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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF THE STATE OF  
WASHINGTON

WESTERN LAND EXCHANGE PROJECT,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,

Defendant.

Case No. 99-\_\_\_\_\_

COMPLAINT

FREEDOM OF INFORMATION ACT,  
ADMINISTRATIVE PROCEDURE ACT.

Plaintiff, Western Land Exchange Project (WLXP), alleges as follows:

INTRODUCTION

1.

This action is premised upon violations of both the Freedom of Information Act, 5 U.S.C. § 552 et. seq. (FOIA), and the Administrative Procedure Act, 5 U.S.C. § 701 et. seq. (APA). It challenges the unlawful failure of Defendant United States Forest Service (USFS) to respond to Plaintiff's FOIA requests in the manner mandated by FOIA. Specifically at issue is Defendant's refusal to publicly disclose information and documents which pertain to a land exchange proposed to occur between a private individual and the Boise National Forest, an administrative component of the USFS. The land exchange was ultimately rescinded. The withheld materials relate to three general categories of

1 information: (1) valuation and review criteria relating to land owned and managed by Defendant on  
2 behalf of the United States public which were considered for inclusion in a land exchange with Mr.  
3 Tom Nicholson; (2) valuation and review criteria relating to land owned by Mr. Tom Nicholson which  
4 were considered for inclusion in a land exchange with Defendant; and (3) valuation and review criteria  
5 relating to land owned by third parties — so called “comparables” — which were considered by land  
6 appraisers employed by Defendant in an effort to establish a fair market value for the property slated  
7 for inclusion in the proposed land exchange. Plaintiff requested the disclosure of these materials,  
8 along with the statutory fee waiver, in order to adequately review and illuminate the nature and extent  
9 of the impact upon publicly held natural resource interests as well as the public fisc flowing from  
10 Defendant’s land exchange policies and practices. Because the appraisal used in each federal land  
11 trade is the very heart of the project—the central factor in determining whether a land exchange is equal  
12 and thus legal—WLXP has particular concerns regarding the availability and transparency of appraisal  
13 information. Despite Defendant’s refusal to disclose the withheld information to WLXP, the USFS  
14 did share the withheld information with at least one member of the public, Mr. Nicholson. Plaintiff  
15 seeks declaratory relief that Defendant has violated the FOIA and APA. Plaintiff also seeks injunctive  
16 relief directing Defendant to promptly provide it with copies of the requested materials. Moreover,  
17 Plaintiff seeks an order from this Court directing Defendant to waive all search and copy fees related to  
18 the Plaintiff’s FOIA request.

19  
20 **JURISDICTION, VENUE AND BASIS FOR RELIEF**

21 2.

22 This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.  
23 S.C. § 1331.

24 3.

25 Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §  
26 1391(e).

27 4.

28 Declaratory relief is appropriate under 28 U.S.C. § 2201.

1 5.

2 Injunctive relief is appropriate under 28 U.S.C. § 2202.

3  
4 PARTIES

5 6.

6 Plaintiff, Western Land Exchange Project (WLXP), is a non-profit 501(c)(3) public interest  
7 organization whose office is located in Seattle, Washington. The group actively conducts public edu-  
8 cation and advocacy campaigns, publishes newsletters, interacts with a multitude of media outlets  
9 and generally advocates in matters pertaining to federal land exchanges. WLXP staff possess unique  
10 knowledge of the federal land exchange programs and the implications of land trade policies, particu-  
11 larly as implemented in the 11 western states by the Forest Service and Bureau of Land Management.  
12 WLXP is actively involved in policy research and provides public oversight and recommendations to  
13 government officials regarding needed reforms in federal land exchange policy and law. A major  
14 component of the group's research and advocacy involves land appraisal practices, methodology, and  
15 disclosure.

16 7.

17 Defendant, United States Forest Service (USFS), is an agency of the executive branch of the  
18 United States government, it is in possession and control of the records sought by WLXP, and as  
19 such, it is subject to the FOIA pursuant to 5 U.S.C. § 552(e).

20  
21 STATEMENT OF FACTS

22 8.

