached here for you to download.

We apologize for the oversight and for any inconvenience it may have caused.

Sincerely,  
Dee Sousa  
415-623-2104

Secure File Downloads:

Available until: 09 January 2016

Click links to download:

2008 ESOR\_Redacted.pdf,30.61 MB

<https://secure.nps.gov/seos/1000/mpd/ui10012016c7caf24d3aef38249b46e4317765222a>

2009 EOSR\_Redacted.pdf,52.76 MB

<https://secure.nps.gov/seos/1000/mpd/ui1001201683b80f79b0c15cc167812875caa4cbf9>

2011 EOSR\_Redacted.pdf,9.02 MB - [Fingerprint:  
753daeedac7c2d066af3464406f28a0e]

<https://secure.nps.gov/seos/1000/mpd/ui1001201677a2fe54462319bce6e9d02cc3f1f85a>

2012 EOSR\_Redacted.pdf,33.82 MB

<https://secure.nps.gov/seos/1000/mpd/ui10012016f86d10580f166c41aa1391f7ba857ac9>

2013 EOSR\_Redacted.pdf,11.01 MB

<https://secure.nps.gov/seos/1000/mpd/ui100120164440421c41e50f9dc3725ff37f0e6fbb> You have received file link(s) sent via NPS Secure File Transfer

(hosted by Accellion). To retrieve the file(s), please click on the file name (link) above.

<Bitdefender.txt>



## **EXHIBIT F**



## United States Department of the Interior

NATIONAL PARK SERVICE  
Pacific West Region  
333 Bush Street, Suite 500  
San Francisco, CA 94104-2828



IN REPLY REFER TO:  
9.C. (PWR-PI)  
NPS-2015-00581

17 DEC 2015

Peter Browning  
High Sierra Hikers Association  
PO Box 1453  
Lafayette, CA 94549

Dear Mr. Browning:

This is an interim response to your Freedom of Information Act (FOIA) request submitted to the National Park Service (NPS), Sequoia and Kings Canyon National Parks dated May 2, 2015 and received on May 4, 2015. The Department of the Interior (DOI) FOIA tracking number for this request is NPS-2015-00581. Please cite this tracking number in any future communications with our office regarding your request.

You requested:

1. *All communications, minutes of meetings, and all other records regarding stock- or meadow-management issues (including the WSP/DEIS and WSP/FEIS planning process), between NPS personnel and commercial packstock enterprises that operate within SEKI. Packstock "enterprises" include broadly all owners, employees, and representatives of commercial outfits that utilize packstock (horses, mules, burros, llamas) within SEKI.*
2. *Any and all records and communications regarding the WSP/DEIS and WSP/FEIS planning process, or other stock- or meadow-management issues that are germane to the WSP between NPS and the Backcountry Horsemen of California, the Backcountry Horsemen of America, and elected officials; and*
3. *All internal NPS communications regarding the WSP/DEIS and development of the WSP/DEIS and the WSP/FEIS that were created prior to the date of this letter; and*
4. *All backcountry ranger reports from 2004 through 2014, inclusive; and*
5. *All reports, memoranda, and other internal NPS communications regarding meadow management and/or stock management issues from 2004 through the date of this letter; and*
6. *The annual "Minutes and Background Information, Meadow Management Meeting," from 2009 through 2015, inclusive, and any/all minutes and other records from other meetings attended by SEKI staff where meadow management and/or stock management were discussed or addressed.*

7. All "records" created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP, including all records regarding the criteria they employed and how the criteria were weighed.
8. All records related to the examinations, monitoring, and/or evaluation of individual meadows, from 2009 to the date of this letter. These were on at least some occasions performed using standard forms, noting the condition of the meadow(s)—amount and type of growth, amount of bare ground, etc. These forms have had at least three different titles: Meadow Assessment Form; Meadow Capacity Assessment Form; and Meadow Monitoring Trip Report. (The first two may be the same thing, or may not be. The third one is a different category). We request all records related to the examination, monitoring, and/or evaluation of meadows and other areas grazed by domestic stock animals within SEKI (both wilderness and non-wilderness, including all living and non-living features, attributes, residents, occupants, and components of meadow and other forage areas) from 2009 through the present.
9. All records, including emails and other communications to, from, and between all those on the LIST OF PREPARERS AND CONSULTANTS that appears on pages 597, 598, and 599 of Volume 1 of the WSP/FEIS dated April 2015, that include, mentions, discuss, address, reference, or analyze topics or issues related to stock management, stock numbers, stock limits, meadow condition, meadow management, commercial stock services, trail suitability for stock use, campsite suitability for stock users, documented and potential environmental impacts of stock use, and all other topics related to stock and meadow management within SEKI.

In order to produce the documents requested, you agreed to the following search terms in your August 11, 2015 letter to Sequoia and Kings Canyon National Parks Superintendent Woody Smeck:

*...the names of pack stations and pack station owners, "WSP," "Wilderness Stewardship Plan," "stock, meadow," "Backcountry Horsemen," "BCHC," "BCHA," "packer," "horse," "mule," "burro," "llama," "goat," "dunnage," "packstation," "pack station," "manure, forage, grazing, hay, pellets, biomass," "hoofprint," "cowbirds," "glyphosate," "WSP/EIS," "WSP/DEIS," "WSP/FEIS," "cheatgrass," "cheat grass," "velvetgrass," "velvet grass," "hola," "holcus lanatus," "e. coli," "escherichia coli," "campylobacter," "salmonella," and "giardia."*

Sequoia and Kings Canyon National Parks staff searched for records responsive to your request, and your request has been forwarded to this office as policy requires when records must be withheld.

In interim response number one, dated November 4, 2015, we transmitted 692 pages of records responsive to item 4, which were released to you in part. In this interim response, we have enclosed 873 pages of records, in partial response to item 6, which are being released to you in part. Portions of these materials are being withheld under FOIA Exemption 5 (156 pages) and FOIA Exemption 6 (eleven pages). See 5 U.S.C. §552(b)(1)-(9).

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." See 5 U.S.C. §552(b)(5); see *Nat'l Labor Relations Bd. v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and



commercial information privileges. We are withholding NPS employee discussions and resulting recommendations and suggestions presented to park managers regarding meadow and/or stock management strategies under Exemption 5 because they qualify to be withheld under the deliberative process privilege.

### *Deliberative Process Privilege*

The deliberative process privilege protects the decision-making process of government agencies and encourages the “frank exchange of ideas on legal or policy matters” by ensuring agencies are not “forced to operate in a fish bowl.” *See Mead Data Cent., Inc. v. United States Dep’t of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) “assure that subordinates...will feel free to provide the decision maker with their uninhibited opinions and recommendations”; (2) “protect against premature disclosure of proposed policies”; and (3) “protect against confusing the issues and misleading the public.” *See Coastal States Gas Corp. v. United States Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that “reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Id.*

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes. Disclosure would expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine the agency’s ability to perform its mandated functions.

FOIA Exemption 6 allows an agency to withhold “personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *See* 5 U.S.C. §552(b)(6).

The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. *See United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-75 (1989).

Under the FOIA, “the only relevant public interest” to consider under the exemption is “the extent to which the information sought would ‘she[d] light on an agency’s performance of its statutory duties’ or otherwise let citizens ‘know what their government is up to.’” *See United States Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495-96 (1994) (quoting *Reporters Comm.*, 489 U.S. at 775). The burden is on the requester to establish that disclosure

would serve the public interest. *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 171-72 (2004). When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public. *See Reporters Comm.*, 489 U.S. at 771.

The information withheld under FOIA Exemption 6 consists of images of individuals who cannot be identified as NPS employees or volunteers that are contained in photographs used to demonstrate meadow conditions. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

Deborah Bardwick, DOI Assistant Field Solicitor and Nancy Hori, NPS Pacific West Region FOIA Officer participated in this decision.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 30 workdays** from the date of this letter. Appeals arriving or delivered after 5:00 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

**Your appeal must be made in writing.** You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the NPS response is in error. You must also include with your appeal copies of all correspondence between you and the NPS concerning your FOIA request, including your original FOIA request and the NPS response. Failure to include with your appeal all correspondence between you and the NPS will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

*DOI FOIA/Privacy Act Appeals Office Contact Information*

Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.  
MS-6556 MIB  
Washington, DC 20240  
Attn: FOIA/Privacy Act Appeals Office



Telephone: 202-208-5339  
Fax: 202-208-6677  
Email: FOIA.Appeals@sol.doi.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services (OGIS)  
National Archives and Records Administration  
8601 Adelphi Road - OGIA  
College Park, MD 20740-6001

E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

If you have any questions about the processing of your FOIA request, please contact Sequoia and Kings Canyon National Parks FOIA Officer Jason Watkins at 559-565-3107, [jason\\_watkins@nps.gov](mailto:jason_watkins@nps.gov), or National Park Service, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, California 93271-9651.

