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Submitted via electronic mail to request.schedule@nara.gov

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8601 Adelphi Road
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Re: Notice of availability of proposed records schedules for the Department of the Interior, DAA-0048-2015-0003

Dear Director Hawkins:

The Natural Resources Defense Council (NRDC) is a non-profit organization dedicated to safeguarding the earth: its people, its plants and animals, and the natural systems on which all life depends. On behalf of our over 3 million members and online activists, NRDC submits the following comments regarding the Department of the Interior's proposed updates to its records schedule, DAA-0048-2015-0003. *See* Notice of availability of proposed records schedules, 83 Fed. Reg. 45,979, 45,980 (Sept. 11, 2018). NRDC also joins the letter submitted by the Emmett Environmental Law and Policy Clinic at Harvard Law School. We appreciate the willingness of the National Archives and Records Administration to work with interested parties and extend the comment period to permit public inspection of Interior's retention policy for such vital records.

The proposed schedule covers records that are central to the public's understanding of the Department of the Interior's ("Interior's") stewardship of our nation's public lands and natural resources. Moreover, it encompasses records of activities that might have long-lasting or permanent implications for both human health and the environment. But the proposed schedule permits some records to be destroyed while they may still be substantially valuable to the public, while other retention policies are too vague to assess their impact. Moreover, the high publicity and comprehensive nature of Interior's schedule change highlights shortcomings in NARA's approval process for agency records schedules. Interior's records schedule should be amended to ensure that valuable records are preserved for public inspection.

BACKGROUND

Legal Background

Federal agencies may dispose of "records," as defined in the Records Disposal Act, 44 U.S.C. § 3301 (RDA), only in accordance with the provisions of that Act. 44 U.S.C. § 3314. The Archivist, as head of the National Archives and Records Administration (NARA), must approve the disposal of all covered records. *Public Citizen v. Carlin*, 184 F.3d 900, 902 (D.C. Cir. 1999)

(citing *Armstrong v. Exec. Office of the Pres.*, 1 F.3d 1274, 1279 (D.C. Cir. 1993)). The Archivist may approve disposal in one of two ways. First, NARA may promulgate general records schedules for disposal of "records of a specified form or character common to several or all agencies." *Id.* § 3303a(d). Second, federal agencies may submit to NARA schedules for the disposal of records in the agency's possession or records that will be generated by the agency. 44 U.S.C. § 3303(3).

Under either approach, NARA may only approve disposal of covered records if those records "do not, or will not after the lapse of the period specified, have sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government." 44 U.S.C. § 3303a(a). Importantly, once a records schedule has been approved by NARA, disposal of records pursuant to that schedule is mandatory. *Id.* § 3303a(b). Approval of a disposal schedule, therefore, warrants careful consideration; "[i]f the Archivist errs in authorizing disposal . . . valuable federal records could be lost forever." *Carlin*, 184 F.3d at 902.

Agency records retention schedules are comprised of three fundamental determinations for each category of records. The first is the "cut-off" for the record, or the separation of files "at regular intervals, usually annually, to permit their disposal or transfer in complete blocks and, for correspondence files, to permit the establishment of new files. Normally correspondence files are cut off at the end of each year (fiscal or calendar), documents are no longer added to that year's files, and new file folders are set up for the next year's files." NARA, *Disposition of Federal Records: A Records Management Handbook*, 31-32 (NARA Handbook).[1] Next, the agency and NARA must determine whether the file should be retained permanently or only temporarily. Third, if the file is to be retained temporarily, the agencies must prescribe a retention period, or the period of time after the cut-off date during which the record must be preserved. *See id.* Files can be retained either at the agency or at NARA's archives. Once the retention period has lapsed for a temporary record, the record is destroyed.

Records at Issue

The Department of the Interior oversees a wide variety of activities related to conservation of wildlife and stewardship of America's public lands and natural resources. The agency implements the Endangered Species Act, 16 U.S.C. § 1531 et seq., Marine Mammal Protection Act, *id.* § 1361 et seq., Mineral Leasing Act, 30 U.S.C. § 181 et seq., Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq., and the General Mining Act of 1872, 30 U.S.C. § 21 et seq., among other foundational statutes. Interior, therefore, generates records that are critical to engagement by civic organizations—like NRDC—that represent the interests of millions of people throughout the country. Without those records, Interior can make decisions that impact people's health and welfare, as well as the natural ecosystems they treasure and enjoy, without public inspection. Such a lack of transparency fosters improper influence by industry groups that wish to pursue profit over the health and welfare of the American people.

