Western Environmental Law Center

Sent via Electronic Mail

January 26, 2012

Freedom of Information Act Appeals Officer
U.S. Department of the Interior
Officer of the Solicitor
1849 C Street, NW, MS 6556
Washington, DC  20240

Re: FREEDOM OF INFORMATION APPEAL
Citizens for a Healthy Community FOIA Request, December 18, 2011,
BLM-2012-00215/CO-12-013

Dear Freedom of Information Appeals Officer:

On behalf of Citizens for a Healthy Community (“CHC”), CHC’s counsel at Western Environmental Law Center hereby appeals the FOIA response of the U.S. Bureau of Land Management (“BLM”) Colorado State Office, that BLM cannot provide CHC with certain information because BLM has concluded that the information is exempt from mandatory disclosure by virtue of Exemptions 4 and 5 (5 U.S.C. § 552 (b)(4) and (b)(5)), of the Freedom of Information Act (“FOIA”). See Letter from Helen M. Hankins, Colorado State Director, Bureau of Land Management to Megan Anderson, Western Environmental Law Center (December 23, 2011) (attached as Exhibit 1).

FOIA requires that an agency disclose documents to any person except where the document falls under a specifically enumerated exemption. 5 U.S.C. § 552. The U.S. Supreme Court has stated, “[T]hese limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act,” and later continued, “[c]onsistent with the Act's goal of broad disclosure, these exemptions have been consistently given a narrow compass.” Dep’t of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 7-8 (2001) (internal citations omitted); see also Soucie v. David, 448 F.2d 1067, 1080 (D.C. Cir. 1971) (“The policy of the Act requires that the disclosure requirement be construed broadly, the exemptions narrowly.”)

The Department of Interior has further issued guidance regarding the release of agency records through FOIA, providing, “[i]t is our policy to make records of the Department available to the public consistent with the spirit of the FOIA and the Privacy Act.” 43 C.F.R. § 2.2.
Indeed, BLM has stated, “the intent of the FOIA is based on openness to citizens and the informed consent of the governed.” See BLM, FOIA FAQ, available at: http://www.blm.gov/wo/st/en/res/FOIA/questions_answers.html.

In CHC’s FOIA request of December 18, 2011 (attached as Exhibit 2), we requested two things:

1. The Expressions of Interest submitted for the parcels located in the [Bureau of Land Management] Uncompahgre Field Office included in the August 2012 Oil and Gas Lease Sale, including information identifying the persons or entities who submitted the Expressions of Interest; and

2. All documents related to the Expressions of Interest listed above.

BLM’s response included the Expressions of Interest (“EOI”) (attached as Exhibit 3) that were submitted – and which BLM relied upon in proposing the 22 parcels included in the August 2012 Lease Sale – however, BLM redacted (blacked-out) the names of the persons or entities who submitted the expressions of interest on those documents. In doing so, BLM cited Exemptions 4 and 5 of FOIA, which provide that “this section does not apply to matters that are:”

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

5 U.S.C.§ 552 (b)(4) and (b)(5).

Exemptions 4 and 5 are inapplicable in the present context, and therefore BLM has unlawfully withheld the redacted information.

1. BLM’s Reliance on Exemption 4 is Misguided and Inapplicable

BLM’s reference to Exemption 4 in its response letter to CHC appears to concede the inapplicability of the “trade secrets” element of this exemption, focusing instead on the latter elements that permit an agency to withhold “commercial or financial information obtained from a person and privileged or confidential.” See BLM Response, at 1 (citing National Parks and Conservation Ass’n v. Morton, 498 F.2d 765 (D.C. Cir. 1974); Critical Mass Energy Project v. NRC, 942 F.2d 799 (D.C. Cir. 1991)). Courts have held that the meaning of “trade secret” should be limited to: “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983). As applied here, the name of the persons or entities nominating the subject parcels cannot logically fit the definition of “trade secret.” We agree with BLM’s apparent determination that it is inapplicable.
Turning to the latter elements of Exemption 4, courts have consistently held that the terms “commercial” and “financial” in Exemption 4 should be given their “ordinary” meaning. See, e.g., Public Citizen, 704 F.2d at 1290; Board of Trade v. Commodity Futures Trading Comm’n, 627 F.2d 392, 403 (D.C. Cir. 1980). Thus, information is commercial if it relates to commerce, or it has been compiled in pursuit of profit. See Am. Airlines v. Nat’l Mediation Bd., 588 F.2d 863, 870 (2nd Cir. 1978); Public Citizen, 704 F.2d at 1290. Examples of items generally regarded as commercial or financial information include: business sales statistics, research data, technical designs, overhead and operating costs, and information on financial conditions. See Wash. Post Co. v. Dep’t of Health & Human Services, 690 F.2d 252, 266 (D.C. Cir. 1982). Indeed, there is a long line of cases specifically limiting the application of Exemption 4 in cases where the claim of confidentiality does not fall within the terms of the exemption. For example, in Getman v. N.L.R.B., 450 F.2d 670, 673 (D.C. Cir. 1971), the court provided that “a bare list of names” is obviously “not exempted from disclosure,” and in National Bus. Aviation Ass’n v. FAA, 686 F.Supp.2d 80, 87 (D.C. Cir. 2010), the court held that a list of registration numbers does not qualify as commercial, even if the use of those numbers might conceivably lead to commercially valuable information. In other words, courts have not extended the use of Exemption 4 to information—such as a list of names or numbers—when that information does not have independent commercial value. In the instant case, the information claimed to be confidential is simply the name of persons or entities that submitted the EOI; we can think of no reason why these names have commercial or financial value, and BLM has not provided one.

Even if a name were found to have some commercial or financial value, it is not “privileged” or “confidential” within the meaning of Exemption 4. The terms “privileged” and “confidential” should be treated as “synonymous.” Washington Post Co. v. Dep’t of Health and Human Services, 690 F.3d, 252, 268 n.50 (D.C. Cir. 1982). After noting that the question of whether the records were “customarily” treated as confidential was a relevant inquiry, the court in National Parks and Conservation Ass’n v. Morton, 498 F.2d 765 (D.C. Cir. 1974) [hereinafter “National Parks I”], stated that before holding information to be confidential, “[a] court must also be satisfied that non-disclosure is justified by the legislative purpose which underlies the exemption.” Id. at 767. Following its examination of legislative history, the court in National Parks I identified two important purposes served by the exemption:


However, the court’s attempt to analyze the FOIA’s legislative history was complicated by the fact that the 1966 House Report has been discredited as an aid to interpreting the Act because it was submitted after the Senate had made its report and passed the bill. The House then passed the bill without amendment, thereby depriving the Senate of the opportunity to object or concur in the interpretation of the Act written into the House Report. See Dep’t of Air Force v. Rose, 425 U.S. 352, 365-67 (1976).
it “encourag[es] cooperation with the Government by persons having information useful to officials;” and

“[i]t protects persons who submit financial or commercial data to government agencies from the competitive disadvantages which would result from its publication.”

_National Parks I_, 489 F.2d at 768. With these purposes in mind, the court concluded that “commercial or financial matter” should have an “expectation of confidentiality” if the following two-prong test can be satisfied:

[C]ommercial or financial matter is “confidential” for purposes of [exemption 4] if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

_Id._ at 770. Numerous courts have adopted the two-prong test announced in _National Parks I_ as a basis for determining whether documents are confidential within the meaning of Exemption 4. _See e.g., Orion Research, Inc. v. EPA_, 615 F.2d 551 (1st Cir. 1980); _Westinghouse Electric Corp. v. Schlesinger_, 542 F.2d 1190 (4th Cir. 1976); _Continental Oil Co. v. FCP_, 519 F.2d 31 (5th Cir. 1975).