Sincerely,



Martha J. Lee  
Acting Regional Director  
Pacific West Region

Enclosure

cc: Woody Smeck, Superintendent, Sequoia and Kings Canyon National Parks  
Jason Watkins, FOIA Officer, Sequoia and Kings Canyon National Parks

# **EXHIBIT G**



**From:** Peter Browning peter@greatwestbooks.com  
**Subject:** Fw: [FOIA NPS-2015-00581] Browning interim release #2  
**Date:** January 1, 2016 at 1:28 PM  
**To:** Bue Rver Law e .buer ver aw@gma .com

----- Original Message ----- From: <president@highsierrahikers.org>  
 To: <pbrowning54@gmail.com>  
 Sent: Tuesday, December 29, 2015 10:08 PM  
 Subject: Fwd: [FOIA NPS-2015-00581] Browning interim release #2

*Privileged attorney-client communication.*

----- Forwarded message -----  
 From: "NPS\_PWR\_FOIA@nps.gov" <nps\_pwr\_foia@nps.gov>  
 Date: Mon, 21 Dec 2015 23:41:43 +0000  
 Subject: [FOIA NPS-2015-00581] Browning interim release #2  
 To: president@highsierrahikers.org  
 Cc: jason\_watkins@nps.gov

You have received 2 secure files from nps\_pwr\_foia@nps.gov.  
 Use the secure links below to download.  
 United States Department of the Interior National Park Service Pacific  
 West Region 333 Bush Street, Suite 500 San Francisco, CA 94104-2828 In  
 reply refer to: 9.C. (PWR-PI)  
 NPS-2015-00581

December 21, 2015

Peter Browning  
 High Sierra Hikers Association  
 PO Box 1453  
 Lafayette, CA 94549  
 Via email: president@highsierrahikers.org

Dear Mr. Browning:

This is an interim response to your Freedom of Information Act (FOIA) request submitted to the National Park Service (NPS), Sequoia and Kings Canyon National Parks dated May 2, 2015 and received on May 4, 2015. The Department of the Interior (DOI) FOIA tracking number for this request is NPS-2015-00581. Please cite this tracking number in any future communications with our office regarding your request.

You requested:

1. All communications, minutes of meetings, and all other records regarding stock- or meadow-management issues (including the WSP/DEIS and WSP/FEIS planning process), between NPS personnel and commercial packstock enterprises that operate within SEKI. Packstock &ldquo;enterprises&rdquo; include broadly all owners, employees, and representatives of commercial outfits that utilize packstock (horses, mules, burros, llamas) within SEKI.
2. Any and all records and communications regarding the WSP/DEIS and WSP/FEIS planning process, or other stock- or meadow-management issues that are germane to the WSP between NPS and the Backcountry Horsemen of California, the Backcountry Horsemen of America, and elected officials; and
3. All internal NPS communications regarding the WSP/DEIS and development of the WSP/DEIS and the WSP/FEIS that were created prior to the date of this letter; and
4. All backcountry ranger reports from 2004 through 2014, inclusive; and
5. All reports, memoranda, and other internal NPS communications regarding meadow management and/or stock management issues from 2004 through the date of this letter; and
6. The annual &ldquo;Minutes and Background Information Meadow

6. The annual checklists, minutes and background information, Meadow Management Meeting, and from 2009 through 2015, inclusive, and any/all minutes and other records from other meetings attended by SEKI staff where meadow management and /or stock management were discussed or addressed.

7. All records created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP, including all records regarding the criteria they employed and how the criteria were weighed.

8. All records related to the examinations, monitoring, and/or evaluation of individual meadows, from 2009 to the date of this letter. These were on at least some occasions performed using standard forms, noting the condition of the meadow(s) and amount and type of growth, amount of bare ground, etc. These forms have had at least three different titles: Meadow Assessment Form; Meadow Capacity Assessment Form; and Meadow Monitoring Trip Report. (The first two may be the same thing, or may not be. The third one is a different category). We request all records related to the examination, monitoring, and/or evaluation of meadows and other areas grazed by domestic stock animals within SEKI (both wilderness and non-wilderness, including all living and non-living features, attributes, residents, occupants, and components of meadow and other forage areas) from 2009 through the present.

9. All records, including emails and other communications to, from, and between all those on the LIST OF PREPARERS AND CONSULTANTS that appears on pages 597, 598, and 599 of Volume 1 of the WSP/FEIS dates April 2015, that include, mentions, discuss, address, reference, or analyze topics or issues related to stock management, stock numbers, stock limits, meadow condition, meadow management, commercial stock services, trail suitability for stock use, campsite suitability for stock users, documented and potential environmental impacts of stock use, and all other topics related to stock and meadow management within SEKI.

In order to produce the documents requested, you agreed to the following search terms in your August 11, 2015 letter to Sequoia and Kings Canyon National Parks Superintendent Woody Smeck:

&hellip;the names of pack stations and pack station owners, &ldquo;WSP,&rdquo; &ldquo;Wilderness Stewardship Plan,&rdquo; &ldquo;stock, meadow,&rdquo; &ldquo;Backcountry Horsemen,&rdquo; &ldquo;BCHC,&rdquo; &ldquo;BCHA,&rdquo; &ldquo;packer,&rdquo; &ldquo;horse,&rdquo; &ldquo;mule,&rdquo; &ldquo;burro,&rdquo; &ldquo;llama,&rdquo; &ldquo;goat,&rdquo; &ldquo;dunnage,&rdquo; &ldquo;packstation,&rdquo; &ldquo;pack station,&rdquo; manure, forage, grazing, hay, pellets, biomass, &ldquo;hoofprint,&rdquo; &ldquo;cowbirds,&rdquo; &ldquo;glyphosate,&rdquo; &ldquo;WSP/EIS,&rdquo; &ldquo;WSP/DEIS,&rdquo; &ldquo;WSP/FEIS,&rdquo; &ldquo;cheatgrass,&rdquo; &ldquo;cheat grass,&rdquo; &ldquo;velvetgrass,&rdquo; &ldquo;velvet grass,&rdquo; &ldquo;hola,&rdquo; &ldquo;holcus lanatus,&rdquo; &ldquo;e. coli,&rdquo; &ldquo;escherichia coli,&rdquo; &ldquo;campylobacter,&rdquo; &ldquo;salmonella,&rdquo; and &ldquo;giardia.&rdquo;

Sequoia and Kings Canyon National Parks staff searched for records responsive to your request, and your request has been forwarded to this office as policy requires when records must be withheld.

In interim response number one, dated November 4, 2015, we transmitted 692 pages of records responsive to item 4, which were released to you in part. In this interim response, we have enclosed 873 pages of records, in partial response to item 6, which are being released to you in part. Portions of these materials are being withheld under FOIA Exemption 5 (156 pages) and FOIA Exemption 6 (eleven pages). See 5 U.S.C. §552(b)(1)-(9).

Exemption 5 allows an agency to withhold &ldquo;inter-agency or intra-agency memorandums or letters which would not be available by

law to a party... in litigation with the agency.” See 5 U.S.C. §552(b)(5); see Nat’l Labor Relations Bd. v. Sears Roebuck & Co., 421 U.S. 132, 149 (1975). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding NPS employee discussions and resulting recommendations and suggestions presented to park managers regarding meadow and/or stock management strategies under Exemption 5 because they qualify to be withheld under the deliberative process privilege.

#### Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the “frank exchange of ideas on legal or policy matters” by ensuring agencies are not “forced to operate in a fish bowl.” See *Mead Data Cent., Inc. v. United States Dep’t of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) “assure that subordinates will feel free to provide the decision maker with their uninhibited opinions and recommendations”; (2) “protect against premature disclosure of proposed policies”; and (3) “protect against confusing the issues and misleading the public.” See *Coastal States Gas Corp. v. United States Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that “reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Id.*

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes. Disclosure would expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine the agency’s ability to perform its mandated functions.

FOIA Exemption 6 allows an agency to withhold “personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See 5 U.S.C. §552(b)(6).

The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. See *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information. See *United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-75 (1989).

Under the FOIA, “the only relevant public interest” to consider under the exemption is “the extent to which the information sought would shed light on an agency’s performance of its statutory duties” or otherwise let citizens “know what their government is up to.” See *United States Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S.

487, 495-96 (1994) (quoting Reporters Comm., 489 U.S. at 775). The burden is on the requester to establish that disclosure would serve the public interest. See National Archives and Records Admin. v. Favish, 541 U.S. 157, 171-72 (2004). When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public. See Reporters Comm., 489 U.S. at 771.