NRDC uses the records at issue in this schedule to check the influence of industry on government decision-making and hold the Department of the Interior accountable to the law. We

[1] https://www.archives.gov/files/records-mgmt/pdf/dfr-2000.pdf

use scientific data developed by Interior to analyze the effectiveness of fisheries management, advocate for preservation of areas vital to recovery of endangered species, and assess the impacts of climate change on populations. We analyze enforcement actions and violations of environmental statutes to make sure that repeat offenders are not permitted to reap profits at the expense of surrounding communities. And we use those same enforcement documents, water quality data, and other records to ensure that communities affected by contamination can clean up their waterways and obtain justice. In sum, NRDC uses records generated by Interior to give communities and ecosystems a voice—one that can be silenced when records are destroyed.

ANALYSIS

In the sections that follow, NRDC respectfully provides two categories of comments for NARA's consideration. In the first, we provide broad comments about NARA's approval process and Interior's proposal as a whole.[2] Second, we comment on individual categories of records proposed for destruction despite their substantial legal, research, or other value. On this basis, we request that NARA reject Interior's records schedule to ensure the preservation of these valuable documents.

I. General Comments

A. NARA's review process provides insufficient opportunity for public review.

While we appreciate the willingness of NARA to extend the public comment period for this records schedule, Interior's proposal highlights shortcomings of NARA's approval process. The process could be improved by automatically publishing all documents relevant to a proposed records schedule in the Federal Register along with the notice of availability of proposed records schedules currently issued by NARA. Doing so would simplify public access to proposed records schedules, allowing subject-matter experts the opportunity to review records schedules that impact their work.

As currently structured, NARA's approval procedure makes it far too difficult for the public to review proposed records schedules. Interior's comprehensive records request would never have been subjected to public review if not for the vigilance of a few individuals who had to *specifically request* that the proposed schedule be made public through the Freedom of Information Act. Thereafter, NARA released incorrect versions of Interior's request and crosswalk before later correcting that error. *See* Russ Kick, *Dept of Interior: Records Destruction Request*.[3] The public should not have to go through such a complex process merely

[2] Throughout these comments, we refer to the comparison tool provided by NARA on the Records Express blog, https://records-express.blogs.archives.gov/, and attached here for reference, as the "Crosswalk." Moreover, we refer to the newly proposed categories of records (*i.e.* those labeled 0001 through 0023 in Column A of the Crosswalk) as "Buckets" and the old records categories (*i.e.* those found in each row of the Crosswalk) as "subcategories," each numbered using the label in the far-left column of the Crosswalk. Subcategories are also denoted by the symbol ¶.

[3] https://altgov2.org/doi-records-destruction/

to inspect a request that, as articulated above, has widespread implications for government accountability.

Moreover, with due respect to the dedicated individuals at NARA who review records disposition requests, it is unlikely that NARA has the depth and breadth of expertise necessary to determine the value of each type of record scheduled for destruction. Interior's request encompasses over four hundred categories of records, the importance of which are nuanced and complex. Enhancing the public's ability to inspect such disposition requests—by publishing the full request automatically, ensuring that records and retention policies are fully explicated using precise language, and providing sufficient time for all interested parties to comment—permits NARA to draw on the expertise of those who regularly utilize such records. Particularly now that Interior proposes to consolidate records disposition authority with the Office of the Secretary instead of individual bureaus and offices with substantive expertise, NARA should not have to rely on the representations of Interior when conducting its review. Greater transparency will reduce this reliance while enabling NARA to make more informed value determinations.

B. Many proposed retention policies are too vague to assess the value of records at the proposed time of destruction.

Language used throughout Interior's proposed records schedule is too vague to pinpoint the precise date that would trigger destruction of records, making it impossible for NARA to evaluate the "administrative, legal, research, or other value of the records" at that time. 44 U.S.C. § 3303a(a). In an apparent attempt to consolidate records into broader "Buckets," Interior uses very broad language to describe the revised retention policies for numerous, previously separate, categories of records. Frequently, it is difficult to determine how these broad policies will apply to specific types of records. Particularly concerning are the categories of records with the following proposed retention: "TEMPORARY. Cut off as instructed in bureau/office records manual, or at the end of fiscal year in which file is closed if no unique cut off exists." Crosswalk, Buckets 0001, 0004, 0007-0009, 0011, 0013-0017, 0019. This instruction is ambiguous in at least two important ways.

