

Comments re U.S. Department of the Interior Proposed Schedule DAA-0048-2015-0003

November 26, 2018

Margaret Hawkins, Director, Records Appraisal and Agency Assistance (ACRA) National Archives and Records Administration 8601 Adelphi Road College Park, MD 20740-6001 SENT via request.schedule@nara.gov

Dear Ms. Hawkins, We, the undersigned organizations and individuals committed to federal government openness and accountability, urge the National Archives and Records Administration (NARA) to reconsider the proposed Department of Interior records retention schedule (DAA-0048-2015- 0003) and NARA's Appraisal thereof for the reasons outlined below and in the attached document.

DAA-0048-2015-0003 consolidates a large number of existing record schedules into a single document. We understand that this change is part of larger effort, initiated and led by NARA, to move agencies to scheduling their records in "big buckets," or large aggregation, schedules. These consist of items covering multiple related series of records and/or records in electronic systems. A traditional schedule, on the other hand, consists of more granular items, typically covering records in one series or electronic system. While we are in accord with NARA that "this process, in and of itself, does not result in imminent destruction or loss of access to historically valuable records," its implementation can nevertheless raise legitimate concerns about the scheduling (and the removal) of some records series within the new system.

The implementation of the 'big bucket' process in this instance is spelled out by the Department of Interior in its Request (DAA-0048-2015-0003):

Methodology: ... This change to a departmental schedule, from individual bureau schedules, moves disposition authority for Record Groups 022 (FWS), 049 (BLM), 057 (USGS), 075 (BIA), 079 (NPS), 115 (BOR), 471 (OSMRE), 473 (BSEE), and 589 (BOEMRE) to 048.

This change takes authority to make records destruction requests out of the hands of these bureaus/offices -- the Bureau of Land Management, National Park Service, US Fish & Wildlife

Service, US Geological Survey, Bureau of Safety and Environmental Enforcement, and Bureau of Indian Affairs -- and puts that authority solely in the office of the Secretary of Interior (record group 048).

It is of great concern that this authority would be removed from the bureaus where the subject area specialists (including records specialists) reside and placed in the Office of a political appointee.

The Department of the Interior (DOI) has proposed a timeline by which to destroy an unspecified number of files spanning 200 records and the last 50 years, including those related to the management of natural resources—energy and minerals, fishing and wildlife, and national parks—and Native American affairs.<sup>1</sup>

Together, these agencies run the lion's share of public land use and Endangered Species Act programs in the U.S., including:

- Natural resource planning and development case files
- Operational mission records related to fish and wildlife species management
- Critical habitat designations
- Assessment reports and surveys
- Federal onshore and offshore production audits and inspections
- Energy lease applications and issued leases
- Energy resource analysis and evaluations
- Land use planning, activities, and permit records
- Land title, operations, and realty, and land status records
- Reciprocal use and license agreements
- Water analysis and water use permitting
- Non-historic water and power projects and facility records
- Water quality records.

In this regard, we point NARA to the submitted comments of the Emmett Environmental Law & Policy Clinic at Harvard Law School and signatories, in particular to *Several Categories of Documents Proposed for Destruction Should, Instead, Be Preserved* which notes categories of records that are highly likely to have significant administrative, legal, research, or other values that warrant permanent preservation, and *The Proposed Records Schedule Does Not Address DOI Recordkeeping Issues Previously Identified by NARA*, and also to the submitted comments and online communication

Dr. Megan Black.

As the vast majority of the Request has to do with records already designated Temporary, we want to note that such interim documents are the best record of the processes through which

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government policies have been reached, and they are the best record of (a) historical processes of great interest to historians, (b) policies and practices of great interest to affected communities, and (c) influence on policy-making by interest groups, which in the past has proven to be of substantial import to legal proceedings involving the government. Thus, we are deeply concerned by the frequent statement in NARA's Appraisal Memo that the records under review "do not document significant actions of federal officials." As NARA is aware, the legal definition of Records (44 U.S.C. Chapter 33 § 3301) is

RECORDS DEFINED.— (1) IN GENERAL.—As used in this chapter, the term "records"— (A) includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.

While the "actions of federal officials" are part of the "transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government," they certainly do not constitute the entirety of activities of the United States Government.

It is disturbing if this is now the standard NARA assessment of the scope of its and the agencies' responsibilities for the preservation of records, as it is not compliant with law. For the purposes of this Comment, we strongly urge NARA to reconsider the disposition timelines for those record series in which they have made this assessment. In particular:

Item 0001: Endangered Species Recovery Plan Files and Fish & Wildlife Data (incorporates 5 items from DOI crosswalk); Item 0002: Critical Habitat (No Designation) Case Files; Item 0003: Fish & Wildlife Coordination Act Reports and State Tagger Program Files (incorporates 4 items); Item 0004: Fish & Wildlife Surveys, Critical Habitat Designation, and Revocation Case Files (incorporates 3 items); Item 0005: Species Management Files; Item 0007: Accounting, Compliance, and Administration Records: Federal Files (incorporates 56 items) and Item 0008: Accounting, Compliance, and Administration Records: Financial Reports/ Summaries; Item 0009: Energy Application Case Files;

Item 0010: Resource Lease Case Files and Power Management Agreements (incorporates 62 items); Item 0011: Resource Analysis and Evaluation (incorporates 46 items); Item 0020: Water Analysis and Water Use & Permitting (incorporates 8 items); Item 0021: Non-Historic Water and Power Projects & Facilities (incorporates 5 items).