The information withheld under FOIA Exemption 6 consists of images of individuals who cannot be identified as NPS employees or volunteers that are contained in photographs used to demonstrate meadow conditions. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

Deborah Bardwick, DOI Assistant Field Solicitor and Nancy Hori, NPS Pacific West Region FOIA Officer participated in this decision.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this letter. Appeals arriving or delivered after 5:00 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

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Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

#### DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.  
MS-6556 MIB  
Washington, DC 20240  
Attn: FOIA/Privacy Act Appeals Office

Telephone: 202-208-5339  
Fax: 202-208-6677  
Email: FOIA.Appeals@sol.doi.gov

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Office of Government Information Services (OGIS)

National Archives and Records Administration

8601 Adelphi Road - OGIA

College Park, MD 20740-6001

E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)

Web: <https://ogis.archives.gov>

Telephone: 202-741-5770

Fax: 202-741-5769

Toll-free: 877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

If you have any questions about the processing of your FOIA request, please contact Sequoia and Kings Canyon National Parks FOIA Officer Jason Watkins at 559-565-3107, [jason\\_watkins@nps.gov](mailto:jason_watkins@nps.gov), or National Park Service, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, California 93271-9651.

Sincerely,

//s//

Martha J. Lee  
Acting Regional Director  
Pacific West Region

Enclosure

cc: Woody Smeck, Superintendent, Sequoia and Kings Canyon National Parks  
Jason Watkins, FOIA Officer, Sequoia and Kings Canyon National Parks

Secure File Downloads:  
Available until: 20 January 2016

Click links to download:  
15-0581 151217 Browning 2nd Interim Reply from Lee SEKI.pdf ,1.36 MB -  
[Fingerprint: 85f372962423f7e5c33ab49c3055e544]  
<https://secure.nps.gov/seos/1000/mpd/ui210120162cee05ee8e631e4a44f50ef24af489de>

2015-00581 Records Released.zip ,130.46 MB



<https://secure.nps.gov/seos/1000/mpd/ui210120161b600415a4b/aaa9ba11410cdcc8a419>

You have received file link(s) sent via NPS Secure File Transfer (hosted by Accellion). To retrieve the file(s), please click on the file name (link) above.



Bitdefender.txt

# **EXHIBIT H**

**From:** Elisabeth Holmes [eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)  
**Subject:** Re: HSHA FOIA No. 2015-00581  
**Date:** January 29, 2016 at 2:27 PM  
**To:** Bardwick, Deborah [deborah.bardwick@sol.doi.gov](mailto:deborah.bardwick@sol.doi.gov)  
**Cc:** NPS PWR FOIA [nps\\_pwr\\_foia@nps.gov](mailto:nps_pwr_foia@nps.gov), Woody Smeck [woody\\_smeck@nps.gov](mailto:woody_smeck@nps.gov), Jason Watkins [jason\\_watkins@nps.gov](mailto:jason_watkins@nps.gov)

---

Hello Dee -

It will have to be next week sometime. Any day but Tuesday Feb. 2nd will work.

Elisabeth

On Jan 26, 2016, at 1:50 PM, Bardwick, Deborah <[deborah.bardwick@sol.doi.gov](mailto:deborah.bardwick@sol.doi.gov)> wrote:

Hello, Elisabeth -

Thank you for your confirmation on the administrative portion of the email. I appreciate your very prompt response.

I will be happy to talk to you further about the extension and the other matters that you raised in your earlier email. If it's convenient for you, please let me know if you have time later this week - perhaps Thursday or Friday afternoon? Next week I am also available most afternoons.

Best -

Dee

On Tue, Jan 26, 2016 at 1:36 PM, Elisabeth Holmes <[eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)> wrote:

Dee -

In the interests of time since the "interim" appeal is due in about 30 minutes, I am only responding to the administrative appeal portion of your email right now. We appreciate NPS recognizing the terms of the FOIA and the regulations, such that an administrative appeal is not due until after a final determination is made. In reliance on that, HSHA will not file its "interim" administrative appeal today.

As to the additional extension being sought, there are requirements that must be satisfied to properly invoke extension, and HSHA does not believe they are properly being claimed here. We will follow up with you about that separately.

Thank you for the contact information for the FOIA Liaison.

Elisabeth

On Jan 26, 2016, at 1:24 PM, Bardwick, Deborah <[deborah.bardwick@sol.doi.gov](mailto:deborah.bardwick@sol.doi.gov)> wrote:

Hello, Elisabeth -

Thank you so much for your clarification.

By this email, NPS agrees that no administrative appeal will be due until, as is set forth in the regulations, the final production is complete.

Since our last letter to you, which anticipated that the final production would be completed by March 21, 2016, it has become apparent that another extension will be needed. The Park will contact you by letter revising its determination date.

Our FOIA regional staff apologizes for leaving out the name of our FOIA liaison. Her name and contact information is below:

Ms. Charis Wilson, PhD, CRM  
NPS FOIA Officer  
12795 W. Alameda Parkway  
PO Box 25287  
Denver, CO 80225-0287  
303-969-2959  
Fax: 303-969-2557  
1-855-NPS-FOIA

Please let me know if you have any further questions or concerns.

Please let me know if you have any further questions or concerns.

Best -

Dee

On Tue, Jan 26, 2016 at 12:50 PM, Elisabeth Holmes <[eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)> wrote:

Hello Dee -

Our understanding is that the Administrative Appeal deadline is today, January 26, 2016, by 2pm Pacific / 5pm Eastern. And as we discussed on January 19th, technically an Administrative Appeal is not even due now because NPS has not issued a final determination on the FOIA, there are still 7 outstanding FOIA categories, and the 2 categories that have been produced only contain partial productions.

That said, because of the wording in NPS's Nov. 4, 2015 and Dec. 17, 2015 letters, we have prepared an "interim" administrative appeal for filing via email today by 2pm Pacific. If you can provide me with the letter addressing NPS's agreement to a "stay" of administrative appeal deadlines until after the March 21, 2016 final production date, then we will hold off on filing the appeal today so that the other parts of the production can proceed.

Thank you.

Elisabeth

On Jan 26, 2016, at 12:41 PM, Bardwick, Deborah <[deborah.bardwick@sol.doi.gov](mailto:deborah.bardwick@sol.doi.gov)> wrote:

Hello, Elisabeth -

As we discussed, please accept this email as my confirmation of my error on the date of the administrative appeal. I thought the date to file the administrative appeal was today, not yesterday, although your email stated that the date was "in advance of" January 26, not [on] January 26.

I will provide you with the email we discussed, addressing the points you summarized in your email, within the next hour. You retain your right to file an administrative appeal. If you do decide to file an administrative appeal today, I will notify the FOIA Appeals Office that I will not contest your appeal on grounds of timeliness.

Please confirm that this is also your understanding, or let me know immediately.

Best -

Dee

On Mon, Jan 25, 2016 at 11:15 AM, Elisabeth Holmes <[eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)> wrote:

Hello Dee -

I am just following up to our conversation last week, and the Jan. 26, 2016 "interim" appeal deadline referenced in the Nov. 4, 2015 NPS letter. Will you be able to get me something in writing before tomorrow confirming a "stay" of administrative appeal deadlines until the FOIA production is complete? If not, I will have to prepare the appeal this afternoon for the purpose of preserving my client's rights.

Thanks.

Elisabeth

On Jan 19, 2016, at 4:48 PM, Elisabeth Holmes <[eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)> wrote:

Dee -

To follow up to our discussion today, these are the points I noted we discussed, and next steps on each:

1. Administrative appeal deadline. We agree that the "administrative appeal" noted in the NPS's letter dated Nov. 4, 2015 is in fact not an "administrative appeal" as contemplated by FOIA or the NPS regulations because NPS has only made interim productions on the FOIA, and there are outstanding productions to be made. We agreed that our understanding of the FOIA and the regulations is that an administrative appeal is not appropriate until the agency has issued its final determination of the

FOIA request. Thus, any administrative appeal deadline referenced in the Nov. 4, 2015 letter is not yet ripe. Prior to an administrative appeal timeframe, NPS is willing to discuss the initial productions. These communications will in no way waive or limit HSHA's or NPS's rights when an administrative appeal is due, or in litigation if that is necessary. You will be sending me a letter to this effect, in advance of January 26, 2016, which is the current 30-day mark from when the Nov. 4, 2015 letter was actually sent out to HSHA.

2. Schedule for production. The FOIA has been pending since May 2015, and since the search terms were agreed to in late August - early September 2015, NPS has produced part of 2 of the 9 categories of records requested. NPS informed HSHA that it would complete production on or before March 21, 2016. That is only 8 weeks from now, and I am very concerned about NPS's ability to meet the deadline. I would like NPS to indicate dates it will issue subsequent productions, so that it can demonstrate it will meet its own deadline. I also noted that the 90 day extension NPS claimed also requires the appointment of a FOIA Liaison (43 CFR 2.19(b)(2)), and this was not done.

3. Fee Waiver. I would like NPS correspondence regarding HSHA's request for a fee waiver. This may be in a May 29, 2015 letter, which I would like to get a copy of.