In the instant case, the information we seek is neither commercial nor financial information; we simply request the disclosure of the persons or entities that submitted the EOI. The first prong of the _National Parks I_ test – whether it would impair the Government’s ability to obtain necessary information in the future – is clearly not relevant; i.e., parties will continue to nominate parcels if they have interest, and such information would not be relevant to BLM absent those Expressions of Interest.

Of note, in _Critical Mass Energy Project v. Nuclear Regulatory Comm’n_, 975 F.2d 871 (D.C. Cir. 1992) [hereinafter _Critical Mass II_] (cited but not discussed by BLM in its response letter to CHC), the D.C. Circuit modified the _National Parks I_ test under certain circumstances, drawing a distinction between information that was submitted voluntarily and submissions that are mandatory; however, this modification has not been adopted by any other Circuit, and has been explicitly rejected by a number of courts. _See, e.g., Dow Jones & Co. v. Federal Energy Regulatory Comm’n_, 219 F.R.D. 167, 178 (C.D. Cal. 2002); _N.Y. Public Interest Research Group v. EPA_, 249 F.Supp.2d 327, 335-36 (S.D.N.Y. 2003). Moreover, because the submitter of the EOI intends to derive a financial benefit from their submission, _Critical Mass II_ is inapplicable in the present context. In _Freeman v. Bureau of Land Mgmt._, 526 F. Supp. 2d 1178, 1187 (D. Or. 2007), the court held that information provided to government agency in support of a mineral patent application was not “voluntarily provided” in light of “the extraordinary benefits” sought to be enjoyed by the information’s submitter and was not, therefore, subject to FOIA’s Exemption 4. In _Freeman_, as here, the submitter “did not provide information to the government for altruistic reasons, as a public spirited citizen, or even in the spirit of cooperation.” _Id._ Therefore, disclosure is “unlikely to deter [the submitter] from providing such
data to the government in the future.” *Id.* Indeed, Bureau of Land Management Manual § 1278.32(D)(1)(b)(2)(b) is consistent with this interpretation, and provides:

*Test for Confidentiality of “Voluntary” Information.* Information which is provided voluntarily to the Government (above and beyond what is required, and derives no benefit from the Government for doing so) may be considered confidential only if that information can be proven to be routinely treated by the company as confidential.

*Id.* at 1187, n. 2. Because the *Critical Mass II* modification is inapplicable due to the benefit sought through submission of the EOI, the validity of Exemption 4 in the present context must be reviewed according to the submitters “expectation of confidentiality,” using the customary two-prong test in *National Parks I*. It should be further noted that, in this case, the expectation of confidentiality is not open-ended. BLM informs submitters of EOIs that BLM will, in fact, allow their identities to be known two days after the competitive lease sale, therefore establishing some parameters and further eroding any expectation of confidentiality held by the submitter.

The second prong of the test – whether it would cause substantial harm to the competitive position of the person from whom the information was obtained – is more subjective. In order to demonstrate the likelihood of substantial competitive harm to the submitter, the agency must show that the submitter faces actual competition, and demonstrate with specific and direct evidence the likely consequences of disclosure. *Niagara Mohawk Power Corp. v. Dep’t of Energy*, 169 F.3d 16, 19 (D.C. Cir. 1999). Under the second prong of this test the court need not conduct a sophisticated economic analysis of the likely effects of disclosure, *National Parks Conservation Ass’n v. Kleppe*, 547 F.2d 676, 681 (D.C. Cir. 1976) [hereinafter “*National Parks II*”]. However, conclusory and generalized allegations of substantial competitive harm are unacceptable and cannot support an agency's decision to withhold requested documents. *See id.* at 680; *Pacific Architects & Engineers, Inc. v. Renegotiation Board*, 505 F.2d 383, 384-85 (D.C. Cir. 1974). Moreover, the agency must demonstrate that the impairment will be “significant;” a “minor impairment” cannot overcome the disclosure mandate of FOIA. *Critical Mass I*, 830 F.2d at 283. The agency’s claim of impairment must be supported by a “detailed factual justification,” not generalized or conclusory affidavits. *Id.* Determining the degree of impairment “necessarily involves a rough balancing of the extent of impairment and the importance of the information against the public interest in disclosure.” *Washington Post*, 690 F.2d at 269.

Thus, for BLM’s use of Exemption 4 to be valid, it must demonstrate that “actual competition and the likelihood of substantial competitive injury” would result if the names of the persons or entities nominating the parcels were revealed. *See Gulf & Western Industries v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979) (citing *National Parks I*, 489 F.2d at 770). BLM has not done so. Moreover, it would be a stretch of both the legislative intent and the public scrutiny mandate of FOIA to extend Exemption 4 to cover the name of the persons or entities that submitted the EOI. After all, this is a competitive lease sale in which the nominating party must still compete if it wishes to purchase the lease. The competitive bidding process is inherently an open and public process, and the burden is on BLM to demonstrate that there is a sufficient reason why the public should be denied the right to this information. FOIA’s central purpose is “to pierce the veil of administrative secrecy and to open agency action to the light of
public scrutiny.” Department of Air Force v. Rose, 425 U.S. 352, 361 (1976). The exemptions to disclosure are to be “narrowly construed” in order that they do not swallow up this central purpose. FBI v. Abramson, 456 U.S. 615, 630 (1982).

2. BLM’s Reliance on Exemption 5 is Misguided and Inapplicable

“In order to qualify [under Exemption 5, (552(b)(5))], a document must thus satisfy two conditions: its source must be a Government agency, and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it.” Dep’t of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. at 8. Thus, Exemption 5 was intended to incorporate the government’s common law privilege from discovery in litigation. H.R. Rep. No. 89-1497, at 10 (1966); S. Rep. No. 89-813, at 29 (1965). “Exemption 5 does not apply to factual information (unless release of the factual information would reflect or reveal the deliberative process), or to recommendations or opinions ultimately relied upon in subsequent agency action.” Bay Area Lawyers Alliance for Nuclear Arms Control v. Dep’t of State, 818 F. Supp. 1291, 1297 (1992).


In some cases, courts have used a “consultant corollary” interpretation of “intra-agency” “to include agency records containing comments solicited from nongovernmental parties.” Nat'l Inst. of Military Justice v. U.S. Dep't of Defense, 512 F.3d 677, 680, 682 (D.C.Cir. 2008). “When an agency record is submitted by outside consultants as part of the deliberative process, and it was solicited by the agency, we find it entirely reasonable to deem the resulting document to be an ‘intra-agency’ memorandum for purposes of determining the applicability of Exemption 5.” Id. at 680 (quoting Ryan v. Dep’t of Justice, 617 F.2d 781, 790 (D.C.Cir.1980)). However, even under this expanded definition, Exemption 5 cannot apply here. The Supreme Court noted that generally when a court applies the consultant corollary, “the consultant does not represent an interest of its own, or the interest of any other client, when it advises the agency that hires it.” Department of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 11 (2001). Thus, to apply Exemption 5 to those outside the agency, it must be a situation where “the consultant functions just as an employee would be expected to do.” Id. In other words, where the outside party is not acting on behalf of the agency, the exemption does not apply. See County of Madison, N.Y. v. Dep’t of Justice, 641 F.2d 1036, 1040-42 (1st Cir. 1981). Courts have further emphasized “the narrow scope of Exemption 5 and the strong policy of the FOIA that the public is entitled to know what its government is doing and why. The exemption is to be applied ‘as narrowly as consistent with efficient Government operation.’” Coastal States Gas Corp. v. Dep’t of Energy, 617 F.2d 854, 868 (D.C. Cir. 1980) (quoting S.Rep.No. 813, 89th Cong., 1st Sess. 9 (1965)); see also Maricopa Audubon Soc. v. U.S. Forest Service, 108 F.3d 1089, 1093 (9th Cir. 1997); see also Mobil Oil Corp. v. U.S. E.P.A., 879 F.2d 698, 700 (9th Cir. 1989) (“The exemptions are permissive, and an agency may voluntarily release information that it would be permitted to withhold under the FOIA exemptions.”).
As applied to the instant case, BLM neither solicited nor initiated the communication from the outside party. Indeed, it is fundamental to the EOI that the persons or entities are acting in their own interest, and certainly not as an “employee” of BLM. Moreover, the information at issue is the disclosure of the persons or entities that nominated the subject parcels. Since the requested documents were already released for their substantive content, they certainly cannot be considered “privileged” for purposes of litigation. Therefore, Exemption 5 is completely inapplicable to the instant case.

