



NATURAL RESOURCES DEFENSE COUNCIL

VIA FACSIMILE/ HARD COPY TO FOLLOW FIRST-CLASS MAIL

November 12, 2002

Ms. Sue Ellen Sloca
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FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Sloca et al.:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Natural Resources Defense Council (NRDC) hereby requests the records¹ identified below relating to the implementation of the National Energy Plan by the Department of Interior ("Department" or "DOI"). Many of the records identified are within the scope of NRDC's previous FOIA requests regarding the National Energy Plan, but have not yet been provided by DOI. Consequently, NRDC is submitting this new FOIA request in order to obtain the requested information promptly. NRDC requests that DOI grant a fee waiver for all of the documents requested.

¹ As used throughout this letter, the terms "record" and "records" shall mean all writings (handwritten, typed, electronic or otherwise produced, reproduced or stored) in the agency's possession, including, but not limited to, any correspondence, minutes of meetings, memoranda, notes, e-mails, calendar or daily entries, agendas, notices, and telefaxes. Regarding the relevant time period, NRDC is requesting records created or relating to the period from January 21, 2001, through the date on which DOI completes its search in response to this FOIA request.

I. Records Requested

NRDC requests the following records:

(1) Any and all records to or from outside parties and the following twelve individuals related to the implementation of the National Energy Plan,² including but not limited to records addressing any of the keywords provided previously by NRDC. See Attachment A for list of key words. The twelve individuals are as follows: Gale Norton, J. Steven Griles, James Cason, Rebecca Watson, Kathleen Clarke, Erick Kaarlela, William Myers, Ann Klee, Camden Toohey, Conrad Lass, Del Fortner and Walter Cruickshank.

(2) The calendars for Gale Norton, J. Steven Griles, James Cason, Rebecca Watson, Kathleen Clarke, Erick Kaarlela, William Myers, Ann Klee, Camden Toohey, Conrad Lass, Del Fortner and Walter Cruickshank.³

(3) Any and all records related to the site-specific projects/ actions identified in Attachment B, all of which are being undertaken by DOI to implement the National Energy Plan.⁴

(4) Final reports and agency memoranda by DOI or any of its components related to implementation of the National Energy Plan, including but not limited to those identified in Attachment C.

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information to appeal the denial. To comport with legal requirements this information must include, *inter alia*: (a) Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and (b) Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

² The term "National Energy Plan" is used to refer to the to the recommendations in the May 2001 report of the National Energy Policy Development Group ("NEPDG"). The term includes any and all references to President Bush's National Energy Policy. It also includes records related to the efforts by several DOI bureaus, including the Bureau of Land Management (BLM) and the Bureau of Indian Affairs, to implement the May 2001 recommendations.

³ NRDC requests those portions of the calendars that have not already been provided to NRDC. Specifically, NRDC requests the calendars beginning with the date specified for each individual through the date on which DOI completes its search in response to this FOIA request: Gale Norton (7/17/02), J. Steven Griles (7/13/02), James Cason (7/16/02), Rebecca Watson (7/6/02), Kathleen Clarke (7/6/02), Erick Kaarlela (7/8/02), Ann Klee (2/28/02), Camden Toohey (7/11/02), Del Fortner (8/5/02), Conrad Lass (7/2/02). Since no calendar has been previously provided for William Myers and Walter Cruickshank, NRDC requests their calendars from January 21, 2001, through the date on which DOI completes its search in response to this FOIA request.

⁴ NRDC limits this request to records in the possession of DOI headquarters personnel and is not requesting a search of field office records.

II. Fee Waiver

We respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii). NRDC is a national, non-profit, environmental organization.⁵ NRDC has no commercial interest in obtaining the requested information. Instead, NRDC seeks the requested information in order to make it public. NRDC intends to use the requested information to increase the public's understanding of how DOI helped formulate and is now implementing the National Energy Plan. Both DOI and other federal agencies have previously granted NRDC fee waivers for information requested related to the National Energy Plan. As demonstrated below, NRDC meets all the criteria for a fee waiver.⁶

A. The records requested concern the operations or activities of the government.

NRDC's request for information about the implementation of the National Energy Plan directly relates to the operations and activities of an agency of the federal government. Employees of the federal government using government funds developed the National Energy Plan. One of DOI's institutional priorities is to implement the specific recommendations of the National Energy Plan. Numerous agency staff are working to implement the recommendations of the National Energy Plan.

B. Disclosure of the information will contribute to public understanding of government operations and activities.

The public's current knowledge of the implementation by DOI of the National Energy Plan is limited. The information requested by NRDC will inform the public about how DOI decisions regarding the implementation of the National Energy Plan were made, as well as about the status and direction of the implementation.