4. Document logistics.

a) I asked about Bates stamping, and you stated this could only be done with an outside third party vendor which would delay processing of the FOIA. We did not discuss this on our call, but FYI and for future reference, Adobe Pro allows users to Bates stamp PDF documents quite quickly.

b) The 692 pages produced for Category #4 included several pages that were redacted in full or in part. The letter regarding this production referenced documents "withheld". It is unclear whether there are additional documents that were not produced because they were withheld, or whether the "withheld" documents were redacted in full and then included with the 692 pages. If NPS can let me know, and make sure this is clear going forward, it will be very helpful to us throughout the course of this FOIA as we reference the records.

5. Vaughn Index. We would like a Vaughn index for the records redacted in full, part, or withheld. Ideally the Index would come simultaneously with the record production, but given the short timeframe between now and March 21, 2016, HSHA is willing to accept NPS producing an Index with 10 days of the final record production. In thinking about the logistics of this, I now also suggest that any administrative appeal would not be due until 30 days after the Vaughn Index is produced, as really it is not until the index is produced that the FOIA production is completed.

6. Exemptions. I mentioned some of the exemptions that my cursory review of the materials caused me some concern. For example, the (b)(5) redactions seemed liberally and broadly applied. Also, the (7)(f) exemptions seem overbroad. After we receive a letter from NPS regarding Point #1 above, we can respond with more substance regarding the exemptions claimed.

Please let me know whether this email accurately confirms your understanding of our discussion today, and next steps.

Thanks.

Elisabeth

Elisabeth ("Eli") Holmes, Attorney  
Blue River Law, P.C.  
P.O. Box 293  
Eugene, Oregon 97440  
Tel. (541) 870-7722  
Email: [eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)  
Website: [www.blueriverlaw.com](http://www.blueriverlaw.com)

Elisabeth ("Eli") Holmes, Attorney  
Blue River Law, P.C.  
P.O. Box 293  
Eugene, Oregon 97440  
Tel. (541) 870-7722  
Email: [eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)  
Website: [www.blueriverlaw.com](http://www.blueriverlaw.com)



--

**Deborah (Dee) Bardwick**

Assistant Field Solicitor  
U.S. Department of the Interior, Office of the Solicitor - San Francisco Field Office  
333 Bush Street, Suite 775  
San Francisco, California 94104  
**T: 415-296-3385**  
**F: 415-296-3371**  
[deborah.bardwick@sol.doi.gov](mailto:deborah.bardwick@sol.doi.gov)

Elisabeth ("Eli") Holmes, Attorney  
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P.O. Box 293  
Eugene, Oregon 97440  
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Website: [www.blueriverlaw.com](http://www.blueriverlaw.com)

--

**Deborah (Dee) Bardwick**

Assistant Field Solicitor  
U.S. Department of the Interior, Office of the Solicitor - San Francisco Field Office  
333 Bush Street, Suite 775  
San Francisco, California 94104  
**T: 415-296-3385**  
**F: 415-296-3371**  
[deborah.bardwick@sol.doi.gov](mailto:deborah.bardwick@sol.doi.gov)

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**Deborah (Dee) Bardwick**

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--

**Deborah (Dee) Bardwick**

Assistant Field Solicitor

U.S. Department of the Interior, Office of the Solicitor - San Francisco Field Office

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# **EXHIBIT I**

**Blue River Law, P.C.**  
P.O. Box 293 Eugene, Oregon 97440  
Tel. (541) 870-7722 and Email [eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)  
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March 13, 2016

Via Email Charis Wilson@nps.gov  
Charis Wilson, National Park Service FOIA Officer  
12795 West Alameda Parkway  
P.O. Box 25287  
Denver, CO 80225

Re: High Sierra Hikers Association FOIA No. 2015-00581

Dear Ms. Wilson:

I write to follow-up to our February 19, 2016 telephone conversation regarding High Sierra Hikers Association's pending FOIA with the National Park Service, No. 2015-00581.

During our conversation, we agreed that my client would provide NPS with a priority list of its nine category FOIA request, and with some examples of improper redactions in the limited documents released to date. You were going to investigate the records produced during the 2008-2009 FOIA responses and litigation, versus what the NPS produced in discovery in the subsequent NEPA litigation, and you were also going to follow-up on the NPS's estimated date of completion.

We have not received an updated estimate date of completion from NPS. I wanted to reiterate that this was promised to us by the San Francisco NPS office on January 26, 2016, *after* my client agreed not to file an interim administrative appeal of NPS's failure to produce responsive records that day. An estimated date completion is required to be provided under FOIA. 5 U.S.C. § 552(a)(7)(B). High Sierra Hikers Association has been without one for seven weeks; the original (already extended) deadline was March 21, 2016.

We also discussed on February 19<sup>th</sup> that NPS would continue with Categories # 4 and #6, but we have not received any records *any* records since December 2015.

I enclose herewith my client's prioritization request for NPS's production of the FOIA records. I will follow-up separately with more detail on the specific redactions.

Priority Production

Regarding the priorities for the current FOIA, my client considered its own priorities, what NPS has already partially produced (Categories #4 and #6), and what should be the easiest for NPS to produce. The chart on the following page outlines the FOIA category as presented in the original FOIA submitted on May 2, 2015, the topic description, and my client's priority number for each category.

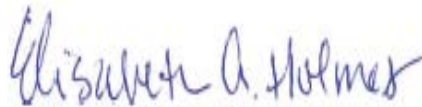


Category Number in Original FOIA Request (May 2, 2015)	Topic Description	Priority Number
1	All communications, minutes of meetings, and all other records regarding stock- or meadow-management issues (including the WSP/DEIS and WSP/FEIS planning process), between NPS personnel and commercial packstock enterprises that operate within SEKI. Packstock "enterprises" includes broadly all owners, employees, and representatives of commercial outfits that utilize packstock (horses, mules, burros, llamas) within SEKI.	4
2	Any and all records and communications regarding the WSP/DEIS and WSP/FEIS planning process, or other stock- or meadow-management issues that are germane to the WSP between the NPS and the Backcountry Horsemen of California, the Backcountry Horsemen of America, and elected officials;	5
3	All internal NPS communications regarding the WSP/DEIS and development of the WSP/DEIS and the WSP/FEIS that were created prior to the date of this letter;	8
4	All backcountry ranger reports from 2004 through 2014, inclusive;	1
5	All reports, memoranda, and other internal NPS communications regarding meadow management and/or stock management issues from 2004 through the date of this letter;	7
6	The annual "Minutes and Background Information, Meadow Management Meeting," from 2009 through 2015, inclusive, and any/all minutes and other records from other meetings attended by SEKI staff where meadow management and/or stock management were discussed or addressed.	2
7	All "records" created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP, including all records regarding the criteria they employed and how the criteria were weighted.	6
8	All records related to the examination, monitoring, and/or evaluation of individual meadows, from 2009 to the date of this letter. These were on at least some occasions performed using standard forms, noting the condition of the meadow(s)—amount and type of growth, amount of bare ground, etc. These forms have had at least three different titles: Meadow Assessment Form; Meadow Capacity Assessment Form; and Meadow Monitoring Trip Report. (The first two may be the same thing, or may not be. The third one is a different category). We request all records related to the examination, monitoring, and/or evaluation of meadows and other areas grazed by domestic stock animals within SEKI (both wilderness and non-wilderness, including all living and non-living features, attributes, residents, occupants, and components of meadows and other forage areas) from 2009 through the present.	3
9	All records, including emails and other communications to, from, and between all those on the LIST OF PREPARERS AND CONSULTANTS that appears on pages 597, 598, and 599 of Volume 1 of the WSP/FEIS dated April 2015, that include, mention, discuss, address, reference, or analyze topics or issues related to stock management, stock numbers, stock limits, meadow condition, meadow management, commercial stock services, trail suitability for stock use, campsite suitability for stock users, documented and potential environmental impacts of stock use, and all other topics related to stock and meadow management within SEKI.	9

Next Steps

As I mentioned in communications with Deborah Bardwick, in anticipation of our back-and-forth discussions on specific documents and specific pages in NPS' FOIA production, it will be very useful for NPS and for us if NPS Bates stamps the records it is releasing. Other federal agencies have done this in large FOIA productions, and software programs like Adobe Acrobat Pro allow this feature to be added, and to be added quickly and economically. Hundreds of pages can be Bates stamped in just minutes. The software NPS is already using to electronically redact these records may in fact also allow NPS to Bates stamp the pages. Ms. Bardwick represented that Bates stamping would require the records to be sent to a third party and thus further delaying the release. Furthermore, in my review of the records produced to date, I have noticed several missing pages in certain documents. I cannot determine at this stage whether NPS is withholding those records, mis-numbered pages, or somehow those pages were inadvertently omitted from the production. To facilitate everyone's efforts in this matter, I encourage NPS to look at ways to Bates stamp its productions in this matter going forward.

Please contact me as soon as possible to provide answers the outstanding questions from our February 19<sup>th</sup> telephone call, to provide an estimated completion date for this FOIA, and to inform of us how NPS will meet this completion date.