First, neither the Cutoff, Appraisal Memo, nor Interior's request explains what "bureau/office records manual" is relevant to each category of records. Yet this manual is foundational to the cut-off applicable to those records and, therefore, the operation of each retention period. Throughout Interior's request, this phrase should be replaced with a substantive description of the relevant cut-off. For the purposes of this comment letter, however, NRDC will assume that any reference to the cut-off articulated in an existing manual indicates that the cut-off is not changed by Interior's proposed schedule. For example, in the very first subcategory of records in the Crosswalk, the current retention provides that the records should be destroyed three years after the goals of the plan are achieved. Crosswalk ¶ 3. Thus, the cut-off for these records is the end of the fiscal year in which the goals of the plan are achieved. *See* NARA Handbook at 105-106. Where the proposed retention states that the records should be "cut off as instructed in bureau/office records manual," therefore, the cut-off prescribed in the current retention still applies. If this assumption is incorrect, NARA must reject each of the records

categories that incorporate an unnamed "bureau/office records manual," *i.e.* Buckets 0001, 0004, 0007-0009, 0011, 0013-0017, 0019.

Second, where there appears to be no cut-off prescribed in the existing bureau/office records manual, the above policy relies on another undefined phrase: the year in which the "file is closed." *See id.* But this instruction is virtually meaningless, as it provides no information about when Interior closes a file. Thus, individuals and officials within Interior have far too much discretion to determine when a "file is closed" for the purposes of the retention schedule. For example, in Bucket 0007, many of the categories of records were previously unscheduled and, therefore, no "bureau/office manual" prescribes a "unique cut off" for those records. *See, e.g.*, ¶¶ 38-80. Because these records relate to mines and wells that may operate for decades, *see, e.g.*, Crosswalk ¶ 52, an agency official could determine that the "file is closed" for a record either (1) when the document at issue is complete or (2) at the conclusion of the lease, contract duration, or operation of the well or mine. If NARA's authority over disposition of records is to have any meaning, individual officials within Interior cannot exercise this kind of broad discretion. To the contrary, because such files retain value at least throughout the operation of a well or mine, NARA must ensure that the records are not cut off before that date—or the date at which the site is reclaimed, *see infra* p. 10.

Relatedly, Bucket 0003 provides that records are "cut off after completion of [a] report or plan" even for subcategories that do not include either reports or plans. Crosswalk ¶¶ 9-12. Specifically, the subcategory "State Tagger Program Files – Agreements" contains just that—agreements. *Id.* ¶ 11. The current retention policy provides that the 6-year retention period begins when the agreement *terminates.* But it is unclear whether the revised retention plan's reference to "completion of report or plan" refers to completion of the written agreement or termination of the agreement. Depending on the duration of such agreements, interpreting the retention policy one way or the other could make a difference of years. But files related to State Tagger Program Agreements should not be deleted while the agreement is effective. They retain substantial value at least throughout the duration of the agreement.

From NARA's appraisal memo, it appears that NARA has not attempted to give content to these ambiguous phrases, yet the bulk of the revised schedule relies on them. Because neither NARA nor the public can assess the value of records at an unknown time of destruction, NARA should not approve destruction of these records before Interior clarifies its proposed policies.

C. Bureaus and Offices within Interior cannot amend their existing records manuals without approval by NARA.

Because the records schedule proposed by Interior incorporates by reference existing records manuals of bureaus and offices within Interior, NARA must ensure that those manuals are not amended without prior approval. Courts have repeatedly stated that the RDA requires approval of NARA before the destruction of any records covered under the Act. *E.g.*, *Carlin*, 184 F.3d at 902 (citing *Armstrong*, 1 F.3d at 1279). This requirement should encompass the cut-off dates for records, which generally provides the date from which any prescribed retention period will be effective. *See* NARA Handbook at 105-6. Thus, the cut-off date is a fundamental

component of any proposed records schedule. As noted above, many of the retention schedules proposed by Interior provide that records will be cut off "as instructed in [the] bureau/office records manual." *See* Crosswalk Buckets 0001, 0004, 0007-0009, 0011, 0013-0017, 0019. Because these manuals remain an integral component of Interior's schedule, the Records Disposal Act requires that NARA approve any changes to the cut-off periods contained in those manuals.