3. Conclusion

FOIA enumerates a broad policy favoring Government transparency, the notion that the public is entitled to information.

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, “sunlight is said to be the best of disinfectants.” In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

Memorandum from President Obama for the Heads of Executive Departments and Agencies (January 21, 2009).

Like President Obama here, the courts have long expressed the overarching policy of disclosure, recognizing FOIA’s “basic policy of ‘full agency disclosure unless information is exempted under clearly delineated statutory language.’” U.S. Dept. of State v. Ray, 502 U.S. 164, 177 (1991) (quoting Rose, 425 U.S. at 360)); see also NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978) (“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”).

According to the plain language of Exemptions 4 and 5 (5 U.S.C. § 552 (b)(4) and (b)(5)), as discussed above, as well as a courts “obligation to construe FOIA exemptions narrowly in favor of disclosure,” U.S. Dept. of Justice v. Landano, 508 U.S. 165, 181 (1993) (citing John Doe Agency v. John Doe Corp. 493 U.S. 146, 152 (1989)), disclosure of the persons or entities responsible for submitting the EOI for the August 2012 Lease Sale is required. Further, the revelation of such information is essential to public participation and engagement, as required under NEPA. For example, a person’s or entity’s track-record with regard to other oil and gas development, safety standards, and compliance history may indeed be vital to public comments and participation. Moreover, “[t]he burden of proof is on the agency to show that the documents are exempt from its duty to disclose.” Willamette Industries v. United States, 89 F.2d 865, 868 (9th Cir. 1982); 5 U.S.C. (a)(4)(B). BLM has failed to demonstrate that the identities of those responsible for submitting the EOIs are properly subject to any exemption. Accordingly, we request that the names of the persons or entities submitting the EOIs nominating parcels in the August 2012 Lease Sale be provided for public review.
Please contact me if you have any questions or would like to discuss this appeal further.

Sincerely,

[Signature]

Kyle Tisdel
Megan Anderson
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Taos, New Mexico 87571
575.751.0351
tisdel@westernlaw.org
anderson@westernlaw.org

COUNSEL FOR CITIZENS FOR A HEALTHY COMMUNITY

cc. Robin Smith, Chair, Citizens for a Healthy Community
EXHIBIT 1

IN SUPPORT OF
CITIZENS FOR A HEALTHY COMMUNITY’S
FREEDOM OF INFORMATION APPEAL
CHC FOIA Request, December 18, 2011,
BLM-2012-00215/CO-12-013
In Reply Refer To:
FOIA CO-12-013
1278 (CO-954)

VIA EMAIL

Ms. Megan Anderson
Western Environmental Law Center
208 Paseo del Pueblo Sur, Unit 602
Taos NM 87571

Dear Ms. Anderson:

This letter is in response to your Freedom of Information Act (FOIA) request, BLM-2012-00215/CO-12-013, dated December 19, 2011, on behalf of the Citizens for a Healthy Community, and received by the Bureau of Land Management (BLM) Colorado State Office on the same date. In your FOIA you sought the following:

"1. The Expressions of Interest submitted for the parcels located in the Uncompahgre Field Office included in the August 2012 Oil and Gas Lease sale, including information identifying the persons or entities who submitted the Expressions of Interest.

2. All documents related to the Expressions of Interest listed above."

The Colorado State Office conducted a search of their files and located 11 pages responsive to your request. However, some information is redacted (blacked-out) in accordance with Exemptions 4 and 5 of the FOIA [5 U.S.C. 552 (b)(4) and (b)(5)].

Exemption 4 permits an agency to withhold "commercial or financial information obtained from a person and privileged or confidential." See e.g., National Parks & Conservation Ass’n v. Morton, 498 F.2d 765 (D.C. Cir. 1974), and Critical Mass Energy Project v. NRC, 942 F.2d 799 (D.C. Cir. 1991). In addition, Exemption 5 permits and agency to withhold commercial information the release of which could harm the commercial interest of the U.S. Government by premature disclosure. See e.g., Federal Open Market Committee v. Merrill, 443 U.S. 340 (1979). However, we will make the information available to you two working days after the competitive sale. Four pages are partially redacted in accordance with Exemptions 4 and 5 and are annotated as such (i.e., (b)(4), (b)(5)).
The undersigned, in consultation with our Solicitor’s Office, Terri Debin, Attorney-Advisor, is responsible for this partial denial invoking Exemptions 4 and 5. You may appeal this partial denial to the FOIA Appeals Officer. The FOIA Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

Freedom of Information Act Appeals Officer  
Department of the Interior  
Office of the Solicitor  
1849 C Street, NW, MS 6556  
Washington, DC 20240

You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including a copy of your original FOIA request and this partial denial letter. Failure to include this documentation with your appeal will result in the Department’s rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, “FREEDOM OF INFORMATION APPEAL.” Your letter should include in as much detail as possible any reason(s) why you believe the bureau’s response is in error. [NOTE: Because of disruptions to mail service in the Washington DC area, you may want to consider alternative means of communication with the Department; i.e., fax, e-mail, express delivery, etc. There may be a considerable delay in receipt of mail sent through the U. S. Postal Service.]

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created 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. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
E-mail: ogis@nara.gov  
Telephone: 301-837-1996  
Facsimile: 301-837-0348  
Toll-free: 1-877-684-6448

You also requested a fee waiver. Your client, Citizens for a Healthy Community, is determined to be in the category of an “other requester”. See 43 CFR § 2.17(4). As an “other requester”, Citizens for a Healthy Community are entitled to the first 2 hours of search and the first 100 copies at no charge. There is no charge for the review of documents under this category as well.
Also in accordance with 43 CFR. §§ 2.16(b)(2) and 2.18(a), there is no charge for fees less than $30.00 which is the case for processing this request. Therefore; your request for a fee waiver is moot and is neither being approved or denied.

If you have any questions related to your FOIA request or this response, please contact Debbie Suehr, BLM Colorado FOIA Officer, at (303) 239-3688; via facsimile at (303) 239-3933; via mail at the letterhead address; or via email at CO_FOIA@blm.gov.

Sincerely,

Helen M. Hankins
State Director

Enclosures
EXHIBIT 2

IN SUPPORT OF
CITIZENS FOR A HEALTHY COMMUNITY’S
FREEDOM OF INFORMATION APPEAL
CHC FOIA Request, December 18, 2011,
BLM-2012-00215/CO-12-013
Via Electronic Mail

December 19, 2011

Barbara Sharrow, Field Manager
Bureau of Land Management
Uncompahgre Field Office
2465 South Townsend Avenue
Montrose, Colorado  81401
bsharrow@blm.gov

Deborah Suehr
Bureau of Land Management
Colorado State Office
FOIA Coordinator
2850 Youngfield Street
Lakewood, Colorado  80215
CO_FOIA@blm.gov

Re:  Freedom of Information Act Request

Dear Ms. Sharrow and Ms. Suehr:

Pursuant to the Freedom of Information Act, 5 USC § 552, the Western Environmental Law Center, on behalf of Citizens for a Healthy Community, a non-profit organization registered in the State of Colorado (Identification Number 20101062998) and a 501(c)(3) federal tax-exempt organization under the Internal Revenue Code, respectfully requests the following records from the BLM relating to oil and gas development in the Delta County region of Colorado:

1. The Expressions of Interest submitted for the parcels located in the Uncompahgre Field Office included in the August 2012 Oil and Gas Lease sale, including information identifying the persons or entities who submitted the Expressions of Interest.

