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November 26, 2018

**Via Electronic Mail**

Margaret Hawkins  
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National Archives and Records Administration  
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Email: [request.schedule@nara.gov](mailto:request.schedule@nara.gov)

**Control No. DAA–0048–2015–0003**

**RE: COMMENTS ON PROPOSED DEPARTMENT OF THE INTERIOR NATURAL  
RESOURCES PLANNING AND DEVELOPMENT DOCUMENT RECORDS  
SCHEDULE**

Dear Director Hawkins:

On behalf of itself and the undersigned environmental and natural resources law clinics, research librarians, and nongovernmental organizations,<sup>1</sup> the Emmett Environmental Law & Policy Clinic at Harvard Law School (the “Clinic”) respectfully submits these comments on the proposed Department of the Interior (“DOI”) natural resources planning and development document records schedule, control number DAA–0048–2015–0003 (the “Proposed Records Schedule”). The National Archives and Records Administration (“NARA”) requested comments on the Proposed Records Schedule, 83 Fed. Reg. 45,979 (Sept. 11, 2018).<sup>2</sup> We urge NARA to reject the Proposed Records Schedule as to some items and modify it as to other items to ensure compliance with the Federal Records Act (“FRA”)<sup>3</sup> and the ability of the public to exercise its rights of access to federal records under the Freedom of Information Act (“FOIA”).<sup>4</sup>

The signatories, other members of the public, and federal agencies all depend on government records for decision making, oversight, and research. “Records are the foundation of open government, supporting the principles of transparency, participation, and collaboration. Well-managed records can be used to assess the impact of programs, improve business processes, and

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<sup>1</sup> A full list of the signatories is included at the end of these comments.

<sup>2</sup> NARA established a deadline for submitting comments of November 26, 2018. Arian Ravanbakhsh, *Department of Interior Updating Their Records Schedule*, RECORDS EXPRESS: THE BLOG OF THE CHIEF RECORDS OFFICER FOR THE U.S. GOVERNMENT, Oct. 26, 2018, <https://records-express.blogs.archives.gov/2018/10/26/department-of-interior-updating-their-records-schedule>.

<sup>3</sup> 44 U.S.C. § 3301 et seq.

<sup>4</sup> 5 U.S.C. § 552.

share knowledge across the government.”<sup>5</sup> Accordingly, decisions to destroy agency records must be made judiciously, transparently, and with public involvement.<sup>6</sup>

The Proposed Records Schedule covers an enormous number and range of DOI records related to natural resources planning and development. Many of these records have distinct and irreplaceable value for researchers interested in history, natural resources, and federal decision-making. Many of the documents are relevant to public engagement with future DOI rulemakings, actions, and decisions. Some of the documents are relevant to future litigation.

NARA should not approve the Proposed Records Schedule without further careful consideration and culling of the list. The public’s ability to identify specific documents that should be permanently archived has been hampered by the lack of transparency in the process of preparing and approving the Proposed Records Schedule together with significant deficiencies in DOI’s recordkeeping that NARA has previously highlighted, but which DOI has yet to cure. In addition, NARA should re-consider the Proposed Records Schedule in light of opportunities for DOI and NARA to implement electronic retention and accessibility of DOI records.

The overarching principle governing NARA’s decision is its duty under the FRA to preserve records of importance to research and other public interests.<sup>7</sup> The signatories of this letter all rely on information within categories of documents listed for destruction in the Proposed Records Schedule when conducting research for a variety of purposes. Their interests will accordingly be harmed if NARA approves the Proposed Records Schedule as currently written.

## **I. The Public Has Not Been Given a Meaningful Opportunity to Comment on the Proposed Records Schedule or Identify Documents that Should Not Be Destroyed**

NARA acknowledges that the records schedule “process can seem mysterious.”<sup>8</sup> Worse, the mystery of the process affirmatively undermines the ability of interested individuals and organizations to examine the Proposed Records Schedule, assess whether particular records warrant retention, and advise NARA.