23 On February 27, 1998, Plaintiff WLXP, filed a FOIA request with the Boise National Forest,  
24 an administrative component of Defendant. The FOIA request asked Defendant "to make available to  
25 us appraisal records on all past and pending land exchanges between Mr. Tom Nicholson and the  
26 Boise National Forest."

27 9.

28 On April 22, 1998, Defendant provided a member of the public, Mr. Nicholson, with copies of

1 the "appraisals of the Federal and non-Federal lands involved with the proposed Nicholson Exchange  
2 #3."

3 10.

4 On April 30, 1998, well beyond the twenty working day response deadline imposed by the  
5 FOIA, see 5 U.S.C. § 552(a)(6)(A)(I), Defendant responded to WLXP's document request by indi-  
6 cating that there were "three land exchanges responsive to your request." However, Defendant indi-  
7 cated that the appraisal reports pertaining to "Nicholson 1" were destroyed "sometime in 1993 or  
8 1994" pursuant to Forest Service regulations. Defendant made available for Plaintiff's review the  
9 appraisal reports relating to "Nicholson 2." However, regarding "Nicholson 3," Defendant invoked  
10 Exemption 5 of FOIA, 5 U.S.C. § 552(b)(5), and withheld "one responsive document in its entirety."

11 11.

12 On May 28, 1998, Defendant notified WLXP that "Nicholson 3" had been "terminated in its  
13 entirety."

14 12.

15 On June 29, 1998, Defendant disclosed for Plaintiff's review some documents pertaining to  
16 appraisal data for "Nicholson 3." However, invoking Exemptions 4 and 6 of FOIA, 5 U.S.C. §§  
17 552(b)(4), (6), Defendant redacted portions of the documents which it provided to WLXP.

18 13.

19 On August 12, 1998, Plaintiff filed with the USFS a timely administrative appeal of Defen-  
20 dant's refusal to disclose all of the requested materials.

21 14.

22 On January 27, 1999, Defendant responded to WLXP by partially granting and partially deny-  
23 ing the FOIA Appeal. Defendant's determination noted that "In response to your appeal, enclosed are  
24 portions of 33 pages and 10 pages in their entirety from the Nicholson #3 exchange, Boise National  
25 Forest lands (federal); and portions of 20 pages and 8 pages in their entirety from Nicholson & Heath  
26 Property (non-federal)." Defendant again invoked Exemptions 4, 5 and 6 of FOIA as the stated basis  
27 for withholding the requested material. The withheld materials relate to three general categories of  
28 information: (1) valuation and review criteria relating to land owned and managed by Defendant on

1 behalf of the United States public which were considered for inclusion in a land exchange with Mr.  
2 Tom Nicholson; (2) valuation and review criteria relating to land owned by Mr. Tom Nicholson which  
3 were considered for inclusion in a land exchange with Defendant; and (3) valuation and review criteria  
4 relating to land owned by third parties — so called “comparables” — which were considered by land  
5 appraisers employed by Defendant in an effort to establish a fair market value for the property slated  
6 for inclusion in the proposed land exchange.

7 15.

8 Plaintiff WLXP urgently requires the material requested to monitor and illuminate the ongoing  
9 activities of Defendant, as well as those parties noted in the requested documents, activities which may  
10 cause significant irreparable and irreversible harm to the environment and the public fisc. Consequent-  
11 ly, Plaintiff WLXP and its members are directly and adversely affected by the Defendant’s refusal to  
12 provide access to the withheld materials.

13 16.

14 Plaintiff WLXP has fully exhausted all administrative remedies required by FOIA. 5 U.S.C.  
15 §§ 552(a)(6)(A), (a)(6)(C).

16 17.

17 Plaintiff WLXP has been required to expend costs and to obtain the services of a law firm,  
18 consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

19  
20 **CAUSES OF ACTION**

21 **COUNT I**  
22 **FREEDOM OF INFORMATION ACT**

23 18.

24 The allegations made in paragraphs 1 through 17 are realleged and incorporated by reference  
25 herein.

26 19.

