



Wendy Keefover-Ring  
 <wkeefoverring@wildearthguardians.org>  
 01/11/2011 10:48 AM

To foia.officer@aphis.usda.gov  
 cc  
 bcc  
 Subject FOIA - Wolf 314F, Colorado

*Robbie*  
*WS*  
*IES*  
*Individual*

171 180

January 11, 2011

Wendy Keefover-Ring  
 WildEarth Guardians  
 P.O. Box 1471  
 Broomfield, CO 80038

Online only: [foia.officer@aphis.usda.gov](mailto:foia.officer@aphis.usda.gov)

Tonya Woods, FOIA Director  
 Office of Legislative and Public Affairs  
 USDA/APHIS/WS  
 4700 River Road, Unite 50  
 Riverdale, MD 20737-1232

Re: FOIA for Records Concerning Wolf 314F

Dear Director Woods:

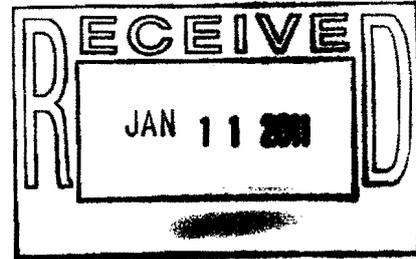
Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and implementing regulations, 49 C.F.R. § 370 et seq., we request copies of all documents and information that discusses or were generated, modified or acquired in relation to the death of wolf 314F in Spring 2009 in Rio Blanco County, Colorado by Compound 1080 (sodium fluoroacetate). Specifically, please include all communications between U.S. Department of Agriculture-Animal and Plant Health Inspection Service-Wildlife Services (WS) and the U.S. Fish and Wildlife Service (FWS); and communications between WS and the Colorado Division of Wildlife. Please include all records involving the criminal investigation, toxicology reports, and any and all records concerning this matter in your possession.

By the term "documents," this request adopts the definition of the Federal Records Act (44 U.S.C. § 3101 et seq.), which includes "all ... papers, maps, photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business...." Id. at § 3301. This definition includes paper documents, electronic mail (e-mail), memoranda, notes, guidelines, data bases, and internal policy documents, without exception. All of the above information should be easily available and a matter of public record.

Please tender responsive documents in digital format whenever possible.

Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.19(b), we hereby request a fee waiver for all copying costs, mailing costs, and other costs associated with locating and tendering responsive documents. See *Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003). The release of these documents is not for commercial use and is in the public interest because it will significantly contribute to public understanding of government operations, particularly as they



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relate to native carnivore conservation. Please note that FWS, Department of Defense, National Park Service, USDA-Forest Service, Bureau of Land Management, Bureau of Indian Affairs, Department of Energy, Bureau of Reclamation, National Transportation Safety Board, Federal Aviation Administration, Environmental Protection Agency, and the U.S. Geological Survey, among other agencies, have granted requests for fee waivers in their provision of documents to WildEarth Guardians in the past.

In considering whether WildEarth Guardians meets fee waiver criteria, WS must remember that FOIA carries a presumption of disclosure and that the fee waiver amendments of 1986 were designed specifically to provide organizations such as WildEarth Guardians access to government documents without the payment of fees. As Senator Leahy stated, “[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . .” 132 Cong. Rec. S. 14298. In interpreting these amendments, the Ninth Circuit Court has held that the amended statute “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy). Both the Ninth Circuit and the District of Columbia Circuit courts have stated that the amendments’ main purpose were “to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA.” *Id.*; *Judicial Watch*, 326 F.3d at 1315.

Thus, both Congress and the courts are clear in their interpretation that the main legislative purpose of the fee waiver amendments is to facilitate access to agency records by noncommercial requesters and “watchdog” organizations, such as conservation organizations, which use FOIA to monitor, analyze, publicize and challenge government activities. As the District of Columbia Circuit Court has stated, this waiver provision was added to FOIA “in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,” in reference to requests from journalists, scholars, and public interest groups. *Better Gov’t Ass’n v. Department of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986), quoting *Ettlinger v. FBI*, 596 F. Supp. 867, 876 (D. Mass. 1984) (emphasis added).

The following information concerning this request and WildEarth Guardians is relevant to our application for a fee waiver:

1. How do these documents concern the operations or activities of the government?

Documents requested concern the killing of an endangered species by unknown but suspicious causes.

2. Will disclosure of the documents contribute significantly to public understanding of government operations or activities?