The process lacks transparency in other important ways, too. Importantly, NARA does not automatically provide the documents crosswalk<sup>9</sup> to the public. Without that information, the public’s ability to exercise its rights under FOIA is impeded. If the public does not know of an agency’s plans to destroy documents, it cannot request some of them in advance. NARA should develop and announce a clear and standardized procedure for alerting the public and providing

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<sup>5</sup> GOVERNMENT ACCOUNTABILITY OFFICE, INFORMATION MANAGEMENT: ADDITIONAL ACTIONS ARE NEEDED TO MEET REQUIREMENTS OF THE MANAGING GOVERNMENTS RECORDS DIRECTIVE 3 (May 2015).

<sup>6</sup> See 44 U.S.C. § 3303a(a).

<sup>7</sup> See *id.*; 44 U.S.C. § 3303.

<sup>8</sup> Ravanbakhsh, *supra* note 2.

<sup>9</sup> “A crosswalk is typically a table or chart prepared as a separate document” that “lists the series and/or systems that comprise each big bucket schedule item.” *Flexible Scheduling FAQ*, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, <https://www.archives.gov/records-mgmt/faqs/flexible-scheduling.html> (last visited Nov. 24, 2018). “A crosswalk also is critical to allow agency staff and records storage facilities maintaining relevant records to convert current dispositions to big bucket dispositions after approval of the big bucket schedule.” *Id.*

an opportunity for public involvement in the process of evaluating documents proposed by DOI and other agencies for destruction.

Moreover, NARA's Federal Register notice regarding the Proposed Records Schedule failed to include meaningful details and specificity regarding the records proposed for destruction.<sup>10</sup> NARA's own policy requires it to include in the notice a "brief description of the records."<sup>11</sup> Nor did the notice alert the public of its right to ask for a detailed crosswalk. The absence of this key information undermined NARA's statutory obligation to provide a meaningful "opportunity for interested persons to submit comment thereon."<sup>12</sup>

Rather than providing a description of the records in the Federal Register, NARA merely listed the high-level categories of records proposed for destruction by DOI.<sup>13</sup> These categories included broad topics such as "fish and wildlife species management," "energy resource analysis and evaluations," and "land use planning and activities."<sup>14</sup> These categories are too broad and high-level to provide meaningful information to the public. Without sufficient descriptions of the documents proposed for destruction, the public's ability to comment is undermined.

The limited descriptions provided in the document crosswalk also make it difficult to discern how DOI will determine which records warrant retention and when DOI will destroy records. One example of this lack of clarity is the vague and unclear "cutoff" dates that are used to define the length of the retention period for documents classified as "temporary." In many places, these dates are defined with reference to bureau or office records manuals, which may not be publicly available and could be modified at any time without public notice.

Given the critical importance of NARA's role as the gatekeeper in preserving documents of historical and other significance to the American public, we urge NARA to address the concerns raised in our letter and develop a process that will ensure an open, transparent, non-mysterious opportunity for public comment and involvement.<sup>15</sup>

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<sup>10</sup> See 83 Fed. Reg. 45,979, 45,980 (Sept. 11, 2018).

<sup>11</sup> *Records Schedule Review Process*, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, <https://www.archives.gov/records-mgmt/policy/records-schedule-review-process.html> (last visited Nov. 24, 2018).

<sup>12</sup> 44 U.S.C. § 3303a(a).

<sup>13</sup> See 83 Fed. Reg. at 45,980.

<sup>14</sup> *Id.*

<sup>15</sup> Moreover, as explained in a separate letter being submitted today by Government Information Watch and other signatories, the NARA Appraisal, by referencing whether records "document significant actions of Federal officials," is applying the incorrect legal standard, and the DOI implementation of the "big bucket" process problematically removes the authority to make records destruction requests from the subject matter expert bureaus and into the office of a political appointee.

## II. Several Categories of Documents Proposed for Destruction Should, Instead, Be Preserved

The “big-bucket crosswalk”<sup>16</sup> and NARA appraisal memo<sup>17</sup> contain only cursory descriptions that make it difficult for an interested party to evaluate the potential future value of the records. Even so, based on our experience as researchers, we are confident that many of the records proposed for temporary retention and later destruction include records that have significant administrative, legal, research, or other values that warrant permanent preservation.<sup>18</sup> Specifically, we expect that the following categories contain records having values that merit permanent retention:

- Item 0001: Endangered Species Recovery Plan Files and Fish & Wildlife Data. The U.S. Fish & Wildlife Service (“FWS”) must, unless it finds “that such a plan will not promote the conservation of the species,” develop recovery plans for species listed as threatened or endangered under the Endangered Species Act.<sup>19</sup> The Proposed Records Schedule proposes destruction of “preliminary and draft plans” three years after a cutoff in the DOI manual.<sup>20</sup> The NARA appraisal found that these records have “little or no research value” and noted that these records had been previously “approved as temporary.”<sup>21</sup> However, the FWS considers recovery plans as the “road map[s] to recovery” that constitute “*one of the most important tools to ensure sound scientific and logistical decision-making throughout the recovery process.*”<sup>22</sup> It is common for researchers, regulators, litigators, and courts to reference and use these documents decades after development to analyze the status of an endangered or threatened species.<sup>23</sup> Documents demonstrating how the FWS develops these plans contain valuable information that could inform future public comments on draft plans or litigation strategies and that the signatories would use in their work.
- Item 0002: Critical Habitat (No Designation) Case Files and Item 0004: Fish & Wildlife Surveys, Critical Habitat, and Revocation Case Files. The decision whether to designate critical habitat for endangered or threatened species can impact land-use decisions,

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<sup>16</sup> DRS Mission Bucket 2-2 Crosswalk—New Version with Headings and Full description.xlsx, available at <https://records-express.blogs.archives.gov/wp-content/uploads/2018/10/DRS-Mission-Bucket-2-2-Crosswalk-Full-Descriptions.pdf> [hereinafter “Crosswalk”].

<sup>17</sup> Memorandum from Jessica E. Blessman on Department of Interior (DOI) Departmental Records Schedule (DRS) 2.2—Natural Resources Planning and Development, available at [https://records-express.blogs.archives.gov/wp-content/uploads/2018/10/DAA-0048-2015-0003\\_Appraisal\\_Memo-Final.pdf](https://records-express.blogs.archives.gov/wp-content/uploads/2018/10/DAA-0048-2015-0003_Appraisal_Memo-Final.pdf) [hereinafter “NARA Appraisal”].

<sup>18</sup> See 44 U.S.C. § 3303a(a).

<sup>19</sup> See 16 U.S.C. § 1533(f).

<sup>20</sup> NARA Appraisal, *supra* note 17, at 5.

<sup>21</sup> *Id.*

<sup>22</sup> NATIONAL MARINE FISHERIES SERVICE & U.S. FISH & WILDLIFE SERVICE, INTERIM ENDANGERED AND THREATENED SPECIES RECOVERY PLANNING GUIDANCE VERSION 1.3, at 1.1-1 (2010) (emphasis added), available at [https://www.fws.gov/endangered/esa-library/pdf/NMFS-FWS\\_Recovery\\_Planning\\_Guidance.pdf](https://www.fws.gov/endangered/esa-library/pdf/NMFS-FWS_Recovery_Planning_Guidance.pdf).

<sup>23</sup> See, e.g., *Greater Yellowstone Coalition v. Servheen*, 665 F.3d 1015, 1020–23 (9th Cir. 2011) (analyzing 1982 and 1993 grizzly bear recovery plans in challenge to 2007 delisting rule).

resource development, and species recovery. Although some designations of critical habitat may spur immediate litigation,<sup>24</sup> the long-term impact of critical habitat designations may not become apparent until years later. Research into programmatic decisions on the designation of critical habitat would benefit from retention of this information.

- Item 0007: Accounting, Compliance, and Administrative Records: Federal Files. The crosswalk for this category includes “Oil and Gas Exploration and Production Records” and “Mining Claim Case Files.”<sup>25</sup> This type of legacy data can provide information about where it is safe to drill many years after an initial project. The data could be key to identifying the location of potential natural gas or oil leaks from improperly plugged wells or old wells whose location or characteristics may be difficult to confirm without these records. Although the records are slated to be destroyed ten years after the cutoff in the DOI manual, leaks and resulting impacts may occur much later. In addition, the information in this broad category may be critical to records regarding issuance and validity of leases and claims and related environmental analysis that be needed at a later time. For instance, there is current litigation relating to the validity of mining leases in the watersheds around the Boundary Waters in Minnesota; these leases were issued in the 1960s. Similarly, litigation relating to the validity of oil and gas leases in the Badger Two Medicine area in Montana is ongoing, but the leases were issued in the 1980s. The documents in Item 0007 should not be categorically destroyed.
- Item 0021: Non-Historic Water and Power Projects & Facilities. The NARA appraisal of these records indicates that current recordkeeping includes a mix of temporary and permanent files and also notes the legal and fiscal value of these records.<sup>26</sup> Inexplicably, these records are still proposed only for temporary retention. It is also difficult to tell from the description what distinguishes these records from those in “Item 0023: Historic Water and Power Projects, Water Resources and Delivery,” which are proposed for permanent retention.<sup>27</sup> The unclear division between these two categories based on the provided descriptions illustrates the lack of transparency and risk of erroneous document destruction in this process.

