



**ADVOCATES** for the West  
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VIA EMAIL AND CERTIFIED MAIL

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, made on behalf of Western Watersheds Project (“WWP”).

Pursuant to the FOIA, please send WWP copies of the following records:

1. All reports, statistics, summary data, and documentation quantifying or describing lethal or nonlethal depredations of any species or category of species in Idaho (or any part of Idaho) by WS employees, agents, assigns, delegees, or contractors for the period from January 1, 2002 to present. This includes depredation statistics organized by component/method type or capture/restraint method.

If you have questions as to the scope of this request, please contact the undersigned. If you believe any portion of this request is exempt from disclosure under FOIA please provide a brief description of each withheld document and the legal basis for withholding such document or portion thereof.

Under the FOIA, Wildlife Services must make a determination on WWP’s request within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i), 7 C.F.R. § 1.7(a). A determination consists of a statement whether agency will comply with request, the reasons therefore, and informs the requester of the right to appeal an adverse decision.

### **Request for Fee Waiver**

FOIA was designed to grant a broad right of access to government information, with a focus on the public’s “right to be informed about what their government is up to,” thereby “open[ing] agency action to the light of public scrutiny.” *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). A key component of providing public access to those records is FOIA’s fee waiver provision, 5 U.S.C. § 552(a)(4)(A)(iii), which provides that “[d]ocuments shall be furnished without any charge or at a [reduced] charge . . . if disclosure of the information is in the public

interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

FOIA’s fee waiver requirement is to be “liberally construed.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003). WWP, a non-commercial and public-interest requester, hereby requests a waiver of all fees associated with this request because disclosure “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.” 5 U.S.C. § 552(a)(4)(A)(iii).<sup>1</sup> This request satisfies both statutory and regulatory requirements for granting a fee waiver, including fees for search, review, and duplication. Below are the criteria APHIS considers in assessing requests for fee waivers, followed by an explanation of WWP’s satisfaction of those requirements. See 7 C.F.R. pt. 1, subpt. A, app. A § 6(a)(1)(i)-(vi). As the factors are interrelated, WWP incorporates the entire discussion below into each criterion. Fee waiver requests must be evaluated based on the face of the request.

The twenty-day statutory deadline is also applicable to this fee waiver request. See, e.g., *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003) (finding where an agency “fails to answer the [fee waiver] request within twenty days,” judicial review is appropriate).

**(1) The subject of the request, i.e., whether the subject of the requested records concerns “the operations or activities of the government.”**

The requested records directly and specifically concern identifiable operations or activities of the federal government. WWP asks for statistics on how many animals WS and its agents have killed or otherwise controlled in Idaho over a specific time period.

The Department of Justice FOIA Guide expressly concedes that “in most cases records possessed by federal agency will meet this threshold” of identifiable operations or activities of the government. See Department of Justice Guide to the FOIA (2009), p. 25. This requirement is clearly met in this case.

**(2) The informative value of the information to be disclosed, i.e., whether the disclosure is “likely to contribute” to an understanding of government operations or activities.**

The requested records are meaningfully informative about government operations or activities and are “likely to contribute” to an increased public understanding of those operations or activities.

Specifically, the records will contribute to public understanding of WS depredation activities in Idaho on a variety of wildlife species. The actions of WS regarding this issue are of concern to the public because the public has an interest in what activities are occurring to manage Idaho wildlife, what impact those activities are having on wildlife populations and the

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<sup>1</sup> WS/ APHIS may also waive or reduce fees where, as in this case, “the requester is engaged in a nonprofit activity designed for the public safety, health, or welfare.” 7 C.F.R. pt. 1, subpt. A, app. A § 6(a)(3)(ii).

environment, and how taxpayer dollars are being spent. This is clear from the high frequency that these issues generally, and WS's activities in particular, are featured and debated in the press. The public also has an interest in knowing whether federal agencies are complying with all required standards and laws.

The records will inform the public how widespread WS's activities and operations are, and allow WWP to discern in part what impact they are having on wildlife populations and the environment. This will contribute to an understanding of WS operations and activities because, to the best of WWP's knowledge, the information is not currently available to the public. WWP reviewed the WS website, including available NEPA documents, and was unable to find the requested information. Disclosure of the requested records will therefore enhance the public's knowledge of this issue and support public oversight of federal agency operations, as well as contribute significantly to public understanding of the operations or activities of WS.

**(3) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to "public understanding."**

Disclosure of these records will contribute to the understanding of the subject by the general public because WWP will disseminate the information to the public and utilize it in policymaking.

WWP's mission to protect and restore western watersheds and wildlife through education, public policy initiatives and litigation. To fulfill its mission, WWP is active in seeking to protect and improve riparian areas, water quality, fisheries, wildlife, and other natural resources and ecological values of western watersheds.

WWP intends to increase public awareness of WS's activities and operations in Idaho, first by collecting the requested documents and records from WS.

Second, WWP will employ the substantial analytical abilities of its environmental attorneys, experts, employees, and/or volunteers to conduct an independent analysis and assessment of WS's actions in managing wildlife, and the resulting impacts upon Idaho's wildlife population and environment. WWP has staff members who are familiar with agency practices and who have scientific backgrounds and experience in wildlife management issues. For example, WWP's current staff includes scientists with expertise in biology (Katie Fite, MS; Michael J. Connor, PhD.). WWP's staff and volunteers have vast experience in examining and assessing documents and information similar to the information sought.