2. All documents related to the Expressions of Interest listed above.

To reduce the expense of our request, we request all documents be provided in electronic format where possible. Unless specifically identified, for the purposes of this request, the term
“documents” includes, but is not limited to, all written, transcribed, recorded or graphic matters, however produced or reproduced, any and all originals copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or record of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs; electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific FOIA request.

Please send all documents responsive to this request to:

Western Environmental Law Center
208 Paseo del Pueblo Sur, Unit 602
Taos, NM 87571
anderson@westernlaw.org

Pursuant to 5 U.S.C. section 552(a)(4)(A)(iii), Citizens for a Healthy Community hereby requests a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents, in accordance with the attached fee waiver request.

We look forward to your reply within twenty working days as required by FOIA, 5 USC § 552(a)(6)(A)(i). Please contact me at 575.613.4195 or anderson@westernlaw.org should you have any questions about this request. Thank you.

Sincerely,

Megan Anderson
Western Environmental Law Center
Counsel for Citizens for a Healthy Community
FEE WAIVER REQUEST

Public interest fee waivers are mandatory; that is, they “shall be furnished” upon a showing that disclosure furthers 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 requestor.” 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of the Freedom of Information Act, as well as case law interpreting FOIA, indicates that the statute’s fee waiver provision is to be liberally construed favoring the public interest. See Forest Guardians v. U.S. Dept. of Interior, 416 F.3d 1173, 1178 (10th Cir. 2005). Citizens for a Healthy Community’s request for information qualifies for a fee waiver under this standard and, accordingly, CHC requests that all fees be waived.

This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below are the four requirements for a fee waiver delineated in the October 2002 Freedom of Information Act regulations of the Department of Interior (See 67 Fed. Reg. 64551-2 (October 21, 2002)) followed by how Citizens for a Healthy Community (“CHC”) satisfies these requirements.

1. How do the records concern the operations or activities of the Government?
The requested documents pertain solely to the BLM August 2012 Oil and Gas Lease Sale administered by the BLM.

2. If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?

   (i) How are the contents of the records you are seeking meaningfully informative on the Department’s or a bureau’s operations and activities? Is there a logical connection between the content of the records and the operations or activities you are interested in? The information CHC is seeking is meaningfully informative because it is either new information or is not publicly available information. It is impossible for the public to have any meaningful understanding of the oil and gas lease parcels at issue without having access to the requested information. Without access to the requested documents it is impossible for a citizen watchdog organization like CHC to closely monitor the activities of the BLM and determine whether the agency is complying with Congressional mandates to protect the human health and the environment. The logical connection with the documents CHC seeks to obtain is clear—citizens need to have access to the requested information to determine whether the federal government’s commitment to develop natural resources is being balanced by the commitment to protect human health and the environment. Without the requested information, the public is in the dark as to whether BLM is doing its job properly.

   (ii) Other than enhancing your knowledge, how will disclosure of the requested records
contribute to the understanding of the public at large or a reasonably broad audience of persons interested in the subject?

One of the largest industries in the world has begun operations in and around CHC’s area of Gunnison and Delta Counties, yet the public has very little knowledge of what is happening and has no way of knowing what is happening, and who is responsible, without the requested information being released. This is because a veil exists between BLM’s data and the public. The records requested will contribute to the public’s understanding of oil and gas operations in the area because none of requested information is currently available to the public. CHC will analyze and interpret it, and will disseminate it to a reasonably broad audience of persons that live in and around the affected area.

The information requested is specific to parcels in and around Paonia, Hotchkiss, and Crawford and upstream areas and thus is relevant to the residents of Delta, Gunnison, and Mesa Counties (all of which lie within the UFO boundary), and neighboring Garfield, Montrose, and Pitkin Counties. To interpret the need to disseminate the information obtained through FOIA across an audience any larger than the 300,000 people who live in these six counties would be unreasonable because the information is not meaningful or relevant to residents of the majority of Colorado’s counties where the potential for natural gas development on federal mineral estate is insignificant.

(iii) Your identity, vocation, qualifications, and expertise regarding the requested information (whether you are affiliated with a newspaper, college or university, have previously published articles, books, etc.) may be relevant factors. However, merely stating that you are going to write a book, research a particular subject, or perform doctoral dissertation work, is insufficient, without demonstrating how you plan to reach the audience of persons interested in the subject.

CHC has the ability and expertise to analyze and explain the requested information to the general public. While Citizens for a Healthy Community is a new organization, various members of its Board of Directors have, as individuals, effectively advocated for environmental conservation issues in the American West for nearly thirty years. CHC has also retained legal counsel at the Western Environmental Law Center to assist it in its work. In various capacities, CHC has a proven track record of digesting, analyzing, and presenting complex information to the public on a wide range of environmental issues.

CHC’s seven Directors hold seven Bachelor’s Degrees, five Master’s Degrees, one PhD, and one M.D. CHC has assembled a highly educated Board consisting of ideal educational backgrounds for analyzing the requested environmental data—including the potential adverse impacts to human health and the environment. Some of the areas in which CHC Board members hold degrees include:

- Bachelor of Science in Agronomy
- Bachelor of Science in Biology
- Bachelor of Science in Education
• Bachelor of Science in Ecological Agriculture
• Bachelor of Science in Environmental, Population and Organismic Biology
• Bachelor of Arts in Sociology
• Master of Science in Environmental Science and Management
• Master of Science in Plant Pathology
• Master of Science in Pharmacology
• Medical Doctor

In addition, the following demonstrates that CHC’s Directors have experience not only in analyzing data, but also in publishing this information:

• Robyn Morrison worked as an editor for the environmental publication *High Country News* and served as the Director of Energy Issues and the Interim Director for the Western Slope Environmental Resource Council.

• Robin Smith published the journal *Endangered Species* for four years while working as the Executive Director and Chair of the Board of *In Defense of Endangered Species*—a wildlife conservation organization. With a Masters Degree in Environmental Science and Management, Robin worked as an Environmental Scientist for the Ohio Environmental Protection Agency for 8 years. For seven of these years, Robin worked in the Division of Solid and Hazardous Waste Management where, among other duties, he was responsible for drafting the Division’s hazardous waste regulations. This has provided him with abundant experience in reading, analyzing, and interpreting technical, scientific, and legal documents. Further examples of Mr. Smith’s ability to analyze information and shed light on the government’s activities and/or operations in a new and meaningful way can be found in two of his reports titled: *Commercial Livestock Grazing in Grand Teton National Park and Restoring Wildlife, Protecting People—The Historical Management Alternative for Red Rock Lakes National Wildlife Refuge’s Comprehensive Conservation Plan*. Both of these were synthesized from many sources of information, including data obtained from the Department of Interior through FOIA requests.

• Dr. Mitch Gershten has authored five scientific articles. With a Bachelors Degree in Environmental, Population and Organismic Biology, a Masters Degree in Pharmacology, and a Medical Degree, Dr. Gershten is well qualified to review the requested documents to determine whether actions of the BLM have put human health and the environment at risk.
• Dr. Daniel Feldman is the author of three books.