A handwritten signature in blue ink that reads "Elisabeth A. Holmes". The signature is written in a cursive, flowing style.

---

Elisabeth A. Holmes

cc: High Sierra Hikers Association

# **EXHIBIT J**

**Blue River Law, P.C.**  
P.O. Box 293 Eugene, Oregon 97440  
Tel. (541) 870-7722 and Email [eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)  
[www.blueriverlaw.com](http://www.blueriverlaw.com)

April 14, 2016

<p><u>Via Email <a href="mailto:Charis.Wilson@nps.gov">Charis.Wilson@nps.gov</a> and First Class Mail</u>  Charis Wilson,  National Park Service FOIA Officer  12795 West Alameda Parkway  P.O. Box 25287  Denver, CO 80225</p>	<p><u>Via Email <a href="mailto:deborah.bardwick@sol.doi.gov">deborah.bardwick@sol.doi.gov</a> and First Class Mail</u>  Deborah Bardwick, Assistant Field Solicitor  U.S. Department of Interior  Office of the Solicitor –  San Francisco Office  333 Bush Street, Suite 775  San Francisco, CA 94104</p>
---	---

Re: High Sierra Hikers Association FOIA No. 2015-00581

Dear Ms. Wilson and Ms. Bardwick:

I write to follow-up to my January 26, 2016 communications with Ms. Bardwick and my February 19, 2016 telephone conversation with Ms. Wilson regarding High Sierra Hikers Association's pending FOIA with the National Park Service, No. 2015-00581, and to follow-up to my March 13, 2016 letter to Ms. Wilson informing NPS of my client's priorities amongst the categories of its May 2, 2015 FOIA request.

Similar to my March 13, 2016 letter, we still have not received an estimated date of completion from NPS. I wanted to reiterate, for the third time, that this was promised to us by the San Francisco NPS office on January 26, 2016, *after* my client agreed not to file an interim administrative appeal of NPS's failure to produce responsive records that day. An estimated date completion is required to be provided under FOIA. 5 U.S.C. § 552(a)(7)(B). High Sierra Hikers Association has been without an estimated date of completion for nearly four months now; the original (already extended) deadline was March 21, 2016 which has now passed. Ms. Wilson and I also discussed on February 19<sup>th</sup> that NPS would continue with Categories # 4 and #6, but we *still* have not received any records *any* records since December 2015, nor any acknowledgement of my client's March 13, 2016 priority list. I was also surprised that I did not receive any communication from Ms. Wilson after I left her a voicemail on March 11, 2016 asking to confirm her e-mail address.

I enclose herewith as Exhibit A some examples of the improper redactions NPS has made in its two productions to date, with my identification of the record in blue font. NPS's claimed redactions fall into exemption categories 5 U.S.C. §§ 552(b)(3), (b)(5), (b)(6), and (b)(7)(F). For the most part, HSHA does not disagree with NPS's (b)(3) (disclosure specifically exempted by statute) and (b)(6) (personal privacy) redactions, however we did note some inconsistencies in NPS's application of these redactions and some questionable applications. *See, e.g.*, Production # 4 (2009) at page 68. The claimed (b)(5) (interagency or

intra agency memorandums or letters) and (b)(7)(F) (disclosure could reasonably be expected to endanger the life or physical safety of any individual) exemptions are applied in a manner contrary to the openness and disclosure principles of FOIA, and in excessively broad fashion. *See Vaughn v. Rosen*, 484 F.2d 820, 823 and n. 11 (D.C. Cir. 1973) (citations omitted); *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (FOIA exemptions specifically made to be exclusive and must be narrowly construed). I further remind NPS that many similar records redacted in response to HSHA's FOIA request have been previously produced to the public, in unredacted format.

#### Exemption (b)(5)

This exemption is to apply to inter or intra agency memoranda, deliberative process privileged materials, attorney-work product privileged materials, or similar civil litigation discovery privileges. NPS provides no basis for the extensive (b)(5) exemptions claimed in Productions # 4 and # 6 other than saying "they are both predecisional and deliberative." NPS Letter to HSHA at 3 (Dec. 17, 2015). The (b)(5) exemption does not apply in a blanket fashion to all recommendations or suggestions. *American Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 238 (D.C. Cir. 2008) (citation omitted) (exemption 5 "does not authorize an agency to throw a protective blanket over all information..."). A distinction should be made between factual or investigative matters, versus truly deliberative or policy-making decisional materials. *See EPA v. Mink*, 410 U.S. 73, 89 (1973); *Ryan v. DOJ*, 617 F.2d 781, 790-91 (D.C. Cir. 1980) (non-exempt portions must be disclosed unless they are 'inextricably entwined' with exempt portions). Several instances of (b)(5) redactions do not readily appear supportable, and it is NPS's burden to show the requirements are met. *See Coastal States Gas Corp. v. Dep't. of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). In Production # 4, essentially all "recommendations" categories of ranger reports have been redacted in whole or in part. In Production # 6, there are several sections of Meadow of Concern Records, Stock Meadow Meeting Committee Reports, Meadow Management Meeting Agendas, and Meadow Management Meeting Recommendations that are heavily redacted and inconsistently redacted. Further, it appears that in some instances the only category of information that is redacted pursuant to (b)(5) relates to stock use – this is a serious and suspect problem with NPS's records release as HSHA's mission is to address stock use in the High Sierras. *See, e.g.*, Production # 4 (2011) pages 37-38. Several examples of improper (b)(5) redactions are listed below and some are also included in Exhibit A from the following pages of the EOSR files in Production # 4:

- 2008 pages 90, 139, 141-142;
- 2009 pages 9, 73-76, 87, 143-145;
- 2011 pages 33, 37-38, 54-55, 79-80;
- 2012 pages 26, 55, 59-60, 62-64, 84-85;
- 2013 pages 41-42, 100-102, 104-107, 116-118.

#### Exemption (b)(7)(F)

NPS's letter transmitting records in December 2015 makes no mention of exemption (b)(7)(F) and thus NPS has provided no basis for claiming this exemption. Exemption (b)(7)(F) protects disclosure records or information compiled for law enforcement purposes but only to the extent that the production "could reasonably be expected to endanger the life



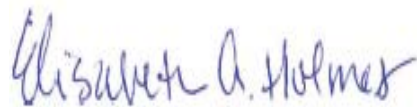
or physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F). Information withheld under this exemption must meet the threshold requirements of “compiled” for law enforcement purposes. *See Pratt v. Webster*, 673 F.2d 408, 416 (D.C. Cir. 1982); *see also Schoenman v. FBI*, 575 F.Supp. 2d 136, 162 (D.D.C. 2008) (mere agency statement that a document “inherently relates to a law enforcement purpose will not suffice.”); *Miller v. DOJ*, 562 F.Supp.2d 82, 118 (D.D.C. 2008) (failure to adequately explain manner and circumstances of record compilation does not link them to any enforcement proceedings). They must also show that the specified (b)(7)(F) harm would result if the records are released. There is no indication the redacted materials satisfy this requirement. In Production # 4, all “communications” categories have been entirely redacted, blocking out entire paragraphs or pages of the record in ranger reports, in addition to other redactions throughout the production. For example, in Production # 4 the “EOSR” files have the following pages with improper (b)(7)(F) redactions, many with entire pages blacked out. Some of these are provided in Exhibit A.

- 2008 pages 29-33, 48, 90-91, 97, 106-107, 143-144,
- 2009 pages 18, 48, 62, 73, 87, 99, 124, 134;
- 2011 pages 11, 59, 78
- 2012 pages 15, 26 (this is (b)(7)(F) and (b)(5)), 41, 95-96, 117;
- 2013 pages 10, 16, 33-34, 55, 59, 76, 89, 115-116, 130-131.

Caselaw confirms that typically only redactions of names and personal identifiers are upheld. *See Amuso v. DOJ*, 2009 WL 535965 at \* 18 (D. D.C. Mar. 4, 2009); *Miller v. DOJ*, 562 F. Supp. 2d 82, 124-25 (D.D.C. 2008) (finding agency properly withheld information pertaining to symbol numbered informant and cooperating witnesses). NPS’s redactions under (b)(7)(F) thus appear excessive.

Lastly, due to NPS’s disregard for my client’s rights under the FOIA, including now a nearly four month delay without any estimated date of completion, High Sierra Hikers Association hereby informs you that it will be filing a complaint against NPS in federal court to enforce its rights, and will be including in its prayer for relief a request for attorneys fees and costs.

Sincerely,




---

Elisabeth A. Holmes

Enclosure: Exhibit A

cc: High Sierra Hikers Association

## **Exhibit A**

**to High Sierra Hikers Association's April 14, 2016 Letter to  
National Park Service regarding FOIA No. 2015-00581**

## **H. Camp Areas**

A number of camp sites were noted as candidates for restoration. Pictures were taken, GPS coordinates noted & in some cases work was begun. This information is presented in a separate file and can be used to monitor success of restoration in the future, or decide what work can be done in upcoming years.