In sum, even based on the limited information provided, it is clear that numerous documents within the categories of documents slated for destruction are in fact documents of future historical or research value<sup>28</sup> that should be preserved.

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<sup>24</sup> See, e.g., *Markle Interests, L.L.C. v. United States Fish and Wildlife Service*, 827 F.3d 452 (5th Cir. 2016), cert. granted, 138 S. Ct. 924 (Mem) (2018) (challenging designation of critical habitat for dusky gopher frog); *Alaska Oil and Gas Ass’n v. Jewell*, 815 F.3d 544 (9th Cir. 2016) (upholding designation of critical habitat for polar bear).

<sup>25</sup> See Crosswalk, *supra* note 16, at rows 23 and 24.

<sup>26</sup> NARA Appraisal, *supra* note 17, at 15.

<sup>27</sup> See *id.* at 16–17.

<sup>28</sup> See *Records Schedule Review Process*, *supra* note 11.

### **III. Advances in Digital Recordkeeping and Conversion Enable the Retention of More Records than May Have Been Practical in Years Past**

Advances in digital recordkeeping enable NARA to improve the Proposed Records Schedule relative to prior DOI schedules. Rather than a simple rescheduling or re-categorizing of how records are kept, NARA could work with DOI to develop recordkeeping approaches that meet current digital capabilities.

The Government Accountability Office (“GAO”) has indicated that “[r]ecords are the foundation of open government, supporting the principles of transparency, participation, and collaboration. Well-managed records can be used to assess the impact of programs, improve business processes, and share knowledge across the government.”<sup>29</sup> A GAO report from 2015 indicated that DOI had developed plans to take actions to meet directives on managing electronic records and transferring permanent records to NARA.<sup>30</sup> These tasks included identifying unscheduled records.<sup>31</sup> DOI has failed to follow through on these important plans.

The recent NARA strategic plan includes goals for digital record storage and access. For instance, the plan calls for digitizing 500 million pages of records and making them available online by fiscal year 2024.<sup>32</sup> The strategic plan also directs NARA to change how it interfaces with agencies. By the end of 2022, NARA will “to the fullest extent possible, no longer accept transfers of permanent or temporary records in analog formats and will accept records only in electronic format and with appropriate metadata.”<sup>33</sup> The Proposed Records Schedule should be modified to ensure compliance with this NARA goal.

### **IV. The Proposed Records Schedule Should be Rejected Because it Reflects DOI’s Failure to Address Key Deficiencies in DOI Recordkeeping**

The Proposed Records Schedule amplifies existing problems in the DOI recordkeeping process, some of which are the result of how decentralized the agency is—including the many offices and employees it has—and some of which are the result of recent instructions by DOI management to obstruct public access to information. DOI records should not be destroyed before DOI and NARA have addressed these key issues. Moreover, DOI has yet to address recordkeeping issues already identified by NARA.

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<sup>29</sup> GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 5, at 3.

<sup>30</sup> *See id.* at 10.

<sup>31</sup> *See id.* at 14.

<sup>32</sup> *See* NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, 2018–2022 STRATEGIC PLAN, at 6 (2018), available at <https://www.archives.gov/files/about/plans-reports/strategic-plan/2018/strategic-plan-2018-2022.pdf>.

<sup>33</sup> *Id.* at 12.