CHC intends to disseminate this information to a reasonably broad audience on the Western Slope by using every means of communication available to us. This includes:

• Authoring articles, writing letters to the editor, distributing news releases, and placing advertisements in the following newspapers in six county region:
  - Delta County Independent;
  - North Fork Merchant Herald (Hotchkiss, Delta County);
  - Mountain Valley News (Cedaredge, Delta County);
  - North Fork Times (Paonia, Delta County);
  - The Valley Chronicle (Hotchkiss, Delta County);
  - Valley Heartbeat (Delta, Delta County);
  - Post Independent (Glenwood Springs, Garfield County);
  - Gunnison Country Times (Gunnison County);
  - The Crested Butte News (Gunnison County);
  - Crested Butte Chronicle and Pilot (Gunnison County);
  - Daily Sentinel (Grand Junction, Mesa County);
  - Mesa State Criterion (Grand Junction, Mesa County);
  - Palisade Tribune Valley Report (Mesa County);
  - Western Slope Fence Post (Grand Junction, Mesa County);
  - Free Press (Grand Junction, Mesa County);
  - Montrose Daily Press (Montrose County);
  - Aspen Daily News (Pitkin County); and
  - Aspen Times (Pitkin County).

• Providing news releases and interviews on the following FM radio stations in the six county region:
  - KVNF, 90.9, North Fork Valley Public Radio (Paonia, Delta County);
  - KPRU, 103.3, Public Broadcasting of Colorado (Delta, Delta County);
  - KLXV, 91.9, Educational Medial Foundation (Glenwood Springs, Garfield County);
  - KWSB, 91.1, Western State College of Colorado (Gunnison, Gunnison County);
  - KBUT, 90.3, Crested Butte Mountain Educational Radio (Gunnison County);
  - KAAI, 98.5, Educational Media Foundation (Palisades, Mesa County);
  - KAFM, 88.1, Grand Valley Public Radio (Grand Junction, Mesa County);
  - KMSA, 91.3, Mesa State College (Grand Junction, Mesa County);
  - KPRN, 89.5, Public Broadcasting of Colorado (Grand Junction, Mesa County);
  - New, 101.9, JKJ Educational Foundation (Olathe, Montrose County);
  - KPRH, 88.3, Public Broadcasting of Colorado (Montrose, Montrose County);
  - KTMH, 88.9, Educational Communications of Colorado Springs (Montrose);
  - KCJX, 88.9, Roaring Fork Public Radio, (Carbondale, Pitkin County);
  - KVOV, 90.5, Public Broadcasting of Colorado (Carbondale, Pitkin County);
  - KDNK, 88.1, Carbondale Community Access Radio (Pitkin County); and
• Analyzing and synthesizing data from this FOIA request and publishing reports to disseminate to the public. These reports will be:
  ➢ Provided to the newspapers listed above;
  ➢ Provided to the radio stations listed above;
  ➢ Provided to local county commissioners, state legislators, and U.S. Congressional Representatives and Senators;
  ➢ Provided to local community and business leaders;
  ➢ Handed out at community events; and
  ➢ Sent to national non-profit organizations working on oil and gas issues.

• Posting the information CHC obtains through this FOIA request and reports CHC synthesizes from this information on CHC’s website (www.citizensforahealthycommunity.org), which is currently under construction. This website will contain a wealth of information obtained through this FOIA request, including: an analysis of BLM’s compliance and inspection of gas facilities; an analysis enforcement action taken by BLM and penalties assessed, an analysis of bonding requirements; a listing of royalties collected; a listing of recently reported undesirable events that have occurred; copies of Unit Agreements and maps of unit areas; copies of Plans of Development, APDs, and NEPA documents that are not available elsewhere.

• Sending out semi-monthly emails to CHC’s list-serve to keep supporters informed on gas issues.

• Distribution of fact sheets compiled from the requested documents;

• Creating and distributing a regularly published newsletter containing articles that are derived from information obtained through this FOIA request.

• Providing public presentations to community groups such as domestic water districts and water companies, irrigation districts and companies, Rotary, Lions Club, church groups, town councils, county commissioners, and agricultural organizations such as the Valley Organic Growers Association, The National Grange, and livestock associations.

• Meeting with elected officials to provide them with the information CHC obtains and reports published as a result of CHC’s FOIA request.

These examples demonstrate that CHC will disseminate the information CHC obtains through FOIA to the public, and therefore CHC is entitled to a fee waiver under FOIA.

(iv) Do you have the ability and intention to disseminate the information to the general public or a reasonably broad audience of persons interested in the subject?
(A) How and to whom do you intend to disseminate the information?
As a public interest non-profit, tax-exempt organization, CHC intends to disseminate this information to the public to fulfill one of its primary purposes for being created—to educate and inform the public regarding oil and gas issues in CHC’s area.

CHC has shown in (2)(iii) above how it will disseminate this information and that it has the ability to disseminate the information. CHC will disseminate this information to the general public, targeted groups identified in (2)(iii), supporters, and other Western Slope, state, and national non-profit organizations that work on oil and gas issues. As stated in (2)(ii) above, the requested information is of interest primarily only to the residents of Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin Counties. Consequently, CHC will disseminate the information primarily to residents of these counties. It is unreasonable to require dissemination of information to people in other locales because the information would be irrelevant to them.

(B) How do you plan to use the information to contribute to public understanding of the Government’s operations or activities?
CHC plans on using this information: to educate and inform the public of oil and gas issues; to organize grassroots opposition to irresponsible oil and gas development; to influence BLM decision-makers; to provide local, state, and federal legislators with information in which to make better decisions.

3. If there is likely to be a contribution to public understanding, will release of requested records contribute significantly to public understanding?

(i) Is the information being disclosed new?
The records requested include new information and/or information that is not available on-line or in a brick and mortar reading room that is a reasonable distance from CHC’s office. The information CHC requests concerns the basis for the Government’s actions regarding the subject parcels up for lease.

(ii) Does the information being disclosed confirm or clarify data which has been released previously?
The contents of the information requested are currently unknown to the general public and CHC. CHC does not request any documents previously provided to CHC by BLM. Therefore, the information being disclosed will not confirm or clarify data that has been previously released.

(iii) How will disclosure increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure?
CHC has a right to this information so it can understand the basis for BLM’s decision to include the subject lease parcels in the August 2012 lease sale. CHC requires the requested records to clarify its understanding, and subsequently, contribute to public understanding, of how BLM is executing its responsibilities on Federal lands under the federal minerals
program. CHC needs information that is not publicly available at this time to determine whether BLM is properly following federal laws and regulations, and representing the public interest in the execution and implementation of contracts with the oil and gas industry, which the requested records will likely provide. These documents will illuminate in a clear and direct way, the operations and activities of BLM as it acts to fulfill important Congressional mandates to protect the environment.

(iv) Is the information already publicly available? If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue (e.g., the listing of the spotted owl as an endangered species), it is less likely that there will be a significant contribution from release.

The information CHC is requesting is not, to CHC’s knowledge, publicly available. The Government may omit sending us requested records that are available in publicly accessible forums such as on the internet or in published materials that are routinely available at public or university libraries within a reasonable distance from CHC’s office so long as the Government provides us with adequate references and/or website links so that CHC may obtain these materials on its own. However, CHC suspects that the majority of requested materials will not be available unless CHC receives them from the Government in satisfaction of this FOIA request.