Moreover, Interior's decision to amend any of those records manuals constitutes final agency action subject to judicial review under the Administrative Procedure Act, 5 U.S.C. § 706. Interested parties, therefore, may challenge any amendments to records cut-offs as arbitrary and capricious or allege that such amendments violate the RDA's mandate that "records of the [U.S.] Government may not be alienated or destroyed except under this subchapter." 44 U.S.C. § 3314. Moreover, if Interior amends the cut-offs for records covered by this schedule, that amendment must minimally be the product of "reasoned decisionmaking." *See Motor Vehicle Mfrs. Ass'n of U.S, Inc. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 52 (1983).

D. NARA may not ignore the value of records to individuals outside the government.

In several places throughout its Appraisal Memo, NARA bases its approval on the value of records to "NARA researchers." Appraisal Memo at 4, 9, 15. To the extent this undefined phrase excludes members of the general public who have a direct interest in decisions made by Interior and the records derived therefrom, it is inconsistent with NARA's regulations and the RDA. Both the RDA and NARA's regulations provide that agencies must make and retain records to protect the rights of the government *and* "persons directly affected by the agency's activities." 44 U.S.C. § 3101, 36 C.F.R. § 1220.30(a); *see also Am. Friends Serv. Comm.*, 720 F.2d 29, 65 (D.C. Cir. 1983) ("But the summaries need to account in some reasonable fashion for historical research interests and the rights of affected individuals—not just the [agency's] immediate, operational needs."). Moreover, the standard applicable to NARA's review of agency disposition schedules does not restrict valuation to the perspective of the agency. Instead, the RDA requires NARA to consider broadly the "administrative, legal, research, or other value" of records. 44 U.S.C. § 3303a(a). Thus, NARA must take into account the value of agency records to a diverse set of stakeholders and may not base its determination solely on the value of records to the agency at issue—and certainly not on the value of the records to NARA alone.

II. NARA Proposes to Permit the Destruction of Records with Substantial Value.

Interior proposes to destroy a wide variety of records that retain substantial value at the proposed time of disposal.[4] NARA cannot approve these proposals consistent with the RDA. 44 U.S.C. § 3303a(a). NARA's determination of whether records lack "sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government" is subject to arbitrary and capricious review under the Administrative Procedure Act, 5 U.S.C. § 706 (APA). *Am. Friends*, 720 F.2d at 45 (plaintiffs could challenge NARA's implementation of

[4] We acknowledge that not all proposed records schedules discussed are substantively different from Interior's existing practice. Where Interior's proposed records schedule constitutes a substantive change of practice, we explicitly indicate those changes.

RDA under the APA because NARA's determination was not committed to agency discretion); *see also, e.g.*, *Carlin*, 182 F.3d at 902 (Plaintiffs challenged NARA's promulgation of a general records schedule as arbitrary and capricious under the APA.). Therefore, in approving a records schedule, NARA may not "fail[] to consider an important aspect of the problem" or "offer[] an explanation for its decision that runs counter to the evidence before the agency." *State Farm Mutual Auto. Ins. Co.*, 463 U.S. at 43. In the sections that follow, we highlight categories of records for which NARA has ignored the substantial value of the records at issue and, in some circumstances, offered explanations for its approval that contradict plain evidence. The following categories are not intended to be exhaustive, but only to highlight the most problematic of Interior's proposals.

A. Records related to Biological Resources and Marine Conservation, 0001-0006, that document population numbers and dynamics should be retained permanently.

Interior has proposed a retention policy that would destroy records of population numbers and dynamics that have extensive value as a research tool for analyzing long-term population characteristics and trends. *See, e.g.*, Crosswalk ¶¶ 5, 18, 15, 16. Previously, many of these records were scheduled to be retained until they were "no longer needed." *See* Crosswalk ¶¶ 4-7. However, these files are now proposed to be destroyed three years after cut-off, *i.e.* at the end of the fiscal year in which the "file is closed." Because these records have substantial permanent value, they should be permanently retained. *See* 44 U.S.C. § 3303a(a).

