



P.O. Box 1808, McCall, ID 83638  
[www.savethesouthforksalmon.com](http://www.savethesouthforksalmon.com)

May 28, 2020

Ms. Kellie Brown  
Administrative Assistant  
Payette National Forest  
500 North Mission Street  
McCall, ID 83638  
[kellie.brown@usda.gov](mailto:kellie.brown@usda.gov)

Kevin Knesek  
Deputy Forest Supervisor  
Payette National Forest  
1249 S. Vinnell Way, Suite 200  
Boise, ID 83709  
[kevin.s.knesek@usda.gov](mailto:kevin.s.knesek@usda.gov)

*BY ELECTRONIC MAIL AND U.S. POSTAL SERVICE - Please Confirm Receipt*

Re: Freedom of Information Act Request

Dear Ms. Brown and Mr. Knesek:

Save the South Fork Salmon Inc. submitted a FOIA request dated March 6, 2020 (2020-FS-R4-03343-F), requesting records pertaining to amendments proposed for the Payette National Forest (NF) Land and Resource Management Plan (Forest Plan) for the Stibnite Gold Project. We have to date not yet received the U.S. Forest Service's (USFS) response.

This letter requests similar records to the March 6, 2020 request, but for the Boise NF, and with more specific language, and to include the Payette NF with that specific language. The response I am awaiting may already include the records I now seek more specifically for the Payette NF, but if there are additional records under the umbrella of this more specific language for the Payette NF, please include them in your response to this request.

On behalf of Save the South Fork Salmon, Inc., I hereby request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the following records:

**Any and all records, electronic or print, of, concerning, or related to amendments to the Boise National Forest Forest Plan and the Payette National Forest Plan that will or may be necessitated by permitting, construction, or operation of the proposed Stibnite Gold Project, including all correspondence, emails, and documents related to the proposed Forest Plan amendments that have been shared with Midas Gold Corp. or Midas Gold Idaho, and all correspondence, emails, and documents related to the proposed Forest Plan amendments that originated with the Forest Service, the Regional Office, the Washington Office of the Forest Service, or Midas Gold/Midas Gold Idaho, including lists and disposition of amendments considered, Forest Plan consistency tables, proposed language of any and all amendments, notice of intent to amend the Forest Plan, analyses considered under 36 CFR 219.8 - 219.11 requirements, and draft content for the draft EIS.**

This request is not meant to be exclusive of any other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

FOIA mandates that an agency release any portions of a document that are not exempt. In the event that access to any of the requested records is denied, FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. I therefore request that I be provided with all non-exempt portions which are reasonably segregable. I further request that you describe the deleted or redacted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. The USFS's written justification might also help to avoid unnecessary litigation. SSFS, of course, reserves its right to appeal the withholding or deletion of any information and expect that you will list the office and address where such an appeal can be sent.

In light of the ongoing and contentious public policy controversy regarding the Stibnite Gold Project, I note that time is of the essence in this matter. There is a great need for prompt disclosure so that the released information may more adequately inform the public debate.

I also request that you waive any applicable fees since, as detailed below, disclosure meets the statutory standard for waiver of fees in that it is clearly "in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. § 552(a)(4)(A).

The Ninth Circuit has held that if a non-profit organization has "identified why they wanted the [documents], what they intend to do with [them], to whom they planned on distributing [them], and the [relevant] expertise of their membership," then a fee waiver is appropriate. *Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997). As discussed below, SSFS believes that it meets the requirements for a fee waiver.

First, disclosure of the requested documents will assist the public in learning how the USFS is conducting its review during its decision-making process to determine whether the standards and guidelines, and goals and directives of the Boise and Payette National Forest Plans have been met, or whether specific amendments are required to allow particular activities for the Stibnite Gold Project to occur. *See* 7 C.F.R. § 1.12(p)(3)(ii) ("Disclosure of the requested records must be meaningfully informative about government operations or activities to be 'likely to contribute' to an increased public understanding of those operations or activities."). The USFS is the lead agency responsible for conducting, and ultimately approving, the Stibnite Gold Project environmental analysis, and ensuring that decision and underlying analysis complies with the requirements of the National Environmental Policy Act (NEPA) and other applicable laws, including the National Forest Management Act and other subsequent USFS rules and guidance.

The proposed Stibnite Gold Project covers not only private land holdings within the State of Idaho, but also federal lands located in and managed by the Payette and Boise National Forests. The Payette and Boise Forest Plans include not only specific management areas, but also Forest-wide Management Directives. Some, but not all, of these management areas will be affected by direct, indirect, and/or cumulative actions stemming from proposed mining activities. Many, if not all, of these activities will require review of their compatibility with management directives as outlined in the respective Forest Plans.