4. Would disclosure be primarily in your commercial interest?

(i) Do you have a commercial interest that would be furthered by disclosure? A commercial interest is a commercial, trade, or profit interest as these terms are commonly understood. Your status as ‘‘profitmaking’’ or ‘‘non-profitmaking’’ is not the deciding factor. Not only profitmaking entities, but other organizations or individuals may have a commercial interest to be served by disclosure, depending on the circumstances involved. CHC does not have a commercial, trade, or profit interest in the requested records. The documents CHC is requesting are not of any commercial interest to it, nor is CHC a business trying to get information for industrial advantage. The information CHC is requesting will not be used for private gain or advantage. CHC is a non-profit organization incorporated in Colorado on February 5, 2010. CHC received its 501(c)(3) federal tax-exempt status on August 26, 2010, retroactive to January 29, 2010. CHC is a public interest organization whose only goal is to protect human health and the environment. CHC serves the public interest by increasing the general public awareness of natural gas issues.

(ii) If you do have a commercial interest that would be furthered by disclosure, would disclosure be primarily in that interest? Would the public interest in disclosure be greater than any commercial interest you or your organization may have in the documents? If so, how would it be greater?

This is not applicable as CHC does not have a commercial interest that would be furthered by disclosure of the requested materials.

(iii) Your identity, vocation, and the circumstances surrounding your request are all
factors to be considered in determining whether disclosure would be primarily in your commercial interest. For example: (A) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest. (B) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

CHC is a not-for-profit, tax-exempt conservation organization with expertise in natural gas issues and a commitment to protecting people and their environment from irresponsible oil and gas development in the Delta County Region of Colorado. CHC does not have any commercial interest in the records requested.

Given CHC’s demonstrably successful efforts at educating the public on natural gas issues in the few months it has been in existence, and the fact that CHC’s education program has significantly contributed to an understanding of government operations and activities, it is clear that CHC is entitled to a fee waiver.

If any item in this request is denied, please specify the exemption claimed under the Freedom of Information Act (5 U.S.C. § 552) as the basis for such denial. CHC understands that denial of this request for information is appealable. CHC is prepared to file an appeal if this request is denied.
EXHIBIT 3

IN SUPPORT OF
CITIZENS FOR A HEALTHY COMMUNITY’S
FREEDOM OF INFORMATION APPEAL
CHC FOIA Request, December 18, 2011,
BLM-2012-00215/CO-12-013
To Whom It May Concern:

Attached is an EOI (8 pages) covering federal lands in Delta County and Gunnison County, Colorado. We are interested in nominating the lands for the August 9, 2012 sale.

I can be reached if you should need further information.

Thank you,

EOI 1973
NOMINATION FORM
FOR COMPETITIVE OIL AND GAS LEASE SALE

March 28, 2011

Name: (b)(4) and (b)(5)

Address: 

Please post the lands described below on the next available competitive oil and gas lease sale notice:

TOWNSHIP 13 SOUTH, RANGE 89 WEST
Sec. 02: Lot 36 (13.71)
Sec. 04: Lot 13 (27.00), Lot 14 (14.49), Lot 17 (13.57), Lot 18 (26.47), Lot 19 (38.47), Lot 20 (25.48), Lot 21 (14.03), Lot 22 (14.48), Lot 23 (26.50)
Sec. 05: Lot 15 (40.00), Lot 16 (40.00), Lot 17 (40.00), Lot 18 (40.00), SW, W2SE, NESE, SESE
Sec. 06: Lot 17 (39.46), Lot 18 (40.00), Lot 19 (40.00), Lot 20 (40.00), Lot 21 (39.09), Lot 22 (33.71), E2SW, SE
Sec. 08: Lot 2 (11.02), NENE, N2NW, SWNW
Sec. 09: Lot 1 (39.53), Lot 2 (25.49), Lot 3 (13.62), Lot 4 (39.12), Lot 5 (39.54), Lot 6 (22.52), Lot 7 (46.08), Lot 10 (19.96), E2NE, SWNE
Sec. 10: Lot 2 (22.65), Lot 11 (34.06), Lot 12 (34.10), Lot 13 (34.14), Lot 14 (34.17)
Sec. 11: Lot 3 (25.06)

TOWNSHIP 13 SOUTH, RANGE 90 WEST
Sec. 07: Lot 3 (37.15), Lot 4 (36.89), E2SW, SWSE
Sec. 31: Lot 5 (33.90), Lot 6 (33.65), Lot 7 (34.76), Lot 10 (19.26), Lot 12 (40.65)

TOWNSHIP 13 SOUTH, RANGE 91 WEST
Sec. 03: S2SW
Sec. 13: Lots 1, 2, NE
Sec. 16: Lots 1-5, 7-11
Sec. 19: Lots 1-4, E2, SENW, E2SW
Sec. 20: Lots 1, 4-6
Sec. 21: Lots 1-7
Sec. 22: Lots 2, 3, 10
Sec. 23: SE, SESW
Sec. 24: ALL
Sec. 25: Lots 1-4, 9, 12-16
Sec. 26: ALL
Sec. 27: NENE, S2NE, E2SW, SE
Sec. 28: E2, E2SW, SWSW
Sec. 29: Lot 1
Sec. 30: Lots 5-11
Sec. 32: E2SE, SWSE
Sec. 33: ALL
Sec. 34: ALL
Sec. 35: ALL
Sec. 36: Lots 1-12

TOWNSHIP 13 SOUTH, RANGE 92 WEST
Sec. 31: Lots 5-20
Sec. 32: Lots 1-16
Sec. 33: Lots 3-10
Sec. 34: Lots 1-3, 7, 8
Sec. 35: Lots 1-9

TOWNSHIP 14 SOUTH, RANGE 89 WEST
Sec. 01: Lots 5-8, S2N2, S2 (ALL)
Sec. 02: Lots 5-8, S2N2, S2 (ALL)
Sec. 03: Lots 5-8, S2N2, S2 (ALL)
Sec. 04: Lots 5-8, S2N2, S2 (ALL)
Sec. 05: Lots 3-6, S2N2, S2 (ALL)
Sec. 06: Lots 4-10, SENW, E2SW, E2 (ALL)
Sec. 07: Lots 1-4, E2W2, E2 (ALL)
Sec. 08: ALL
Sec. 09: ALL
Sec. 10: Lots 1-4, W2 (ALL)
Sec. 11: Lots 1-5, NE, N2SE, SESE (ALL)
Sec. 12: ALL

CO BLM (Delta and Gunnison) Page 1 of 5
Sec. 13: ALL
Sec. 14: Lots 1-3, NENE, S2NW, S2 (ALL)
Sec. 15: Lots 1-2, N2NW, S2NW, S2 (ALL)
Sec. 16: ALL
Sec. 17: ALL
Sec. 18: ALL
Sec. 19: ALL
Sec. 20: ALL
Sec. 21: ALL
Sec. 22: ALL
Sec. 23: ALL
Sec. 24: ALL
Sec. 25: ALL excluding HES 266
Sec. 26: ALL
Sec. 27: ALL
Sec. 28: ALL
Sec. 29: ALL
Sec. 30: ALL
Sec. 31: ALL
Sec. 32: ALL
Sec. 33: ALL
Sec. 34: ALL
Sec. 35: ALL
Sec. 36: ALL excluding HES 266

TOWNSHIP 14 SOUTH, RANGE 90 WEST
Sec. 06: Lots 1, 2, 6, 7, S2NE, E2SW, SE
Sec. 07: Lots 1, 2, 3, 4, E2W2, E2

TOWNSHIP 14 SOUTH, RANGE 91 WEST
Sec. 01: Lot 3, SWNE, S2NW, S2
Sec. 02: S2NE, N2SW, SE
Sec. 03: Lots 1-4, S2NW, S2S2
Sec. 04: Lots 1-4
Sec. 05: Lot 1
Sec. 06: E2NE
Sec. 10: N2
Sec. 11: E2, S2NW, SW
Sec. 12: ALL
Sec. 15: SE, SESW
Sec. 21: N2, W2SW
Sec. 22: N2, N2SW, SESW, SE
Sec. 29: SENW, SW
Sec. 30: SWSE
Sec. 31: Lots 1-4, E2W2, E2
Sec. 32: W2