27 Plaintiff WLXP has a demonstrated interest and ability to monitor Defendants actions for com-  
28 pliance with environmental laws. The group has frequently participated in public debate and adminis-  
trative proceedings relating to significant and complex forest management issues. Public oversight of

1 Defendant's land exchange valuation policies and practices is important because the appraisal used in  
2 each federal land trade is the very heart of the project—it is the key factor in determining whether the  
3 property involved in a proposed land exchange is of equal value as required by law.

4 20.

5 Plaintiff WLXP's request for information will significantly contribute to the public's under-  
6 standing of governmental activities or operations in that the information requested concerns USFS's  
7 ongoing promotion and oversight of land exchange policies and practices which utilize the monies of  
8 the United States government in support of projects which can and do have demonstrable and conse-  
9 quential environmental, social and economic impacts. Moreover, the FOIA documentation provided  
10 by WLXP during the administrative phase of this matter demonstrates that the group has the ability and  
11 intent to analyze and disseminate this information to its members and to the general public.

12 21.

13 WLXP has a statutory right to review the requested materials and there is no legal basis for  
14 Defendant's refusal to disclose these documents.

15 22.

16 Unless enjoined by this Court, Defendant will continue to violate the rights of Plaintiff WLXP  
17 to receive public records under the FOIA.

18 23.

19 Plaintiff WLXP is entitled to reasonable costs of litigation, including attorney fees pursuant to  
20 FOIA. 5 U.S.C. § 552(a)(4)(E).

21  
22 **COUNT II.**  
**VIOLATIONS OF THE ADMINISTRATIVE PROCEDURES ACT**

23 24.

24 The allegations made in paragraphs 1 through 23 are realleged and incorporated herein by  
25 reference.

26 25.

27 Defendant has failed to act in an official capacity under color of legal authority by failing to  
28 comply with the mandates of FOIA consequent to its refusal to disclose the documents requested by

1 WLXP.

2 26.

3 Defendant has unlawfully withheld agency action by failing to comply with the mandates of  
4 FOIA consequent to its refusal to disclose the documents requested by WLXP.

5 27.

6 Plaintiff has been adversely affected and aggrieved by the Defendant's failure to comply with  
7 the mandates of FOIA. Defendant's refusal to disclose the documents requested by WLXP have in-  
8 jured Plaintiff's interests in public oversight of governmental operations and environmental protection,  
9 and constitute violation of Defendant's statutory duties under the APA.

10 28.

11 Plaintiff has suffered a legal wrong as a result of the Defendant's failure to comply with the  
12 mandates of FOIA. Defendant's refusal to disclose the documents requested by WLXP have injured  
13 Plaintiff's interests in public oversight of governmental operations and environmental protection, and  
14 constitute violation of Defendant's statutory duties under the APA.

15 29.

16 Defendant's actions in failing to disclose the documents requested by WLXP is arbitrary and  
17 capricious, an abuse of discretion and otherwise not in accordance with law.

18 30.

19 Plaintiff is entitled to judicial review under the Administrative Procedure Act 5 U.S.C.S.  
20 §§702, 706.

21 31.

22 Plaintiff is entitled to costs of disbursements and costs of litigation, including reasonable attor-  
23 ney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C.S. § 2412.

24  
25 WHEREFORE, Plaintiff prays that this Court:

26 1. Order Defendant to promptly provide Plaintiff with copies of the requested documents  
27 which remain at issue in this action.

28 2. Order Defendant to waive all fees associated with the disclosure of any documents which

1 the Court may order released to Plaintiff in this action.


2 3. Declare the Defendant USFS's refusal and failure to disclose the documents requested by  
3 WLXP to be unlawful under the FOIA and the USFS's implementing regulations.

4 4. Declare the Defendant USFS's refusal and failure to disclose the documents requested by  
5 WLXP to be arbitrary, capricious, an abuse of discretion, and not in accordance with law under the  
6 APA.

7 5. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E)  
8 and 28 U.S.C. § 2412.

9 6. Grant such other and further relief as the Court may deem just and proper.

10  
11 Respectfully submitted for the Court's consideration, this date, October \_\_\_\_, 1999.

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