## **I. Permit System**

I was told by one visitor that the White Mtn Ranger Station would not leave his permit for him outside after closing hours. This seemed unusual to me, and caused him some inconvenience.

In some cases permits issued for Bishop Pass were stamped “canisters recommended” and in other cases “canisters required.”

It would be nice to have the known CUA itineraries at the beginning of the season. (I wasn’t able to download easily due to limited time & access to network)

## **J. Radio Communications**

(b) (7)(F)



## **K. Operations**

Regulations: Content & Education

(b) (5)



(b) (5)



(b) (5)



(b) (5)





(b) (5)

**Campsite inventory corrections:**

I'm not sure if the campsite inventory is being kept current, or if it is a done deal. In any case, here are some corrections

35593, 41086	should be on other side of river,
11S 0355970 4108580	"boulder site" across trail from site above
39-1-28	Has 3 sites
39-1-18	Has 4 sites
New0359285, 4102398	trail crew knack box & camp
New	UTM(nad83) 356022, 4108566 north of trail "danny's site"

**Track Logs**

Circular path in Big Pete	For my use, demarcates meadow
Linear track, lower big pete	Walked from one end of drift fence to the other, then back to trail
Linear track, deer meadow	Drift fence
Linear track, ladder meadow	Drift fence
Linear track, Dusy trail junc	Drift fence

*Example of improper (b)(5) Redaction from Production #  
4 2011 EOSR at pages 54-55*

K. Recommendations:

(b) (5)



*Example of improper (b)(5) Redaction from*

*Production # 4 2011 EOSR at pages 54-55*

(b) (5)



L. Pertinent Inventory:

Fuel:

5 full and 3 partial 8-oz. pocket rocket canisters  
3 full and 2 partial 4-oz. pocket rocket canisters  
3 gallons white gas  
2 quarts ethanol  
1 partial large propane tank

Maps:

2 Mineral King (7.5 min)	1 Mt. Williamson (7.5 min)
3 Mt. Langley (7.5 min)	2 Cirque Peak (7.5 min)
1 Kern Lake (7.5 min)	1 Kearsarge Peak (7.5 min)
0 Kern Peak (7.5 min)	1 John Muir Wilderness (7.5 min)
2 Mt. Brewer (7.5 min)	1 Lone Pine (15 min)
3 Johnson Peak (7.5 min)	2 Kern Peak (15 min)
2 Chagoopa Falls (7.5 min)	2 Mt. Whitney (15 min)
6 Mt. Kaweah (7.5 min)	1 Golden Trout Sierra South
5 Mt. Whitney (7.5 min)	1 Inyo National Forest

Cabin Supplies:

0 quart size ziplocks	0 boxes Kleenex
14 lightsticks (for SARs)	5 CUA forms
5 bundles paper towels	10 visitor contact log sheets
12 rolls toilet paper	3 grain sacks
0 bottles dish soap	0 large trash bags
30 clothes pins	20 small trash bags
1 lost-found report book	0 aluminum shovel heads
1 employee medical evaluation packet	1 voltmeter
2 exotic plant observation forms	1 slingshot
50 wildlife observation forms	1 laundry brush
20 BIMS forms	1 bag cotton balls
5 burlap sacks	2 patch kits
15 sheets laminating paper	1 jar contact cement
5 cutter insect repellent sticks	4 pairs ear plugs
4 bottles insect repellent	1 medium leather gloves
1 bag p-cord	2 large leather gloves
2 bottles sunscreen	1 box ballpoint pens
0 boxes thumbtacks	1 box #10 envelopes

H. PERMIT SYSTEM

a. Trailheads: Most people had NPS permits from Lodgepole, Grant Grove and Cedar Grove, they were well informed.

b. Issuing Office: Most were NPS permits and well informed. Private stock groups are less informed on grazing issues.

I. COMMUNICATIONS

(b) (7)(F)



J. NEEDS FOR NEXT YEAR

NPS Stock: The NPS stock needs to be shod at least 2 weeks before delivery and hopefully trimmed once or twice during the winter to protect their feet. The stock needs to be delivered on the requested date or right after ranger training ends, whichever comes first. If stock is delivered to a frontcountry location to be used before deploying to the backcountry, then hay and feed needs to be delivered to that location before or at the same time as the stock.

(b) (5)



Stock Gear: I need 2 green horse pads and 4 green pack pads.  
I need 4 new matties.

(b) (5)



(b) (5)



#### K. RECOMMENDATIONS

(b) (5)



Roaring River Ranger Station: the solar system needs to be checked. A new charge controller -20 with readouts and lights needs to replace the two that are now in use. The batteries might need to be packed out and fully charged and taken back in. I hope they will still hold a charge and be ok for next year. 130 feet of conduit would protect the outside wire.

Small bulletin boards at the 3 lakes to give good NPS information.

Grant Grove trailhead and trail signs, trail work and stock training.

Drift Fence and Pasture Fence work in Roaring River.

#### L. PERTINENT INVENTORY

2 cans sweet horse feed  
1/2 can Alfalfa Pellets  
1 lg. Mineral Block  
3 sm. white salt blocks  
3 sm. fire extinguishers @ RS (\*2 large fire extinguishers brought out)  
5 full Oxygen tanks @ RS (1 sm. full tank left @ govt. corral)

#### NPS Warehouse Wish List:

1 doz. D Batteries	9 boxes kitchen matches
1 doz. AA Batteries	6 mattress covers
1 doz. C Batteries	20 tie on "material" tags for fuel
6 9-volt Batteries	20 tie on tags
10 orange firefighter note pads	1 fire shovel(for rgr lake cache)
6 steno pads	1 polaski (for rgr lake cache)
1 duct tape	1 fold out limbing saw-12"
	1 long pole saw-fiberglass

#### Corral Needs:

8 bags dry cob	2 green riding pads, 4 pack pads
8 bags horse feed	Leather oil - 1 gallon
14 bags alfalfa pellets	4 new matties
1 box shoeing nails-#5 ch /shoes-)	



**Second Priority**

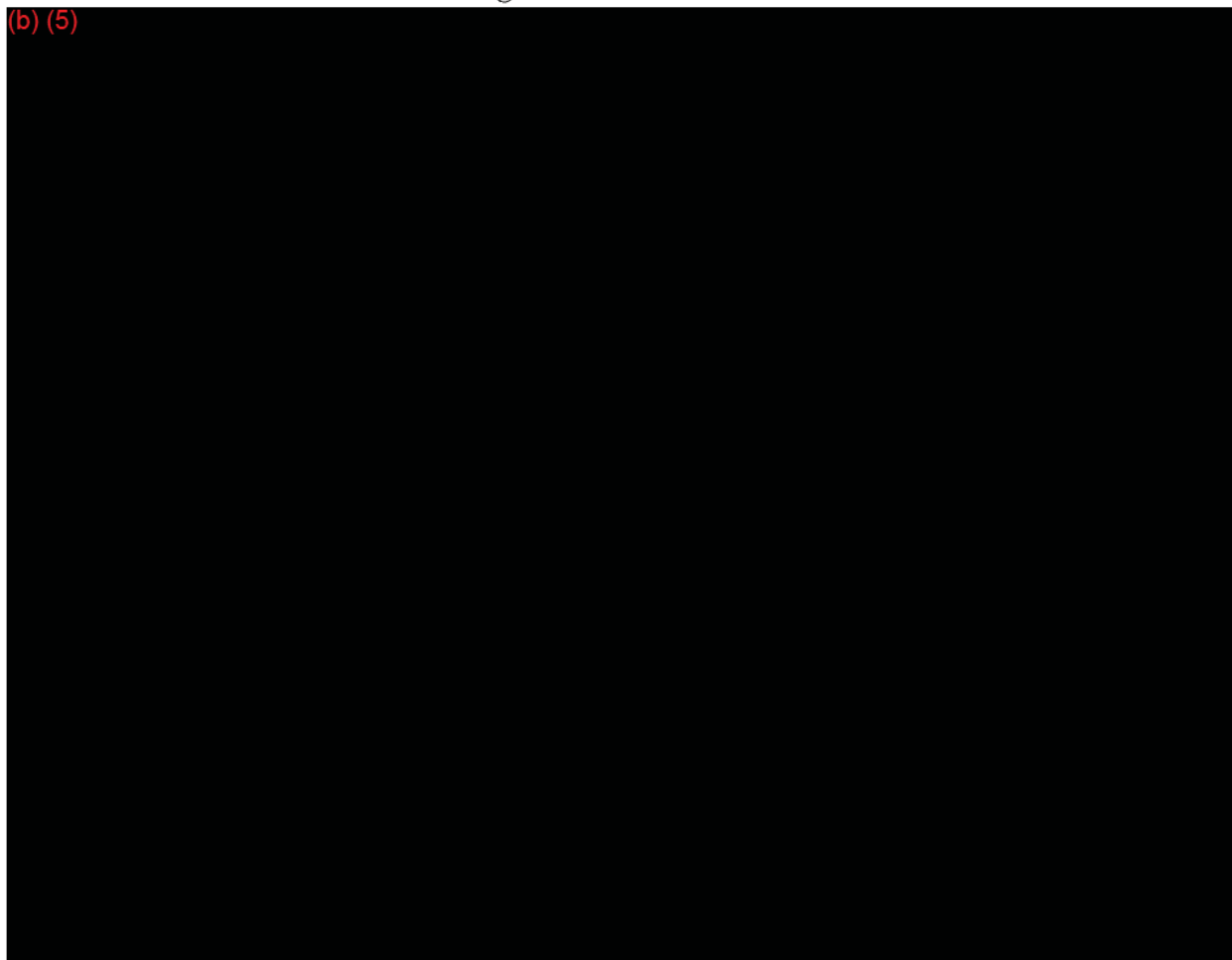
Print out old EOS reports (from george)	
Print out old EOS reports (from others)	
Rubbing alcohol	1 bottle
Chairs for station, 1 regular size camp chair with stiff cloth seat	1 ea
Bag valve for station?	
3-hole punch for station	
"quick lok" locking strap for 55 gal drum	1 ea