TOWNSHIP 14 SOUTH, RANGE 92 WEST
Sec. 03: NESE, SWNW, SWSW
Sec. 04: Lots 2-4, S2N2, SW, N2SE, SWSE
Sec. 05: Lots 1-4, S2N2, S2
Sec. 06: Lots 1-7, SENW, S2NE, E2SW, N2SE, SESE
Sec. 07: E2NE, SENW, E2SW, W2SE
Sec. 08: N2, N2S2, SWSW, SWSE
Sec. 09: NWNE, NENW
Sec. 17: SWNW
Sec. 18: Lot 2, E2NW
Sec. 25: S2
Sec. 26: N2SW, SE
Sec. 28: W2NE, N2SE
Sec. 31: SESW, S2SE
Sec. 32: NWSW, SESE
Sec. 33: SWSW
Sec. 34: SWNE, N2NW, SENW, N2S2, S2
Sec. 35: E2NE, S2
Sec. 36: ALL

TOWNSHIP 15 SOUTH, RANGE 89 WEST
Sec. 09: E2NE
Sec. 10: W2NW

TOWNSHIP 15 SOUTH, RANGE 91 WEST
Sec. 06: Lots 1-7, SENW, S2NE, E2SW, SE
Sec. 07: Lots 1-4, E2W2, E2
Sec. 25: E2W2, W2SW
Sec. 27: SENE, E2SE
Sec. 29: NW, N2SW, SWSW
Sec. 30: Lots 1-4, E2W2, E2
Sec. 31: Lot 1, N2NE, SENE, NENW

TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 01: Lots 1-4, S2N2, S2
Sec. 02: Lots 1-4, S2N2, N2SW, SE
Sec. 03: Lots 5, 6, 8, 9, 10, 11
Sec. 04: Lot 4, SWNW
Sec. 05: Lots 1, 2, SWNE, SENW
Sec. 06: Lots 1, 2, 5, S2NE, SENW
Sec. 08: S2S2
Sec. 10: SWNE, N2SE
Sec. 11: NE, N2SW, SESH, W2SE
Sec. 12: NW, E2SE, SWSE
Sec. 14: NWNE
Sec. 15: S2NE, NW, S2
Sec. 17: E2NW, SW
Sec. 18: Lot 1, NE, NENW, N2SE, SESH
Sec. 22: NE, N2NW, SENW, NESH, N2SE
Sec. 23: NENE, W2NW
Sec. 24: S2NE, NW, N2SW, SWSW, SE
Sec. 25: N2NE, SENE, NWNN, NESE
Sec. 31: SENW, NESE
Sec. 32: S2SW
Sec. 34: SESH, SWSW

ONLY THOSE LANDS LISTED BELOW INCLUDE SPLIT ESTATE.

DESCRIPTION 1:
TOWNSHIP 13 SOUTH, RANGE 69 WEST
Sec. 10: Lot 1 (46.03), N2NE, NWNW

SURFACE OWNER:
BEAR RANCH LLC
1801 FORUM PL STE P2
WEST PALM BEACH, FL 33401

DESCRIPTION 2:
TOWNSHIP 13 SOUTH, RANGE 91 WEST
Sec. 20: Lots 2, 3

SURFACE OWNER:
William Ray Mann
P.O. Box 1490
Paonia, CO 81428

DESCRIPTION 3:
TOWNSHIP 13 SOUTH, RANGE 91 WEST
Sec. 25: Lot 7

SURFACE OWNER:
Baine Angus LLC
7500 E. Arapahoe Rd. #345
Centennial, CO 80112

DESCRIPTION 4:
TOWNSHIP 13 SOUTH, RANGE 91 WEST
Sec. 25: Lot 5, 6, 8, 10, 11

SURFACE OWNER:
Willapa Logging CO Inc.
P.O. Box 232
Raymond, VA 98577

DESCRIPTION 5:
TOWNSHIP 14 SOUTH, RANGE 90 WEST
Sec. 08: Lots 4-5, SENW

SURFACE OWNER:
BAINE ANGUS LLC ETAL
7500 E ARAPAHOE RD #945
CENTENNIAL, CO Mail 80112

CO BLM (Delta and Gunnison)
DESCRIPTION 6:
TOWNSHIP 14 SOUTH, RANGE 91 WEST
Sec. 04: S2NE, SE2W

SURFACE OWNER:
Mountain Coal Company
c/o A.R. Land Company
1 Cityplace Drive STE 300
St. Louis, MO 63141-7066

DESCRIPTION 7:
TOWNSHIP 14 SOUTH, RANGE 91 WEST
Sec. 17: N2SW

SURFACE OWNERS:
Peter Heller
2002 Osoeola St.
Denver, CO 80212-1147

Robert Dale Simineo
13221 German Creek Lane
Paonia, CO 81428

Melvin Theodore Simineo
13221 German Creek Lane
Paonia, CO 81428

DESCRIPTION 8:
TOWNSHIP 14 SOUTH, RANGE 91 WEST
Sec. 20: S2NE

SURFACE OWNER:
Norman E. Smith
11312 3800 Rd.
Paonia, CO 81428

DESCRIPTION 9:
TOWNSHIP 14 SOUTH, RANGE 92 WEST
Sec. 07: E2SE

SURFACE OWNER:
Glen A. Miller and Charlotte A. Miller
2264 Willow Wood Rd.
Grand Junction, CO 81503

DESCRIPTION 10:
TOWNSHIP 14 SOUTH, RANGE 92 WEST
Sec. 16: Lot 4 (SW2SW)

SURFACE OWNER:
Dorothy Lestock Rogos
30500 Winston Dr.
Bay Village, OH 44140

DESCRIPTION 11:
TOWNSHIP 14 SOUTH, RANGE 92 WEST
Sec. 28: N2SE

SURFACE OWNERS:
O.F. Demoulin
9845 3775 Rd.
Hatchkiss, CO 81419

EAGLE BUTTE RANCH LLP
3129 MAROON CREEK RD
ASPEN, CO 81611-0000

LITTLE MONTY LYNN
36196 K25 ROAD
HOTCHKISS, CO 81419-0000

DESCRIPTION 12:
TOWNSHIP 14 SOUTH, RANGE 92 WEST
Sec. 26: W2NE

SURFACE OWNERS:
County of Delta
DESCRIPTION 13:
TOWNSHIP 15 SOUTH, RANGE 89 WEST
Sec. 09: W2NE, W2, SE
Sec. 10: E2, E2NW, SW
Sec. 11: ALL
Sec. 12: ALL
Sec. 13: ALL
Sec. 14: ALL
Sec. 15: ALL
Sec. 16: ALL
Sec. 17: ALL
Sec. 18: Lots 1-4, E2W2, E2 (ALL)
Sec. 19: Lots 1-4, E2W2, E2 (ALL)
Sec. 20: ALL
Sec. 21: ALL
Sec. 22: ALL
Sec. 23: ALL
Sec. 24: ALL
Sec. 25: ALL
Sec. 26: ALL
Sec. 27: ALL
Sec. 28: ALL
Sec. 29: ALL
Sec. 30: Lots 1-4, E2W2, E2 (ALL)
Sec. 31: Lots 3-6, E2W2, E2 (ALL)
Sec. 32: ALL
Sec. 33: ALL
Sec. 34: ALL
Sec. 35: ALL
Sec. 36: ALL