For instance, subcategory 5 includes data that is "used to study the population dynamics of several species of fish." Crosswalk ¶ 5. Interior proposes to destroy these data only three years after the cut-off period. But studies of population dynamics of fish routinely span far more than three years. *See, e.g.*, Masami Fujiwara et al., *A coupled recreational anglers' decision and fish population dynamics model*, PLoS ONE 13(10): e0206537 (Oct. 31, 2018) (drawing on population data for two fish species over thirty-five years);[5] Timothy Essington et al., *Fishing Amplifies Forage Fish Population Collapses*, Proceedings of the National Academy of Sciences (April 2015) ("We only considered time series that spanned at least 25 y[ears], which was the minimum number of years that we deemed adequate to reliably estimate minimum biomass levels and other population attributes . . . .").[6] Thus, the data compiled by the Service could have research value for the Service and other researchers far beyond the proposed retention period. The same applies for Sea Lamprey Data described in subcategory 7.

Similarly, subcategory 15 covers "survey information, data, and summary reports of fish and wildlife numbers and locations." Crosswalk ¶ 15. Despite explaining that the records are used to track long-term trends, Interior proposes to retain these data for only twenty years after cut-off. Like the data described above, these records are potentially valuable for evaluating long-term population dynamics as well as geographic location of species. Location data is particularly valuable for determining the historical range of species that are threatened by habitat destruction, climate change, or other factors that impact their geographic range. Such data might also be used

[5] *Available at* https://doi.org/10.1371/journal.pone.0206537
[6] *Available at* http://www.pnas.org/content/early/2015/04/01/1422020112.short

to determine critical habitat for species later listed as endangered under the Endangered Species Act, 16 U.S.C. § 1533—a possibility that the Service cannot dismiss for many species.

Interior's plan to destroy records of population numbers, locations, and dynamics will result in the loss of valuable information about our nation's fish and wildlife. This information might be used by Interior or other researchers in a variety of contexts. Because that data never loses its value, it should be scheduled for permanent retention.

B. Records under subcategory 8, Critical Habitat (No Designation) Case Files, should be retained permanently.

Records that support the U.S. Fish and Wildlife Service's decision not to designate critical habitat for a species retain substantial legal and other value well beyond the five years prescribed by Interior. First, the Service's decision not to designate critical habitat might be revisited by the agency at any point. The Service may decline to designate critical habitat where designation is either not prudent or not determinable at the time of listing. 16 U.S.C. § 1533(a)(3)(A). A "not determinable" determination gives the Service at most two years to designate critical habitat. *Id.* § 1533(b)(6)(A). But the Service may find that critical habitat is not prudent under two circumstances: (1) when "identification of critical habitat can be expected to increase the degree of such threat to the species" and (2) when critical habitat "would not be beneficial to the species." 50 C.F.R. § 424.12(a)(1). Either "not prudent" determination could be reconsidered by the Service at any time in a subsequent rulemaking. If the Service chose to do so, either on the basis of new scientific information or a reappraisal of its previous conclusion, the data, legal analysis, and other records underlying its old decision would be highly valuable.

Additionally, the statute of limitations applicable to citizen suits challenging designation or non-designation of critical habitat is six years. *See, e.g.*, *Am. Forest Res. Council v. Ashe*, 946 F. Supp. 2d 1, 20 (D.D.C. 2013) (applying the "catch all" statute of limitations of 28 U.S.C. § 2401(a) to plaintiff's challenge to FWS's critical habitat designation). As such, any records supporting the Service's decision must be retained at least six years from the date that the Service's non-designation determination is published in the Federal Register. Without such records, parties interested in challenging the Service's failure to designate critical habitat will be unable to review and challenge the basis for the Service's determination.

As such, records related to non-designation of critical habitat retain substantial value beyond the five-year retention period proposed by Interior. On this basis, NARA should not approve Bucket 0002 of Interior's proposed records schedule.

C. Records related to Energy and Minerals, 0007-0012, that document environmental enforcement actions, noncompliance, and inspections should be retained permanently.

NARA and Interior have failed to explain how categories of records that document Interior's enforcement of environmental statutes, regulations, and permit requirements lack sufficient value to warrant preservation. Many records in this category were previously unscheduled, but Interior proposes to retain them for only ten years past the cut-off. In

provisionally approving these schedules, NARA has both "offered an explanation for its decision that runs counter to the evidence before the agency" and "failed to consider an important aspect of the problem." *State Farm*, 463 U.S. at 43.