As you are aware, there is a high degree of interest in these records (and this Request). We are, therefore, especially troubled by the appraisers' use of the phrases "of interest" and "of value" to "NARA researchers." Indeed, in relation to Indian Trust fiduciary accounting (IFTA) records that had been previously authorized for permanent retention during the Cobell, et al. v. Salazar, et al., litigation (1996-2009), NARA states that "Now that this litigation has been settled, DOI and NARA are in agreement that, while IFTA records possess long-term legal value, they are not of interest to NARA researchers." (Emphasis added) It certainly seems that large numbers of researchers, including—but not limited to—legal, scientific, financial, environmental, are excluded from NARA's sense of its responsibility. This limitation is nowhere in the basic laws and authorities of NARA. (See also endnote 1)

Moreover, we note that "temporary" files—deemed by agency appraisers to be of "little to no research value" (see below) that do "not document significant actions of Federal officials"—are subject to increasingly narrow time horizons. Many temporary files have recommended holding periods from 0 to 5 years, while others earned a more robust and typical life span of 40 to 75 years. The former in particular would be held for arguably too narrow a time frame for researchers to meaningfully engage them.

We therefore urge NARA to reconsider its disposal judgments in all the instances in which the phrases noted above occur and, most particularly in the case of the IFTA records.

In the same discussion of the IFTA records, NARA made an additional statement that causes us concern:

In creating the DRS, the Department and bureau representatives have made a good faith effort to reschedule series (or portions of series) as temporary, where the records were found to lack continuing value as archival records. ...During the appraisal, bureaus also notified NARA of series discovered to be obsolete and these have been removed from the crosswalk. (Emphasis added)

In light of all the serious concerns noted above – and the assessments made in the referenced document by outside experts on the bureaus and the activities conducted by them– we request that the Department of Interior be directed to submit a new Request with "obsolete" series restored and that a new appraisal be undertaken by NARA.

Finally, and somewhat separately, we strongly urge NARA to undertake a vigorous and public outreach to the wide variety of stakeholders in the preservation of the records of “the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.” This will entail and necessitate going well beyond the agencies and “NARA researchers.” The process of identifying what records will be preserved and for what lengths of time (and in what formats) is excessively opaque and must be made apparent, all related documents must be made publicly available without a FOIA request, and the public must be given adequate time to process the information and to comment.

Sincerely,

Organizations Government Information Watch Demand Progress Free Government Information Defending Rights & Dissent Public Citizen FracTracker Alliance National Coalition for History Association of Research Libraries Rural Coalition Society of Professional Journalists Project On Government Oversight (POGO) Inter-university Consortium for Political and Social Research (ICPSR)

Individuals (affiliation included only for identification purposes): Alexander B. Howard Johanna Davidson Bleckman, ICPSR Margaret Levenstein, ICPSR Russ Kick, AltGov2 [altgov2.org]

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Dr. Megan Black, Appetite for Destruction? Making Sense of the Interior Department’s Request to Destroy Files, Cambridge Core blog, 5 November 2018, <http://blog.journals.cambridge.org/2018/11/05/appetite-for-destruction-making-sense-of-the-interior-departments-request-to-destroy-files/> ...the request promises to obscure from view departmental activities related to Native American land and assets. The request includes files from the landmark class-action lawsuit Cobell, et al. v. Salazar (2009), in which Native Americans charged DOI and the Department of Treasury with mismanaging Indian trust funds, securing a settlement of an astonishing \$3.4 billion. As NARA and DOI officials examined these files, they agreed that while they “possess long term legal value, they are not of interest to NARA researchers.” Yet it is also unclear when cross-referencing the memo with the schedule which Cobell files precisely are slated to go.

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Ibid. The DOI request reveals a hierarchy—however unintentional—that devalues regulatory activities and prioritizes activities spurring economic development. Many files related to endangered species, offshore inspections, wildlife refuges, and drinking water are slated to have fleeting shelf-lives compared to the longer-lasting records featuring economic surveys. Such judgments, to give one example, would impact the way the 2010 BP Deepwater Horizon oil spill could be analyzed: series that consolidate reports and retrospectives in the aftermath of oil catastrophes will be permanent while those providing real-time accounts of leasing, drilling, and inspection processes preceding it would be available less than 10 years. Such priorities could result in the loss of important data tied to pollution and public health and safety. Exacerbating this tendency is the fact that jurisdiction over records across many bureaus, including the Geological Survey, Fish and Wildlife, and so on, are being brought under the singular authority of DOI, centralizing and streamlining the process by which files can be classed and dumped.

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