TOWNSHIP 15 SOUTH, RANGE 90 WEST
Sec. 01: ALL
Sec. 02: ALL
Sec. 03: ALL
Sec. 04: ALL
Sec. 05: ALL
Sec. 06: ALL
Sec. 07: ALL
Sec. 08: ALL
Sec. 09: ALL
Sec. 10: ALL
Sec. 11: ALL
Sec. 12: ALL
Sec. 13: ALL
Sec. 14: ALL
Sec. 15: ALL
Sec. 16: ALL
Sec. 17: ALL
Sec. 18: ALL
Sec. 19: ALL
Sec. 20: ALL excluding HES 49
Sec. 21: ALL
Sec. 22: ALL
Sec. 23: ALL
Sec. 24: ALL
Sec. 25: ALL
Sec. 26: ALL
Sec. 27: ALL
Sec. 28: ALL excluding HES 49
Sec. 29: ALL excluding HES 49
Sec. 30: ALL excluding HES 173
Sec. 31: ALL
Sec. 32: ALL
Sec. 33: ALL
Sec. 34: ALL
Sec. 35: ALL
Sec. 36: ALL

SURFACE OWNER:

CO BLM (Delta and Gunnison)
DESCRIPTION 14:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 04: Lot 3

SURFACE OWNERS:
MARTI M FELIX
66 BLUESTEM
RIDGWAY, CO 81432-0000

LEVALLEY RANCH LTD
PO BOX 835
HOTCHKISS, CO 81419-0835

DESCRIPTION 15:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 04: SENW, E2SW
Sec. 09: NWNE, NENW

SURFACE OWNER:
WELT DONALD TRUST
36320 HIGHWAY 92
HOTCHKISS, CO 81419-0000

DESCRIPTION 18:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 05: S2SW
Sec. 08: NE, N2SW
Sec. 09: SWSW

SURFACE OWNER:
ALLEN HUBBARD CREEK LLLP
PO BOX 25
HOTCHKISS, CO 81419-0025

DESCRIPTION 17:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 06: Lot 6

SURFACE OWNER:
DEVANEY TERESA L
PO BOX 206
HOTCHKISS, CO 81419

DESCRIPTION 18:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 06: Lot 7

SURFACE OWNERS:
MUSE ELTON
8155 3400 RD
HOTCHKISS, CO 81419

MILLER JERAMIE J
8368 3400 RD
HOTCHKISS, CO 81419-6724

DESCRIPTION 19:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 08: NESW

SURFACE OWNER:
ALLEN JAMES R
1841 BUCHFINCK
ALLIANCE, NE 69301-0000

DESCRIPTION 20:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 06: SESW

SURFACE OWNER:
JOHNSTON ELAINE J
8360 3400 ROAD
HOTCHKISS, CO 81419-6724
DESCRIPTION 21:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 06: SWSE

SURFACE OWNER:
BLEVINS MARCEL
P O BOX 27
STANLEY, ND 58784-0027

DESCRIPTION 22:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 06: SESE

SURFACE OWNER:
ALLEN LAWRENCE P
PO BOX 25
HOTCHKISS, CO 81419-0025

DESCRIPTION 23:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 09: SESE

SURFACE OWNER:
ALLEN LAWRENCE P TRSUT NO. 1
PO BOX 25
HOTCHKISS, CO 81419-0025

DESCRIPTION 24:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 10: NESE

SURFACE OWNER:
KOTTHENETTE PAUL D
PO BOX 1019
HOTCHKISS, CO 81419-1019

DESCRIPTION 25:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 10: SESE

SURFACE OWNER:
PIPHER CHARLES H
PO BOX 311
CRAWFORD, CO 81415-0311

ROBERTS ANDREW R
PO BOX 365
HOTCHKISS, CO 81419-0365

DESCRIPTION 26:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 10: W2, W2SE
Sec. 20: N2NE
Sec. 21: NWNE, N2NW

SURFACE OWNER:
PIPHER ANDREW PAUL
38191 LINMAN ROAD
CRAWFORD, CO81419 81419-0025

DESCRIPTION 27:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 17: E2, E2NW

SURFACE OWNER:
ALLEN HUBBARD CREEK LLLP
PO BOX 25
HOTCHKISS, CO 81419-0025

DESCRIPTION 28:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 21: NENE

SURFACE OWNER:
HEBERT ELAINE L
37582 HIGHWAY 92
CRAWFORD, CO 81415-0000

DESCRIPTION 29:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 33: S2NE, N2SE

SURFACE OWNERS:
JENSEN LARRY R
JENSEN MATTHEW RYAN
3497 STEARMAN LANE
CRAWFORD, CO 81415-9315

ASPEN LEAF REAL ESTATE LLLP
3000 CLEAR FORK RD
MAHER, CO 81421-0000

LUBIN MARK A
37064 GRANDVIEW MESA RD
CRAWFORD, CO 81415-0000

DESCRIPTION 30:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 32: SENE, NESE
Sec. 33: S2NW, N2SW

SURFACE OWNERS:
MILLER RANCH CORPORATION
4655 3500 RD
CRAWFORD, CO 81415-0000

DESCRIPTION 31:
TOWNSHIP 15 SOUTH, RANGE 92 WEST
Sec. 33: SWSW

SURFACE OWNER:
ASPEN LEAF REAL ESTATE LLLP
3000 CLEAR FORK RD
MAHER, CO 81421-0000
February 15, 2011

ATTN: Oil & Gas Leasing
U. S. Department of the Interior
Bureau of Land Management
2850 Youngfield Street
Lakewood, CO 80215

Re: Expression of Interest
Oil and Gas Lease Sale
Gunnison County, Colorado

Ladies and Gentlemen:

Please place the following unleased lands on your next available Competitive Oil and Gas Lease Sale:

**Township 11 South, Range 90 West**
Sec 2: Lots 1-5, 7, 8, 11-14

Containing 299.56 acre, more or less.

The surface owner of the above listed lands is:

David Clinger
21759 Cabrini Blvd.
Golden, CO 80401

Please advise if there are any problems which might delay or prohibit the lands from being placed on the next possible sale. Confirmation of an estimated sale date would be greatly appreciated.

Thank you for your assistance in this matter.

Very truly yours,

(b)(4) and (b)(5)
To Whom It May Concern:

(b)(4) and (b)(5) would like to nominate the following lands for a future competitive oil and gas lease sale:

Township 12 South-Range 89 West, 6th PM, Gunnison County, CO

Section 28: Lot 1, W/2SW/4, NE/4SW/4, SW/4NW/4
   Surf owner: State of Colo, 1313 Sherman St, Rm 620, Denver, CO 80203
Section 28: 5/2SE/4, SE/4NW/4
   Surf owner: BLM – Montrose Dist Ofc.
Section 33: E/2SW/4, NW/4NW/4, Lots 1, 2, 3, 6, 7
   Surf owner: State of Colo, 1313 Sherman St, Rm 620, Denver, CO 80203
Section 33: W/2SW/4, SW/4NW/4
   Surf owner: Abbott Ranches, LLC, 100 Merchant Dr., Montrose, CO 81401
Section 33: E/2E/2
   Surf owner: BLM – Montrose Dist Ofc

Township 13 South-Range 89 West 6th PM, Gunnison County, CO

Section 4: Lots 5-23, SE/4SE/4
Section 5: Lots 3, 4, 9,10/11/12
Section 6: Lots 6, 7, 8, 9, 10,11, 14, 15, 16
   Surface owner: BLM – Montrose Dist ofc
Section 3: Lots 5-12
   Surf owner: Bear Ranch, LLC, 1601 Forum Pl, Ste P2, West Palm Beach, FL 33401

Thank you for your consideration in this request; pls call if you have any questions.

Regards,

(b)(4) and (b)(5)

EOI 1885