First, NARA explained that records in Bucket 0007 were previously approved as temporary, Appraisal Memo at 7, when 43 of the 58 subcategories of records were previously unscheduled. Because unscheduled records must be treated as permanent, 36 C.F.R. §§ 1220.18, 1225.16(c)(2), scheduling these records for only temporary retention is significant and warrants careful review of their value. NARA's approval of Bucket 0007 based on previous approval—when more than two thirds of the records were not previously approved—runs counter to the evidence before the agency and is, therefore, arbitrary and capricious.

Moreover, NARA failed to take into account important considerations when determining that records within Bucket 0007 had "little or no research value." These documents pertain to inspections, enforcement and corrective actions, well monitoring, and other forms of compliance assurance for oil, gas, and mineral extraction activities on both the outer continental shelf and federal and Indian lands. *See, e.g.*, Crosswalk ¶¶ 44-45, 48, 88-89. Records of noncompliance are not merely administrative records. To the contrary, the Bureau of Land Management's Oil and Gas Inspection and Enforcement Program "ensures the proper accounting of oil and gas production volumes, the safety of operations, and the protection of the environment." U.S. DOI Office of the Inspector General (OIG), *Bureau of Land Management's Oil and Gas Inspection and Enforcement Program* 3, Report No.: CR-EV-BLM-0001-2009 (Dec. 2010).[7] For years, OIG has criticized BLM's recordkeeping activities, concluding that electronic databases were routinely inaccurate and incomplete. *See, e.g.*, *id.* at 14. As a result, BLM is frequently unable to determine when an environmental inspection was last conducted or what safety or environmental inspections are due in the future. *Id.* These problems highlight both the importance of recordkeeping in compliance programs as well as the imprudence of allowing already inadequate records to be destroyed. Only by developing and retaining these records can Interior implement an effective enforcement program that minimizes oil and gas waste and protects public health and safety.

Moreover, documents related to environmental enforcement, including subcategories 44, 45, and 48, have substantial and longstanding legal and research value. First, past practice of well operators can be vital to establishing a pattern of noncompliance in subsequent legal actions. This allows Interior to identify and monitor habitual offenders and ensure that future extraction does not threaten the health and safety of surrounding communities and ecosystems. Second, records of past noncompliance with environmental protections could be used to detect sources of pollution, such as leaks, and can be used to implement corrective actions necessary to protect communities from the harms of pollution. Violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., Clean Air Act, 42 U.S.C. § 7401 et seq., and individual permit requirements, for instance, can cause contamination that lasts decades. Communities affected by such contamination must be able to detect and remedy leaks caused by extraction activities that may have contributed to this contamination. Without those records, agencies may not be able to trace

[7] *Available at* https://www.doioig.gov/sites/doioig.gov/files/CR-EV-BLM-0001-2009.pdf

contamination to its source in order to protect the public health and safety or mitigate waste. Thus, long-term retention of environmental compliance records is vital to protect public health.

Records related to environmental enforcement and noncompliance at oil, gas, and mineral production facilities should be retained permanently. But to the extent these records are retained temporarily, the cut-off should not occur before a well or mine is fully reclaimed. Only by allowing a sufficient period of time following reclamation can Interior ensure that a site has been reclaimed sufficiently to prevent any future environmental contamination.

D. Records related to Energy and Minerals, Buckets 0007-0012, that document royalty payments on resource extraction activities should be retained permanently.

Records related to the payment of royalties from extraction activities on federal land allow both Interior and taxpayers to ensure that the government receives its fair share of revenue from extraction of natural resources. *See, e.g.*, Crosswalk ¶¶ 46 (production measurement inspections and enforcements), 47 (production reporting, errors, exceptions, and well actions), 49 (mineral revenue distribution and disbursement files), 50 (payor account reconciliation), 62-63 (compliance reviews). While these records were previously unscheduled, Interior's revised schedule provides that such records will be destroyed only ten years after the "file is closed." This schedule obscures the payment history of bad actors and may foster abuse of America's natural resources at taxpayers' expense. These records, therefore, should be retained permanently.

E. Records related to Land Status, Bucket 0018, that document real property transfers and ownership should be retained permanently.