The proposed Stibnite Gold Project is a major Federal action with significant public interest, competing opinions, substantial political involvement, and a complex environmental analysis. As stated above, the USFS's Project Notice of Intent to Prepare an Environmental Impact Statement for the Stibnite Gold Project states that forest plan amendments will be considered during the Project approval process. Forest Plan amendments are no trivial matter as decisions for the proposed Stibnite Gold Project will affect the Boise and Payette National Forests' ability to meet its management directives. The irreversible character of decisions to be made will have far reaching impacts—whether they be beneficial or adverse—on the environment and the socioeconomics of the communities within Valley County and the greater West Central

Mountains Region of central Idaho. These impacts extend to a much broader segment of the general public whose appreciation of these forests, the Stibnite area, and the Salmon River, its tributaries, and surrounding ecosystem is significant.

The South Fork Salmon River watershed is critical habitat for Endangered Species Act-listed anadromous fish and continues to support wild populations of these fish. It is a major economic driver for communities in Valley County that rely on a recreation-based economy which includes activities such as sportfishing, hunting, hiking, mountain biking, motorcycling, OHV, backcountry skiing, kayaking, canoeing, and rafting. Importantly, the South Fork of the Salmon watershed within the Payette and Boise National Forests lies within the Nez Perce Tribe's treaty reserved lands and is of immense cultural importance to them. A project the size of the Stibnite Gold Project could drastically impact some of the nation's greatest forests and rivers and could have significant long-term environmental and economic impacts to Valley County, Idaho and surrounding areas.

The requested documents will show whether the proposed amendments are consistent with the 2012 Planning Rule, in particular that project-specific amendments should not result in a lessening of any substantive requirements for protecting Forest resources. They will show how proposed amendments may adversely affect the environment. And, among other things, the documents will also reveal whether the USFS's actions were improperly influenced by the project proponent, and contribute to the public's understanding of government meetings with the project proponent who has a clear interest at stake. These matters are indeed in the public interest. They will contribute significantly to its understanding of how the USFS has conducted its review and how the USFS intends to comply with relevant laws. This meets the requirements for a fee waiver. *See id.*

Second, SSFS intends to review the information contained in the requested documents and summarize the information into a more readily understood format for distribution to the public. See 7 C.F.R. 1 § 1.12(p)(3)(iii). SSFS has the relevant expertise of the members to be able to understand and summarize any information gleaned from the documents for dissemination to the general public. Within our organization there are at least three Ph.D.s, two people with graduate degrees from Oxford University, a retired geologist and retired fish biologist, a former attorney for the U.S. Department of Justice, an attorney practicing environmental law, two retired USFS District Rangers, and a retired U.S. Forest Supervisor.

SSFS has the ability to disseminate this information to the general public. SSFS is a non-profit corporation in the State of Idaho, with over 400 members and supporters, whose mission is to protect and preserve the ecological, cultural, and economic resources of the South Fork of the Salmon River watershed and the well-being of the people that depend on them for generations to come. SSFS maintains a public website ([www.savethesouthforksalmon.com](http://www.savethesouthforksalmon.com)), where it will post its summary of the information contained in the documents, and communicates with its

members and supporters on a regular basis through email updates. SSFS has also given presentations to its members, the general public, and members of other conservation organizations, and has organized and participated in several public events. SSFS members, supporters, and directors have testified at public hearings concerning the Community Agreement proposed by Midas Gold Corp. in 2018, using information acquired through FOIA requests. These hearings resulted in the City of McCall taking a more deliberate decision-making process concerning a partnership with a private corporation, and Midas Gold Corp. withdrawing the offer to sign the agreement from Valley County. SSFS has also organized multiple events in McCall, including Rally for the South Fork, held September 1, 2018, Gathering of Peoples, held October 12, 2019, several informational movie and discussion nights focusing on the impacts of mining on fish and on communities, and other public meetings and events aimed at increasing public awareness of and interest in the proposed Stibnite Gold Project. SSFS has organized or participated in events with other conservation groups in McCall and Boise, and is planning future events for interested members of the public to learn how to effectively participate in the NEPA process and comment on the Stibnite Gold Project draft EIS, which includes addressing amendments and/or exemptions to the Payette and Boise Forest Plans. SSFS can send documentation of its participation in the community upon request.

For SSFS's purpose to protect and preserve the well-being of people that depend on the South Fork of the Salmon watershed to be effectuated, the information in the requested documents will be shared at NEPA comment workshops that will assist the public in their analysis and substantive comment writing for the anticipated Stibnite Gold Project draft EIS. It will also be disseminated to the SSFS email distribution list of citizens and organizations that have been collected by SSFS who have shown interest in the Stibnite Gold Project, and many who live and work in the counties and towns that will be significantly affected by the proposed Project.