A. The Proposed Records Schedule Does Not Address DOI Recordkeeping Issues Previously Identified by NARA

NARA completed a records management program inspection of DOI in 2017.<sup>34</sup> NARA found that the DOI records management program “lacks a formal, approved, comprehensive strategic plan” and that the program “does not conduct regular, comprehensive records management evaluations.”<sup>35</sup> Importantly, NARA found that “delays in updating and issuing the DOI RMP’s Directive [Departmental Manual (DM)] 380 are a risk to effective, enterprise electronic records management.”<sup>36</sup> This DOI manual “includes approved overarching policies on records management topics from records schedules to vital records for all of DOI.”<sup>37</sup> In 2017, NARA described “updates in the areas of records losses and the political exit process” as a continuing process.<sup>38</sup> Based on these findings, NARA recommended that DOI “should develop and implement a Departmental strategic plan in order to strengthen the records management program.”<sup>39</sup> NARA also recommended that DOI “and the bureau and office [record management] programs must establish comprehensive and regular [record management] evaluations to ensure all DOI records are managed in accordance with 36 CFR Chapter XII, Subchapter B.”<sup>40</sup> DOI has failed to implement these recommendations.

Significantly, NARA found that “delays in updating and issuing the DOI RMP’s Directive DM 380 are a risk to effective, enterprise electronic records management.” NARA recommended the “DOI RMP must update and reissue DM 380 to include guidance on managing electronic records and information, including email. (36 CFR 1220.34, 36 CFR 1236.22).”<sup>41</sup> DOI’s website indicates that the most recent publicly available update to DM 380 was in 1998.<sup>42</sup> The section on records disposition and records schedule, DM 384, was last publicly updated in 1989.<sup>43</sup> DOI’s website does not have publicly available versions of DM 384 chapters on “disposition” or “records disposition schedules.”<sup>44</sup>

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<sup>34</sup> NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, DEPARTMENT OF THE INTERIOR RECORDS MANAGEMENT PROGRAM: RECORDS MANAGEMENT INSPECTION REPORT, Jan. 11, 2017, *available at* <https://www.archives.gov/files/records-mgmt/resources/doi-2016-inspection.pdf>.

<sup>35</sup> *Id.* at iii.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 8.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 10.

<sup>40</sup> *Id.* at 15.

<sup>41</sup> *Id.*

<sup>42</sup> *See Records Management Policies and Guidance*, DEP’T OF THE INTERIOR, <https://www.doi.gov/ocio/policy-mgmt-support/information-and-records-management/records-management-policies-guidance> (last visited Nov. 24, 2018).

<sup>43</sup> *See id.*

<sup>44</sup> *See Electronic Library of the Interior Policies*, DEP’T OF THE INTERIOR, <https://www.doi.gov/elips/browse> (last visited Nov. 24, 2018).



DOI's continued failure to update DM 380 and other sections of the DOI manual on recordkeeping is of particular concern because the Proposed Records Schedule relies so extensively on the DOI manual. The Proposed Records Schedule regularly uses the phrase "[c]ut off as instructed in bureau/office records manual" to describe proposed records retention methods.<sup>45</sup> The proposed system is only as good as the underlying records manual, which NARA has already found to be out-of-date and insufficient at the departmental level.<sup>46</sup> Furthermore, because key sections of the DOI manual on records are not publicly available, it is impossible to determine the sufficiency of these provisions.

NARA should reject the Proposed Records Schedule because DOI's records management program has failed to address NARA's previous recommendations to improve the agency's recordkeeping and because DOI has failed to make key departmental manual sections public.

B. The Proposed Records Schedule Must Be Evaluated in the Context of Efforts by DOI to Obstruct Public Access to Information

In addition to the Proposed Records Schedule, DOI has recently undertaken efforts to withhold information from the public and limit transparency in its decision-making. For example, on September 8, 2018, DOI issued internal instructions to withhold information from the public in response to FOIA requests about Endangered Species Act decisions and other actions under laws that the FWS administers.<sup>47</sup> The instructions state that in "past FOIA responses, FWS has often released most, if not all, documents related to its ESA final decisions without undertaking a discerning review for deliberative materials."<sup>48</sup> That approach has been discouraged since "late 2017-early 2018" when the Department of Justice "has also required that we prepare more limited [administrative records] for non-programmatic ESA cases."<sup>49</sup> These more limited

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<sup>45</sup> See, e.g., Crosswalk, *supra* note 16, at rows 3–7.

