



Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

Phone: (202) 265-PEER • **Fax:** (202) 265-4192

Email: info@peer.org • **Web:** <http://www.peer.org>

NOTE CHANGE OF MAILING ADDRESS

Stacey Cummins, FOIA Coordinator
U.S. Fish and Wildlife Service
P.O. Box 25486
Denver, CO 80225

Email: fw6_foia@fws.gov

Pamela Mozina
FWS FOIA Coordinator
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041

Email: fwhq_foia@fws.gov

August 1, 2016

RE: FREEDOM OF INFORMATION ACT REQUEST VIA U.S. MAIL & EMAIL

Dear Ms. Cummins and Ms. Mozina:

Emails dated February 5, 2016 and sent separately by U.S. Fish & Wildlife Service (FWS) Refuge Chief Cynthia Martinez and Mountain-Prairie Regional Director Noreen Walsh indicate that talks have begun about “legislation that would transfer the lands comprising the National Bison Range in Montana to be held in trust by the United States for the benefit of the CSKT” (the Confederated Salish and Kootenai Tribes).

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests information regarding this proposal. Specifically, we request the following:

1. All communications or records of communications, including but not limited to emails, letters, and notes or reports of telephone conversations and meetings, between 1) officers and employees of the Fish and Wildlife Service or the Department of Interior and 2) members of the public, members of Congress or staff to members of Congress or congressional committees, and members or officers or representatives of the Confederated Salish and Kootenai Tribes (CSKT), which concern or reference any proposal, or any proposed legislation, to transfer the National Bison Range to be held in trust by the United States for the benefit of the CSKT.
2. Drafts and comments on any drafts of legislation to transfer the National Bison Range to be held in trust by the United States for the benefit of the CSKT.
3. Any analysis, comments, memoranda, or other writings concerning any proposal, or any proposed legislation, to transfer the National Bison Range to be held in trust by the United States for the benefit of the CSKT.

This request excludes documents previously produced in response to a February 28, 2016 FOIA request from PEER concerning the proposed Bison Range transfer, FWS-2016-00479.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a)(4)(A)):

1. *The records concern the operations or activities of the Government.*
The FOIA request is, by its terms, limited to identifiable activities of the Department of the Interior and the USFWS.

2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.

The requested material concerns the management of public National Wildlife Refuge Land, specifically the National Bison Range and the means by which a decision was made, and legislations is being formulated, to transfer a significant refuge to an Indian Tribe.

The documents requested seek details the process of formulating and considering legislation to transfer the National Bison Range to be held in trust by the United States for the benefit of the CSKT. As such, the requested documents are the most pertinent and explanatory of this particular action.

3. The release of these requested records will contribute significantly to public understanding of the governmental activities.

The information requested should shed direct light on the manner in which decisions were made and legislation is being formulated, to transfer the Bison Range to the CSKT.

While a certain segment of the population has an interest in the National Bison Range in particular, the broader public has a keen interest in being assured that activities taking place on their National Wildlife Refuges, and the management of those Refuges, are carried out in the optimum manner to protect the resources of the National Wildlife Refuge System.

Moreover, the transfer of a refuge to a tribe is, to our knowledge, an unprecedented action. Not surprisingly, the disclosure of this planned transfer and of the possible content of legislation intended to achieve that transfer has attracted wide public and media interest.

In addition, since another 18 refuges in 8 states, constituting 80% of the entire National Wildlife Refuge System, are potentially eligible for similar transfers to tribes, as are 57 National Parks in 19 states, including parks such as Redwood, Glacier, Voyageurs, Olympic and the Cape Cod National Seashore, the public interest in these documents extends far beyond the National Bison Range.

PEER intends to provide the requested information to the general public though —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in PEER's newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, PEER has repeatedly demonstrated the ability to generate nationwide news coverage concerning activities occurring within the USFWS as well as on the National Bison Range.

4. Disclosure would not serve a commercial interest of the requestor.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional

integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agencies final response within 20 working days.

Cordially,

Paula Dinerstein
Senior Counsel