The public’s interest in wildlife conservation, and particularly native carnivores—and especially those that are very rare on the landscape—has increased dramatically in the past few decades. The public, biologists, and conservations are particularly concerned about wildlife management and wildlife killing policies and practices. The public is also interest in safety issues involving WS. The information requested here is not currently available, and its disclosure will increase public knowledge.

WildEarth Guardians ([www.wildearthguardians.org](http://www.wildearthguardians.org)) is a 501(c)(3), non-profit membership organization dedicated to protecting and restoring wildlife, wild rivers, and wild places in the American West. The mission of WildEarth Guardians’ coalition AGRO: A National Coalition to End the Aerial Gunning of Wildlife ([www.goAGRO.org](http://www.goAGRO.org)) is to focus both public attention and

conservation resources on protecting and restoring America's wild native carnivores. WildEarth Guardians has 9,000 members and activists and maintains offices in Santa Fe, Denver, and Phoenix. We will compile this information and send it to our members in action alerts, newsletters, and other electronic mediums as well as to the general public via earned national or regional media.

As recognized authorities on native carnivore policies and management, WildEarth Guardians possesses the necessary expertise to extract and interpret the relevant information from the requested documents, and to disseminate this information to the public through press releases, news letters, web sites, and other electronic mediums. Conservation and other organizations and the public regularly seek analysis from WildEarth Guardians concerning carnivore conservation and rely on its dissemination of information about these species. This recognized expertise and organizational capacity, and the important issues described herein, assures that provision of the requested documents to the WildEarth Guardians will significantly contribute to public understanding of government operations and activities.

WildEarth Guardians employs a variety of methods to disseminate information to the public, including electronic (circulation: 10,000) and print (circulation: 5,000) newsletters; news releases; presentations to members; presentations to the general public; publication of reports, factsheets and white papers; radio and television interviews, and postings on our websites. Documents provided by WS to WildEarth Guardians in the past have contributed to multiple reports and extensive media coverage that have increased the public's understanding of government operations as they pertain to livestock protection and wildlife recruitment schemes with regards to carnivore killing. For example, because of our press releases, the Associated Press has frequently covered issues pertaining to WS's annual killing activities (that are focused on the numbers and species of animals killed); the danger of aerial gunning because of the frequency of accidents in recent years; and oversight agencies such as the Environmental Protection, the General Accounting Office, and WS itself for lapses in public and employee safety.

WildEarth Guardians also routinely shares information it has obtained with other organizations. For example, information received from federal agencies has been shared with Animal Damage Review, California Native Plant Society, California Wilderness Coalition, Center for Biological Diversity, Committee for Idaho's High Desert, Conservation Northwest, Friends of Nevada Wilderness, Idaho Conservation League, Natural Resources Defense Council, Oregon Natural Desert Association, Predator Defense Institute, Sierra Club, Defenders of Wildlife, The Humane Society of the U.S., and the Wilderness Society. Information is also distributed at numerous conferences throughout the country such as Defenders of Wildlife's biennial carnivore conference, agency-run black bear and cougar workshops, and other forums. Information provided to WildEarth Guardians also aids staff who are frequently interviewed by news media and take part in public forums to analyze and interpret government programs and activities. As an example, WildEarth Guardians staff frequently speak in public forums at events that we set up, and as invited speakers.

Information received from this FOIA request will be presented to the public through one or more of the above means. In view of these facts, it can be seen that information obtained from this FOIA request will contribute to an understanding of government programs by the public-at-large, biologists, and fellow conservationists as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Reply to Request

FOIA provides an agency twenty (20) working days to reply to an information request.

Thank you for your attention to this request.

Sincerely,

Wendy Keefover-Ring  
Carnivore Protection Director  
WildEarth Guardians  
303.819.5229  
[wendy@wildearthguardians.org](mailto:wendy@wildearthguardians.org)

Wendy Keefover  
Carnivore Protection Director  
WildEarth Guardians  
P.O. Box 1471  
Broomfield, CO 80038  
303.819.5229

Email: [wendy@wildearthguardians.org](mailto:wendy@wildearthguardians.org)

WildEarth Guardians: <http://www.wildearthguardians.org>

Protect New Mexico's Cougars: <http://www.protectnmcougars.org/>

Stop Aerial Gunning of our Wildlife: <http://www.goagro.org/>

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WildEarth Guardians has earned a Four Star rating from Charity Navigator. View our profile at <http://www.charitynavigator.org/index.cfm?bay=search.summary&orgid=9974>.