<sup>46</sup> Individual DOI agencies or bureaus also have their own records management manuals. See, e.g., DEP'T OF THE INTERIOR, FISH & WILDLIFE SERV., COMBINED USFWS DISPOSITION MANUAL (March 2006), <https://www.fws.gov/policy/a1283fw2.html> (last visited Nov. 25, 2018); DEP'T OF THE INTERIOR, OFFICE OF SURFACE MINING RECLAMATION & ENFORCEMENT, APPENDIX A: RECORDS MANAGEMENT MANUAL (Aug. 2008), available at <https://www.osmre.gov/lrg/docs/directive942manual.pdf>. It is not clear if the Crosswalk refers to these manuals or the department-wide DOI manual. Agency manuals often refer back to the departmental manual, see, e.g., DEP'T OF THE INTERIOR, U.S. GEOLOGICAL SURVEY, U.S. GEOLOGICAL SURVEY MANUAL, 431.1 - RECORDS MANAGEMENT PROGRAM, <https://www2.usgs.gov/usgs-manual/410/431-1.html> (last visited Nov. 25, 2018) (referencing DM 380, 382, and 384), and contain broken links that prohibit the public from reviewing important information in the agency manuals, see *id.* (broken link to "[32-1-S1](#) - USGS General Records Disposition Schedule and the Discipline-specific Records Disposition Schedules"). These agency-specific manuals suffer from the many of the same deficiencies NARA identified in the department-wide DOI manual. The scattered locations, uncertainty whether online files are up-to-date, and variable quality of these manuals also amplify the difficulty for interested members of the public to analyze the Proposed Records Schedule.

<sup>47</sup> DEPARTMENT OF THE INTERIOR, GUIDANCE FOR APPLYING DELIBERATIVE PROCESS PRIVILEGE IN PROCESSING ECOLOGICAL SERVICES FOIA REQUESTS: COORDINATION WITH THE OCTOBER 20, 2017, DOJ MEMORANDUM ON ADMINISTRATIVE RECORDS, Sept. 8, 2018 [hereinafter FOIA Guidance]. *The Guardian* obtained and published a copy of this internal document. See Jimmy Tobias, *Revealed: US Moves to Keep Endangered Species Discussions Secret*, GUARDIAN, Oct. 18, 2018, <https://www.theguardian.com/us-news/2018/oct/18/trump-administration-us-endangered-species-discussions-secret>.

<sup>48</sup> See FOIA Guidance, *supra* note 47, at 2.

<sup>49</sup> *Id.* at 2.



administrative records have been apparently produced in recent high-profile litigation over decisions about the listing status of species and endangered species consultations on major infrastructure projects such as pipelines.<sup>50</sup>

To describe the new approach, the instructions list “[c]ategories of information and documents that should be considered for withholding in full,” including “Draft versions of policies and rules,” “Email content that reflects substantive suggestions and interpretations that were never adopted, or tentative analysis and discussion of options,” and “PowerPoints/webinars not shared with audiences external to the federal government.”<sup>51</sup>

In addition, the DOI’s Bureau of Land Management (“BLM”), has proposed limits to the number of times that a person or organization could submit FOIA requests to the agency.<sup>52</sup> The BLM also proposed other actions, such as “more stringent justification for fee waivers,” that could deter members of the public or the media from filing FOIA requests.<sup>53</sup> Limiting these types of FOIA requests counters FOIA’s purpose and limits the public transparency of DOI’s actions. NARA should evaluate the Proposed Records Schedule in light of these DOI efforts to limit transparency. Information DOI now seeks to destroy is likely to be relevant to research, litigation, and challenges to DOI action; the public is entitled to access to such information.

Previous issues with records retention from departing DOI political appointees magnifies concerns about transparency. NARA recently identified unauthorized destruction of records by outgoing DOI political appointees.<sup>54</sup> The lost DOI records included calendar, mobile device data, and Google drive information from four important political appointees.<sup>55</sup> These devices and media, including Google drive, are heavily relied on by DOI staff. DOI identified several remedial actions to take and NARA made further recommendations that “DOI establish onboarding training for all employees, including political appointees, identifying recordkeeping requirements and responsibilities appropriate to their role (NARA Bulletin 2017-01), and addressing the use of DOI devices. Further, DOI should regularly audit staff compliance with records management policies and procedures (36 CFR 1220.34(j)).”<sup>56</sup>

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<sup>50</sup> *See id.*

<sup>51</sup> *Id.* at 5.