NRDC has a proven ability to digest and disseminate information effectively. In addition to its web site (www.nrdc.org) which is updated daily, NRDC has numerous other means to widely disseminate information to the public including numerous and varied publications, educational programs, media initiatives, and public interest litigation. For example, Nature's Voice is published and distributed five times a year by NRDC to its approximately 450,000 active members. NRDC also publishes a magazine, OnEarth, which is distributed to 140,000 subscribers and is also distributed for sale to newsstands and bookstores. OnEarth is available online free of charge at <http://www.nrdc.org/onearth/02spr/default.asp>. NRDC also regularly distributes information and alerts to its 490,000 online activists. See, e.g., Action Alert on Arctic National Wildlife Refuge, April 16, 2002 (Attachment 1); Join Me in Signing the Declaration of Energy Independence, February 11, 2002 (Attachment 2).

⁵ NRDC falls within the "other requester" category specified by 43 CFR § 2.17.

⁶ If NRDC's request for a fee waiver is denied, NRDC will pay fees under protest without waiving its right to appeal the denial of a fee waiver. Consequently, please begin the search for responsive records immediately upon receipt of this request. Please inform me before you take any steps that could cause the fees to exceed \$1,000.

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues including energy policy, urban air pollution, water pollution, climate change, and nuclear weapons. Some specific examples are provided below:

- (1) NRDC obtained through a FOIA request a memorandum by ExxonMobil advocating the replacement of a highly respected atmospheric scientist, Dr. Robert Watson, as the head of the Intergovernmental Panel on Climate Change. NRDC used this memorandum to help inform the public about what may have been behind the decision by the Bush Administration to replace Dr. Watson. See NRDC Press Release, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," April 3, 2002. (Attachment 3); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," Los Angeles Times, April 4, 2002, at A19. (Attachment 4)
- (2) In the summer of 2000, NRDC obtained information through FOIA regarding the levels of arsenic in drinking water supplies across the country. NRDC made much of the information available on the NRDC web site and provided analysis describing its significance and guiding interested members of the public on how to learn more about arsenic in their own drinking water supplies. See Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," San Diego Union-Tribune, June 5, 2000, at B1. (Attachment 5)
- (3) NRDC used information obtained through FOIA requests to produce and distribute a report analyzing the impacts of manure pollution from large livestock feedlots on fish and wildlife, as well as human health. Spills & Kills (August 2000). (Attachment 6)
- (4) NRDC used information obtained from numerous FOIA requests to publish five databooks between 1984 and 1994 describing the history of nuclear weapons programs in the United States, Soviet Union, Britain, France and China. (Attachment 7)
- (5) NRDC obtained through a FOIA request a Defense Department document, the History of the Custody and Deployment of Nuclear Weapons: July 1945 through September 1977. The document attracted significant press attention once it was disclosed. See, e.g., Walter Pincus, "Study Says U.S. Secretly Placed Bombs; Cold War Deployments Affected Mostly Allies," Washington Post, Oct. 20, 1999, at A3. (Attachment 8) One of NRDC's nuclear scientists, Robert Norris, published a detailed analysis of this document explaining its significance to the public. Robert S. Norris, William M. Arkin, and William Burr, "Where They Were," Bulletin of Atomic Scientists (Nov/Dec 1999). (Attachment 9)

- (6) NRDC regularly publishes a Nuclear Notebook, often using information obtained through FOIA requests. The Nuclear Notebook provides current information about the nuclear weapons programs of the United States and other nations. It is published in each issue of the Bulletin of Atomic Scientists. See, e.g., “U.S. Nuclear Forces, 2002,” Bulletin of Atomic Scientists, May/June 2002 (Attachment 10).
- (7) In 1996, NRDC obtained through a FOIA request test results regarding lead levels in the District of Columbia’s drinking water supplies. NRDC made the test results public as well as analysis explaining the significance of the results. See, D’Vera Cohn, “Tap Water Safeguards Still Stalled; City Failed to Tell Some Residents of Excess Lead Contamination,” Washington Post, April 18, 1996, at J1. (Attachment 11)
- (8) In 1989, NRDC obtained through a FOIA request testimony by federal experts who opposed oil drilling off the coasts of California and Florida. The Bush Administration had previously suppressed the testimony. See Larry Liebert, “Oil Testimony Reportedly Quashed; Environmentalists Say Federal Experts Pressured by Bush,” San Francisco Chronicle, Oct. 5, 1989, at A6. (Attachment 12)
- (9) In 1988, NRDC obtained through a FOIA request a report by the U.S. Fish and Wildlife service that declared that the government’s review of offshore oil drilling in Northern California was incomplete and overly optimistic. Reagan Administration officials had tried to keep the report secret and then repudiated it upon its release. See Eric Lichtblau, “Federal Report Blasts Offshore Oil Studies,” Los Angeles Times, June 4, 1988, at A32. (Attachment 13)
- (10) In 1982, NRDC obtained through a FOIA request a memorandum by the U.S. Environmental Protection Agency stating that most air pollution monitors have repeatedly underestimated levels of toxic lead in the air. NRDC used the memorandum to inform the public about the consequences of EPA’s proposal to relax restrictions on lead in gasoline. See, Sandra Sugawara, “Lead in Air is Undermeasured, EPA Section Chief’s Memo Says,” Washington Post, July 11, 1982, at A6. (Attachment 14)

C. Release of the requested records will contribute significantly to public understanding.

As discussed in the preceding section, the public currently has little information about DOI’s implementation of the National Energy Plan. Information about whom key agency officials met with will provide extremely valuable information to the public in understanding how DOI decisions about implementing the National Energy Plan were made. Likewise, correspondence between key agency officials and those likely to benefit from agency decisions implementing the National Energy Plan will be extremely useful to the public in understanding

those decisions. Finally, records related to opening specific public lands to energy exploration and production will be useful to the public in understanding why and how these agency decisions are being made. To the best of NRDC's knowledge, none of the requested information has been previously released to the public.