SSFS is also able to disseminate information through the local and regional newspaper media. SSFS members and supporters have written several opinion pieces or viewpoints discussing several concerns regarding the Stibnite Gold Project, and have provided the local news media with documents and information that support factual stories regarding the approval process for the Project.

As a matter of significant public interest in Valley County, I plan to make these documents available at the McCall Public Library. This is a facility normally open to the general public; many people will thereby have access to the information contained in the materials which are the subject of this request. The USFS should recognize the vital contributions that libraries and depositories of public records make to the public's understanding of the operations of government. "All federal agencies should implement the intended favorable treatment of these organizations under FOIA." See 135 Cong. Rec. S8466 (daily ed. July 20, 1989) (debate

colloquy, Senator Leahy responding to Senator Kerry's questions about State Dept. policy of denying fee waivers to libraries).

SSFS's intended use of the requested documents and its ability to disseminate this information have been held by the courts to be sufficient to support a fee waiver. See *Western Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1041 (D. Idaho 2004); *Or. Nat. Desert Ass'n v. U.S. Dep't of the Interior*, 24 F.Supp.2d 1088, 1095 (D. Or. 1998); *Eagle v. U.S. Dep't of Commerce*, No. C0120591, 2003 WL 5 21402534 at \*3, \*5 (N.D. Cal. Apr. 28, 2003). SSFS has thus demonstrated that a fee waiver is warranted in this case.

Finally, as discussed below, the nature of the public contribution will be significant. See 7 C.F.R. 1.12(p)(3)(iv). The disclosure of this information would significantly enhance the public's understanding of how the USFS is carrying out its duties as set forth in 40 C.F.R. § 1500-1508, 36 CFR § 219.8-219.11, 16 U.S.C. § 1600-14, 16 U.S.C. § 1531-1544, and 30 U.S.C. § 21-54. According to recent media reports, documents obtained through FOIA by SSFS and its partners, and a request for information from Forest Service Chief Christiansen by six Congressional members, indicate the Stibnite Gold Project NEPA analysis is significant, controversial, and political. SSFS has asked the USFS numerous times to restore the public's confidence in this NEPA analysis through letters to local Forest Supervisors, Regional Foresters, and the Forest Service Chief. Forest Plan amendments and/or exemptions to accommodate the SGP are an important component to the permitting and approval process. How the USFS carries out this process, particularly with an assurance that it is not being unduly influenced by a project proponent, will significantly enhance the public's understanding.

SSFS's current understanding is that the requested documents are not publicly available. The Stibnite Gold Project is of immense interest to the public and will have impacts, whether beneficial or adverse, that affect the local environment and the socioeconomic and general well-being of people who not only live in the West Central Mountains region, but also people who come to visit and partake in activities in the South Fork of the Salmon watershed. Congress has indeed found that "the public interest is served by the Forest Service." 16 U.S.C. § 1600(2). Forest Plan Management Directives provide a road map that guides the USFS's land management decisions. See 16 U.S.C. § 1604. These decisions—particularly in areas with large proportions of USFS land proximal to communities—have direct, indirect, and cumulative effects on these communities who rely on Forest resources for a variety of environmental, social, cultural, and economic reasons. Thus, this information will contribute to the citizens' of Valley County, Idaho and surrounding cities, towns, counties, states, and Tribal communities understanding of the effects that the Stibnite Gold Project could have on their health and well-being. This information will contribute to the public's understanding on whether decisions to alter management directives unduly impact or subvert management of Forest resources. In essence, it will contribute to the understanding of whether the USFS is

compiling and reviewing all relevant data and making appropriate decisions with regards to any plan amendments, exemptions, or both to permit the Stibnite Gold Project. Considering the immense public interest in this project and how the local Forest is managed, this information will significantly enhance the public's understanding of those governmental activities.

As discussed above, SSFS has completely met the requirements for a fee waiver. I have shown that disclosure of the requested information will contribute to the public's understanding of the operations and that a waiver of fees will benefit public interest. These fee waivers are essential to groups, such as SSFS, that "rely . . . on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities - publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions." *See Better Gov't Ass'n v. Dep't of State*, 780 F.2d at 94 (D.C. Cir. 1986).

Access to the requested records should be granted within twenty (20) working days from the date of your receipt. Failure to respond in a timely manner shall be viewed as a denial of this request and SSFS may immediately file an administrative appeal. Thanking you in advance for your prompt reply.

Sincerely,



Julie Thrower

Secretary, Board of Directors

Save the South Fork Salmon, Inc.

savethesouthforksalmon@gmail.com

(208) 271-6503

CC: Judy Rose, R4 FOIA Coordinator

Joseph Starry, WO FOIA Coordinator

Linda Jackson, Payette Forest Supervisor

Tawnya Brummett, Boise Forest Supervisor