**For Rick to Pick up from Cache**

Ice Axe, light weight	<b>Bring from GG cache</b>
Snowshoes	<b>Bring from GG cache</b>
Microspikes	
sleeping bags	
Canister, bear	Bring carbon fiber regular
Titanium pot	
First aid kit for patrol	

**APPENDIX A: Notes from using GeoPro satellite Tracker**

(b) (5)



(b) (5)



(b) (5)



**Lake 10,800, LeConte Canyon**

Last year I posted a metal “No Camping” sign with an additional hand-written interpretive sign at Lake 10,800 – a place where YL frogs live, breed and lay eggs. The campsite here is too close to water, but very convenient and appealing. This year the sign was gone, despite it being strapped to a tree with metal strapping and a bolt!

(b) (5)



## **G. Trails**

### **a. Trail Activities/ Work accomplished**

- GPS'ed the old Siberian Creek trail again as I believe that historic data has been lost.
- GPS'ed some of the local trails as the PCT in particular is shown incorrectly on contemporary maps as is the lower Rock trail. Also, on the Mt. Langley 7 ½" quad., a trail is shown along the crest to Mt. Corcoran. This leads visitors to assume a trail exists there. It is in addition to the designated agency boundary.
- GPS'ed some of the local cross country routes and use trails including the one that may be designated as the preferred route on Mt Langley.
- Removed small tree from trail adjacent to Ranger Station meadow early season.

### **b. Problem areas**

- 1) Lower Rock Creek switchbacks.
- 2) Checks/steps along PCT between Siberian Outpost and Rock Creek junction.
- 2) Army Pass trail between upper creek crossing and Army pass(es).
- 3) Mt Langley user trails.

## **H. Camp Areas**

Due to high volume of traffic, areas are in need of constant maintenance, however all look good. "Stock Camp" sign was removed due to potential hazard trees that cannot be removed on a regular basis in wilderness.

## **I. Permit System**

(b) (5)



It would be nice to target the PCT hikers with modern technology (i.e. apps or websites) that encourage LNT practices and inform them of the different regulations for the different agencies along their route. As a user group, they seem to be having the most negative impact to our patrol areas and normally are long gone by the time we get to our stations so we can't address them in the field.

We also need to find a way to identify private stock users at the trailheads and give them appropriate information. This is a perpetual problem. Maybe specifically ask all permittees if they have a dog or stock when issuing every permit (and not making the assumption that they don't).

## **J. Communications**


(b) (7)(F)



(b) (7)(F)



(b) (5), (b) (7)(F)





*Example of improper (b)(7)(F) Redaction from Production*

# 4 2008 "ESOR" at pages 30-33

(b) (7)(F)



(b) (7)(F)



*Example of improper (b)(7)(F) Redaction from Production # 4 2008*

*"ESOR" at pages 30-33*

(b) (7)(F)



(b) (7)(F)



## **EXHIBIT K**

**From:** president@highsierrahikers.org  
**Subject:** Fwd: [FOIA NPS-2015-00581] Freedom of Information Act Interim Response 03 - Browning SEKI  
**Date:** May 16, 2016 at 8:41 AM  
**To:** ebuerveraw@gmail.com

*Privileged attorney-client communication*

----- Forwarded message -----

**From:** "NPS\_PWR\_FOIA@nps.gov" <nps\_pwr\_foia@nps.gov>  
**Date:** Fri, 22 Apr 2016 15:44:50 +0000  
**Subject:** [FOIA NPS-2015-00581] Freedom of Information Act Interim Response 03 - Browning SEKI  
**To:** president@highsierrahikers.org  
**Cc:** seki\_superintendent@nps.gov, seki\_foia@nps.gov

You have received 2 secure files from nps\_pwr\_foia@nps.gov.  
Use the secure links below to download.

OFFICIAL ELECTRONIC MAIL SENT VIA EMAIL

NO HARD COPY TO FOLLOW

National Park Service

Pacific West Region

333 Bush Street, Suite 500

San Francisco, CA 94104-2828

IN REPLY REFER TO:  
9.C. (PWR-PI)  
NPS-2015-00581

Peter Browning  
High Sierra Hikers Association  
PO Box 1453  
Lafayette, CA 94549

Dear Mr. Browning:

This is an interim response to your Freedom of Information Act (FOIA) request submitted to the National Park Service (NPS), Sequoia and Kings Canyon National Parks dated May 2, 2015 and received on May 4, 2015. The Department of the Interior (DOI) FOIA tracking number for this request is NPS-2015-00581. Please cite this tracking number in any future communications with our office regarding your request.

You requested:

1. All communications, minutes of meetings, and all other records regarding stock- or meadow-management issues (including the WSP/DEIS and WSP/FEIS planning process), between NPS personnel and commercial packstock enterprises that operate within SEKI. Packstock "enterprises" include broadly all owners, employees, and representatives of commercial outfits that utilize packstock (horses, mules, burros, llamas) within SEKI.
2. Any and all records and communications regarding the WSP/DEIS and WSP/FEIS planning process, or other stock- or meadow-management issues that are germane to the WSP between NPS and the Backcountry Horsemen of California, the Backcountry Horsemen of America, and elected officials; and
3. All internal NPS communications regarding the WSP/DEIS and



3. All internal NPS communications regarding the WSP/DEIS and development of the WSP/DEIS and the WSP/FEIS that were created prior to the date of this letter; and

4. All backcountry ranger reports from 2004 through 2014, inclusive; and

5. All reports, memoranda, and other internal NPS communications regarding meadow management and/or stock management issues from 2004 through the date of this letter; and

6. The annual "Minutes and Background Information, Meadow Management Meeting," from 2009 through 2015, inclusive, and any/all minutes and other records from other meetings attended by SEKI staff where meadow management and/or stock management were discussed or addressed.

7. All "records" created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP, including all records regarding the criteria they employed and how the criteria were weighed.

8. All records related to the examinations, monitoring, and/or evaluation of individual meadows, from 2009 to the date of this letter. These were on at least some occasions performed using standard forms, noting the condition of the meadow(s)—amount and type of growth, amount of bare ground, etc. These forms have had at least three different titles: Meadow Assessment Form; Meadow Capacity Assessment Form; and Meadow Monitoring Trip Report. (The first two may be the same thing, or may not be. The third one is a different category). We request all records related to the examination, monitoring, and/or evaluation of meadows and other areas grazed by domestic stock animals within SEKI (both wilderness and non-wilderness, including all living and non-living features, attributes, residents, occupants, and components of meadow and other forage areas) from 2009 through the present.

9. All records, including emails and other communications to, from, and between all those on the LIST OF PREPARERS AND CONSULTANTS that appears on pages 597, 598, and 599 of Volume 1 of the WSP/FEIS dated April 2015, that include, mention, discuss, address, reference, or analyze topics or issues related to stock management, stock numbers, stock limits, meadow condition, meadow management, commercial stock services, trail suitability for stock use, campsite suitability for stock users, documented and potential environmental impacts of stock use, and all other topics related to stock and meadow management within SEKI.

In order to produce the documents requested, you agreed to the following search terms in your August 11, 2015 letter to Sequoia and Kings Canyon National Parks Superintendent Woody Smeck:

"the names of pack stations and pack station owners, "WSP," "Wilderness Stewardship Plan," "stock, meadow," "Backcountry Horsemen," "BCHC," "BCHA," "packer," "horse," "mule," "burro," "goat," "dunnage," "packstation," "pack station," "manure," "forage," "grazing," "hay," "pellets," "biomass," "hoofprint," "cowbirds," "glyphosate," "WSP/EIS," "WSP/DEIS," "WSP/FEIS," "cheatgrass," "cheat grass," "velvetgrass," "velvet grass," "hola," "holcus lanatus," "e. coli," "escherichia coli," "campylobacter," "salmonella," and "giardia."