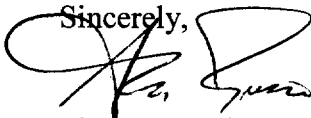
D. NRDC has no commercial interest that would be furthered by disclosure of the requested records.

As a non-profit, membership organization, NRDC has no commercial interest in the information requested.

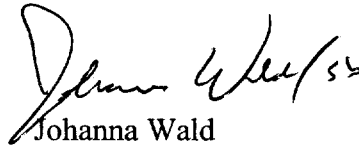
CONCLUSION

We appreciate your help in obtaining the requested information as soon as possible. The public has an immediate right to the requested information so that interested members of the public can have a meaningful role in shaping this nation's energy future. Please call if you have any questions regarding this request. To facilitate delivery, please send the requested records to Sharon Buccino, NRDC, 1200 New York Avenue NW, Suite 400, Washington, DC 20005.

Sincerely,



Sharon Buccino
Senior Attorney
NRDC-DC
202-289-6868



Johanna Wald
Senior Attorney
NRDC-San Francisco
415-777-0220

Enclosures:

Attachments, A-C, 1-14

Cc: Daniel Bensing, U.S. Department of Justice
Gillian Flory, U.S. Department of Justice

Attachment A
List of Keywords

Oil
Gas
Arctic
National Petroleum Reserve
Access
Streamline
Expedite
Pipeline
Right of way
Withdrawals
Monument
Coal
Nuclear
Utility
Offshore
OCS (Outer Continental Shelf)
Deepwater
Royalties
Hydropower
CBM (coalbed methane)
Hydraulic fracturing
APD (application to drill)
Inspection
Enforcement
Lease
Stipulations
Time sensitive plans
Analysis of adverse energy impacts

ATTACHMENT B
Site-specific documents

1. Jack Morrow Hills Coordinated Activity Plan (Wyoming)
2. Pinedale Anticline Natural Gas Exploration and Development Project (Wyoming)
– BLM lease decisions
3. Atlantic Rim Coalbed Methane Project (Wyoming)
4. Powder River Basin Environment Impact Statement (EIS) (Wyoming)
5. Powder River EIS (Montana)
6. Yellow Cat/ Dome Plateau Seismic Exploration Project (Utah)
7. Veritas/ Book Cliffs seismic exploration project (Utah)
8. March 19, 2002, BLM competitive oil and gas lease sales in Utah
9. August 20, 2002, BLM competitive oil and gas lease sales in Utah
10. Missouri Breaks National Monument (Montana) – BLM lease decisions
11. Bridger Teton National Forest (Montana) – BLM involvement in forest plan and lease decisions
12. Otero Mesa Plan for Mineral Leasing and Development (New Mexico)
13. Springerville Coal-Fired Power Plant Expansion (Arizona)
14. Northwest Colorado Working Landscape Trust proposal re. management of federal lands in Vermillion Basin (Colorado)
15. Roan Plateau Land Use Planning Amendment/ EIS (Colorado)
16. National Petroleum Reserve-Alaska Integrated Activity Plan and lease decisions
17. Arctic National Wildlife Refuge – lease decision

ATTACHMENT C
Final reports and Agency Memoranda¹

1. Final copies of BLM week ahead reports
2. Final Energy Policy Conservation Act (EPCA) studies of impediments to federal oil and gas exploration and development
3. Final BIA Energy Development Plan
4. Memoranda related to BIA's Energy Development Plan
5. Final National Energy Policy Interagency Implementation Status
6. Final IM re. Review Requirements Planning Efforts
7. Final IM re. Incorporating the President's National Energy Policy into Land Use Plans
8. Final Regional Energy Council Concept
9. Final IM on BLM's Implementation Plan for the President's National Energy Policy
10. Final MMS Implementation of the National Energy Policy
11. Final Third-party contracting IM
12. Final NM report re. NEP Implementation
13. Any and all Statements of Adverse Energy Impact prepared by BLM (NRDC understands that copies of these statements are being collected by BLM's National Energy Office)

¹ NRDC has reason to believe that these specific reports exist because they were referred to but not provided in documents DOI has disclosed in response to NRDC's ongoing FOIA litigation against the agency. For example, in some cases, drafts were identified but final copies were not provided.