<sup>52</sup> *See* Juliet Eilpern & Michael Laris, *Trump Administration Plan Would Roll Back Environmental Reviews Covering use of Public Lands*, WASH. POST, Feb. 8, 2018, [https://www.washingtonpost.com/politics/trump-administration-plan-would-roll-back-environmental-reviews-covering-use-of-public-lands/2018/02/08/c5a2b322-0d07-11e8-95a5-c396801049ef\\_story.html](https://www.washingtonpost.com/politics/trump-administration-plan-would-roll-back-environmental-reviews-covering-use-of-public-lands/2018/02/08/c5a2b322-0d07-11e8-95a5-c396801049ef_story.html).

<sup>53</sup> *See* JPat Brown, *Bureau of Land Management Looks to Limit the Number of FOIA Requests Organizations Can File with the Agency*, MUCKROCK, Feb. 13, 2018, <https://www.muckrock.com/news/archives/2018/feb/13/bureau-of-land-management-foia-rollback/>.

<sup>54</sup> *See* Letter from Laurence Brewer, Chief Records Officer for the U.S. Government, to Kenneth S. Taylor, Associate Chief Information Officer, U.S. Fish and Wildlife Services (July 17, 2017), *available at* <https://www.archives.gov/files/records-mgmt/resources/ud-2017-0024-doi-fws-open-close-letter.pdf>.

<sup>55</sup> *See* Letter from Laurence Brewer, Chief Records Officer for the U.S. Government, to Kenneth S. Taylor, Associate Chief Information Officer, U.S. Fish and Wildlife Services (Jan. 4, 2018), *available at* <https://www.archives.gov/files/records-mgmt/resources/ud-2017-0024-doi-fws-open-close-letter.pdf>.

<sup>56</sup> *Id.*

In light of the ongoing efforts being taken by the current DOI leadership to restrict transparency, the potential for unauthorized destruction of records is a heightened concern. NARA should actively work with DOI to prevent future loss of records such as these, and NARA should analyze the appropriateness of the Proposed Records Schedule within this context.

C. DOI's Decentralized Recordkeeping Method Amplifies the Need for Robust NARA Recordkeeping

The DOI is a highly decentralized federal department with over 2,400 locations.<sup>57</sup> This decentralization makes recordkeeping a particularly difficult task. As researchers and students in the Clinic know from firsthand experience, DOI is not readily able to find or access historic documents that are often dispersed in offices around the country and not available digitally. These factors underscore the importance of NARA establishing a sufficient recordkeeping program for DOI files.

Certain peculiar characteristics of a decentralized natural resources agency illustrate this point. For instance, in 2016 a fire destroyed the BLM field office in Challis, Idaho. This fire caused the unauthorized destruction of DOI records.<sup>58</sup> Maintaining appropriate digital storage of records can minimize such losses. The Proposed Records Schedule compounds the loss of records at DOI by limiting long-term retention of records.

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In summary, DOI's Proposed Records Schedule does not adequately protect records that will be valuable for future administrative, legal, research, or other purposes. The Proposed Records Schedule relies on DOI processes that NARA has already found deficient. Furthermore, NARA should analyze this proposal in the context of ongoing DOI efforts to limit public access to information and transparency. We urge NARA to reject or modify the Proposed Records Schedule in light of these concerns.

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<sup>57</sup> *About our Employees*, DEPARTMENT OF THE INTERIOR, <https://www.doi.gov/employees/about> (last visited Nov. 24, 2018).

<sup>58</sup> See Letter from Laurence Brewer, Chief Records Officer for the U.S. Government, to Corey J. Wells, Department of the Interior (Feb. 21, 2017), available at <https://www.archives.gov/files/records-mgmt/resources/ud-2017-0016-doi-blm-open-close-letter.pdf>.

Thank you for your attention to these comments. We respectfully request that you respond to this letter; we look forward to your response.

BY:



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On behalf of the Emmett Environmental Law & Policy Clinic and the following signatories:

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