Third, WWP will disseminate this information and analysis through public education and outreach activities. WWP uses the media to spread information to the public, with news articles appearing regularly discussing WWP's work or quoting WWP staff or board members on

grazing and wildlife depredation issues.<sup>2</sup> It regularly disseminates information to its 1400+ members, as well as supporters and the general public, through its website, Online Messengers (email notices), and Facebook and Twitter. See [www.westernwatersheds.org](http://www.westernwatersheds.org). An employee and board member regularly post information received from agencies, and their analysis, on a widely-read wildlife blog, The Wildlife News.<sup>3</sup> See [www.thewildlifeneeds.com](http://www.thewildlifeneeds.com). WWP publishes a regular newsletter, the Watershed Messenger. WWP participates in conferences, where it disseminates information to scientists, lawyers, conservationists, and other interested publics, and participates in educational outreach such as presentations to high school students. It prepares written reports and distributes them on its website, based on information obtained through FOIA requests. In this way, the requested information will be disseminated to its members and supporters, members of other conservation organizations, as well as other interested members of the public.

Finally, WWP will utilize the information and its analysis in policymaking. Another core aspect of WWP's work is active participation in agency decision-making concerning public lands throughout the West, particularly with respect to management of livestock grazing and associated wildlife depredation such as those conducted by WS. WWP will also contribute to public understanding by submitting the information and its analysis to other agencies as it participates in policymaking in Idaho in the future. This includes participation in the NEPA process on public lands in Idaho. This contributes to public understanding because it will allow other government agencies, which may not have had prior access to the data, to also analyze it, and present the data or their further analysis in public NEPA documents.

Thus, the requested information will contribute to the public understanding of WS's activities in Idaho. Again, to the best of WWP's knowledge, there is no other way to obtain the requested information except through these documents. These documents will help educate the public about WS's activities to manage wildlife, about which there is substantial public interest, as noted.

These mechanisms for publicizing, distributing, and utilizing the information received through FOIA requests demonstrate WWP's intention to disseminate the information to the public with the goal of disclosing material that will inform, or has the potential to inform, the public. See *Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005) (finding an online newsletter and maintenance of a website sufficient to show how the requester will disseminate information); *Federal CURE v. Lappin*, 602 F. Supp. 2d 197, 203-04 (D.D.C. 2009) (finding public interest organization's "website [and] newsletter . . . are an adequate means of disseminating information," and noting the organization's "stature as [an] advocacy group . . . len[t] credence" to its dissemination argument). WWP will therefore contribute to "public understanding."

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<sup>2</sup> E.g., Idaho Wolf Eradication Challenged, *The Ecologist*, January 10, 2014, at [http://www.theecologist.org/News/news\\_analysis/2231775/idaho\\_wolf\\_eradication\\_challenged.html](http://www.theecologist.org/News/news_analysis/2231775/idaho_wolf_eradication_challenged.html) (quoting WWP staff).

<sup>3</sup> This site received 996,948 visits or hits in 2013, and currently receives 83,079 average hits per month, 19,172 average hits per week, and 2,731 average hits per day.

**(4) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.**

Disclosure is likely to significantly contribute to public understanding of the government operations and activities at issue. WWP has a proven track record of significantly contributing to public understanding of issues surrounding wildlife through the media, administrative actions, and legal actions.

These initiatives have been based, in part, on materials received from the Government and processed by WWP. As noted, WWP has on staff or available for consultation biologists and environmental lawyers with experience in wildlife issues and data analysis. As explained above, WWP has the ability and intention to disseminate the information requested to a broad public audience, such that the disclosure of the requested information is likely to significantly enhance public understanding of these issues.

Furthermore, as noted, the information being requested is new and, to the best of WWP’s knowledge, not currently publicly available. WWP reviewed the WS website, including available NEPA documents, and was unable to find the requested information.

Thus, the public currently does not have the ability to evaluate the depredation actions of WS in Idaho, or the impact of those actions. Once the information is made available, it may be analyzed and presented to the public in a manner that will meaningfully enhance the public’s understanding of this issue. Therefore, disclosure of these documents will significantly contribute to the understanding of a broad audience.

**(5) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure.**

WWP has no commercial interest in the information sought, or any intention to use these records in any manner that furthers a commercial, trade, or profit interest. WWP is incorporated as an Idaho nonprofit corporation and is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. As such, WWP has no commercial or profit interests. Rather, the requested records will only be used in the furtherance of WWP’s mission to protect and restore western watersheds and wildlife.

**(6) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”**

WWP, a non-profit organization, has no commercial interest and will realize no commercial benefit from the release of the requested information.

## **Conclusion**

In the event that you deny WWP a fee waiver, please send a written explanation for the denial along with a cost estimate. Please contact me for authorization before incurring any costs in excess of \$25.

Please send the documents to WWP; c/o Advocates for the West; P.O. Box 1612; Boise, ID; 83701. If you have any questions about this request, please feel free to contact me. Thank you very much.

Sincerely,

s/ Kristin F. Ruether

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Kristin F. Ruether  
*Advocates for the West*  
Attorney for Western Watersheds Projects