Sequoia and Kings Canyon National Parks staff continues to search for records responsive to your request. For an interim release, a group of records which were deemed responsive have been forwarded to this office as policy requires when records must be redacted.

In interim response number one, dated November 4, 2015, we transmitted 692 pages of records responsive to item 4, which were released to you in part. On December 17, 2015, in interim release number two, we released 873 pages of records in part, in partial response to item 6. In this release, we have enclosed 168 pages which are being released to you in part, in partial response to item 5. Portions of this

material have been withheld under FOIA Exemption 5 (27 pages), FOIA Exemption 6 (nine pages) and 1 page under FOIA Exemption 7 (A). See 5 U.S.C. §552(b)(1)-(9).

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." See 5 U.S.C. §552(b)(5); see *Nat'l Labor Relations Bd. v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding NPS employee discussions and resulting recommendations and suggestions presented to park managers regarding meadow and/or stock management strategies under Exemption 5 because they qualify to be withheld under the deliberative process privilege.

#### Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the "frank exchange of ideas on legal or policy matters" by ensuring agencies are not "forced to operate in a fish bowl." See *Mead Data Cent., Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) "assure that subordinates... will feel free to provide the decision maker with their uninhibited opinions and recommendations"; (2) "protect against premature disclosure of proposed policies"; and (3) "protect against confusing the issues and misleading the public." See *Coastal States Gas Corp. v. United States Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that "reflect the give-and-take of the consultative process" and may include "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Id.*

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency's deliberative processes. Disclosure would expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine the agency's ability to perform its mandated functions.

FOIA Exemption 6 allows an agency to withhold "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." See 5 U.S.C. §552(b)(6).

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. See *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information. See *United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-75 (1989).

Under the FOIA, “the only relevant public interest” to consider under the exemption is “the extent to which the information sought would shed light on an agency’s performance of its statutory duties; or otherwise let citizens know what their government is up to.” See *United States Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495-96 (1994) (quoting *Reporters Comm.*, 489 U.S. at 775). The burden is on the requester to establish that disclosure would serve the public interest. See *National Archives and Records Admin. v. Favish*, 541 U.S. 157, 171-72 (2004). When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public. See *Reporters Comm.*, 489 U.S. at 771.

The information withheld under FOIA Exemption 6 consists of personal telephone numbers and names. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency’s statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

Additional material has been redacted under FOIA Exemption 7. Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” if the records fall within one or more of six specific bases for withholding set forth in subparts (a) through (f). 5 U.S.C. § 552(b)(7)(A)-(F). We have redacted one page in part because it is protected under the following subpart of Exemption 7.

Exemption 7(A) protects law enforcement records if their release could reasonably be expected to interfere with enforcement proceedings. For the material that has been withheld under 7(A), we have determined it is a law enforcement record for a pending or prospective investigation and releasing it could reasonably be expected to interfere with enforcement proceedings because the premature release could hinder the government’s ability to further control and shape the investigation and enable targets of the investigation to elude detection; create defenses; or suppress, fabricate, or tamper with evidence.

Deborah Bardwick, DOI Assistant Field Solicitor and Nancy Hori, NPS Pacific West Region FOIA Officer participated in this decision.

If you have any questions about the processing of your FOIA request, please contact Sequoia and Kings Canyon National Parks FOIA Officer Jason Watkins at 559-565-3107, [jason\\_watkins@nps.gov](mailto:jason_watkins@nps.gov), or National Park Service, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, California 93271-9651.

Sincerely,  
/s/Laura E. Joss  
Regional Director  
Pacific West Region

Enclosure

cc: Woody Smeck, Superintendent, Sequoia and Kings Canyon National Parks  
Jason Watkins, FOIA Officer, Sequoia and Kings Canyon National Parks

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## United States Department of the Interior

NATIONAL PARK SERVICE  
Pacific West Region  
333 Bush Street, Suite 500  
San Francisco, CA 94104-2828



IN REPLY REFER TO:  
9.C. (PWR-PI)  
NPS-2015-00581

21 APR 2016

Peter Browning  
High Sierra Hikers Association  
PO Box 1453  
Lafayette, CA 94549

Dear Mr. Browning:

This is an interim response to your Freedom of Information Act (FOIA) request submitted to the National Park Service (NPS), Sequoia and Kings Canyon National Parks dated May 2, 2015 and received on May 4, 2015. The Department of the Interior (DOI) FOIA tracking number for this request is NPS-2015-00581. Please cite this tracking number in any future communications with our office regarding your request.

You requested:

1. *All communications, minutes of meetings, and all other records regarding stock- or meadow-management issues (including the WSP/DEIS and WSP/FEIS planning process), between NPS personnel and commercial packstock enterprises that operate within SEKI. Packstock "enterprises" include broadly all owners, employees, and representatives of commercial outfits that utilize packstock (horses, mules, burros, llamas) within SEKI.*
2. *Any and all records and communications regarding the WSP/DEIS and WSP/FEIS planning process, or other stock- or meadow-management issues that are germane to the WSP between NPS and the Backcountry Horsemen of California, the Backcountry Horsemen of America, and elected officials; and*
3. *All internal NPS communications regarding the WSP/DEIS and development of the WSP/DEIS and the WSP/FEIS that were created prior to the date of this letter; and*
4. *All backcountry ranger reports from 2004 through 2014, inclusive; and*
5. *All reports, memoranda, and other internal NPS communications regarding meadow management and/or stock management issues from 2004 through the date of this letter; and*
6. *The annual "Minutes and Background Information, Meadow Management Meeting," from 2009 through 2015, inclusive, and any/all minutes and other records from other meetings attended by SEKI staff where meadow management and /or stock management were discussed or addressed.*



7. All "records" created or maintained by NPS personnel and contractors who were responsible for creating the various alternatives in the WSP, including all records regarding the criteria they employed and how the criteria were weighed.
8. All records related to the examinations, monitoring, and/or evaluation of individual meadows, from 2009 to the date of this letter. These were on at least some occasions performed using standard forms, noting the condition of the meadow(s)—amount and type of growth, amount of bare ground, etc. These forms have had at least three different titles: Meadow Assessment Form; Meadow Capacity Assessment Form; and Meadow Monitoring Trip Report. (The first two may be the same thing, or may not be. The third one is a different category). We request all records related to the examination, monitoring, and/or evaluation of meadows and other areas grazed by domestic stock animals within SEKI (both wilderness and non-wilderness, including all living and non-living features, attributes, residents, occupants, and components of meadow and other forage areas) from 2009 through the present.
9. All records, including emails and other communications to, from, and between all those on the LIST OF PREPARERS AND CONSULTANTS that appears on pages 597, 598, and 599 of Volume 1 of the WSP/FEIS dated April 2015, that include, mention, discuss, address, reference, or analyze topics or issues related to stock management, stock numbers, stock limits, meadow condition, meadow management, commercial stock services, trail suitability for stock use, campsite suitability for stock users, documented and potential environmental impacts of stock use, and all other topics related to stock and meadow management within SEKI.

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#### *Deliberative Process Privilege*

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privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public. *See Reporters Comm.*, 489 U.S. at 771.

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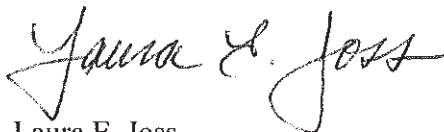
Additional material has been redacted under FOIA Exemption 7. Exemption 7 protects from disclosure "records or information compiled for law enforcement purposes" if the records fall within one or more of six specific bases for withholding set forth in subparts (a) through (f). 5 U.S.C. § 552(b)(7)(A)-(F). We have redacted one page in part because it is protected under the following subpart of Exemption 7.

Exemption 7(A) protects law enforcement records if their release could reasonably be expected to interfere with enforcement proceedings. For the material that has been withheld under 7(A), we have determined it is a law enforcement record for a pending or prospective investigation and releasing it could reasonably be expected to interfere with enforcement proceedings because the premature release could hinder the government's ability to further control and shape the investigation and enable targets of the investigation to elude detection; create defenses; or suppress, fabricate, or tamper with evidence.

Deborah Bardwick, DOI Assistant Field Solicitor and Nancy Hori, NPS Pacific West Region FOIA Officer participated in this decision.

If you have any questions about the processing of your FOIA request, please contact Sequoia and Kings Canyon National Parks FOIA Officer Jason Watkins at 559-565-3107, [jason\\_watkins@nps.gov](mailto:jason_watkins@nps.gov), or National Park Service, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, California 93271-9651.

Sincerely,



Laura E. Joss  
Regional Director  
Pacific West Region

Enclosure

cc: Woody Smeck, Superintendent, Sequoia and Kings Canyon National Parks  
Jason Watkins, FOIA Officer, Sequoia and Kings Canyon National Parks