Interior's proposal to destroy records documenting transfers of title and the ownership status of real property not only violates NARA's mandate to preserve records with sufficient value to warrant preservation, but also undermines Interior's central mandate under the Federal Land Policy and Management Act, 42 U.S.C. § 1701 (FLPMA). Previously, several categories of these records were retained permanently, but Interior now proposes to permit disposal after only 25 years. ¶¶ 288-289. These categories include records fundamental to documenting transfer of title to and from the United States, such as abstract of title, final certificates of title, records documenting land donations and abandonment of easements, contracts of sale, and deeds. *Id.* Additionally, Interior proposes to continue to destroy other records related to "land status determinations" only 20 years after a final determination of "whether land is considered public lands." *Id.* ¶ 284. Retaining each of these three records categories helps to prevent duplicative agency effort to determine repeatedly the ownership of contested areas of land or the borders of federal land. Conversely, disposing of these records makes it more difficult for Interior, landowners, and other researchers to determine both present and historical ownership of land. These records, therefore, retain substantial permanent value. In fact, their value likely increases with time as other records of land transfers and ownership are lost. Despite this shift to approve destruction of these files, NARA's appraisal memo fails to provide any explanation of why these records have insufficient value after only twenty-five years.

Further, destruction of documents related to land status determinations and acquisition of land still owned by the U.S. undermines a central function of Interior—to catalogue federally owned lands. *See* FLPMA, 43 U.S.C. §§ 1701, 11. In enacting FLPMA, Congress directed Interior to "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values . . . ." *Id.* § 1711. Indeed, Congress enacted FLMPA, in part, because "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present . . . ." 43 U.S.C.A. § 1701. These provisions reflect Congress's intent that Interior should serve as a repository for information about the extent of public lands. Interior's plan to destroy records related to real property ownership undermines this crucial role.

F. Records related to wilderness studies, subcategory 275, should be retained permanently.

Interior proposes to continue its practice of destroying records related to wilderness studies only twenty years after the study is conducted. By destroying records that document the wilderness character of federal land, this policy undermines future designation of areas under the Wilderness Act, 16 U.S.C. § 1131 et seq. A wilderness area is defined under the Act as one that:

> (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

16 U.S.C. § 1131(c). While a wilderness study conducted by an agency within Interior might conclude that an area contains the qualities suitable for designation as a wilderness area, only an act of Congress may make that designation official. Thus, an area with wilderness qualities, *e.g.* "features of scientific, educational, scenic, or historical value," might remain undesignated for years or even decades. *Id.* Without the case files and reference files used to reach the determination that an area is suitable for designation as wilderness, Congress will have little basis to revisit designation of an area. Moreover, even if an area is never formally designated as wilderness—or even withdrawn from consideration—those records might contain vital information about the existence and location of features with substantial value to scientific or historical research communities. This value is unlikely to diminish over time and warrants preservation far beyond the twenty years proposed by Interior.

G. Records related to Resource Inventories, Studies, Surveys and Mapping Files, subcategory 279, should be retained permanently.

Interior has proposed to shorten the retention period for "resources inventory, study, or survey working files and reference materials" from twenty-five to twenty years. Crosswalk ¶ 279. These documents provide invaluable information about myriad natural resources on public land—resources that citizens of the U.S. own in common. Though the documents proposed for

destruction include only "[p]reliminary or intermediate technical and scientific data which are duplicated or adequately summarized," *id.*, Interior's proposal will result in the destruction of raw data that could be used well beyond the twenty-year retention period. Interior's determination of whether that data is "adequately summarized" is far too subjective to ensure that important data are not destroyed. And moreover, those data might be used in different ways that demand different levels of specificity. It is nearly impossible for Interior to foresee whether any particular data summary will be adequate for purposes that have yet to be determined. Thus, raw data resulting from these inventories and studies should be permanently retained.

H. Records related to Land Use and Planning, Item 0014, that document pre-acquisition contaminant surveys should be retained permanently.

Pre-acquisition contaminant surveys conducted by Fish and Wildlife Service have value well beyond the twenty-year retention period proposed by Interior. According to the Crosswalk, such records document the status of the land prior to acquisition, as determined by "contaminants specialists." Crosswalk ¶¶ 249 (land not ultimately acquired), 274 (acquired land). The purpose of such surveys is to "identify potential hazardous substance-related threats to fish and wildlife and their habitats and other environmental problems prior to real property acquisition." FWS, *341 FW 3, Pre-Acquisition Environmental Site Assessments*, FWM #260 (1996).[8] Not only might such surveys have value to FWS if the land is retained for more than twenty years, but such information will be vital to subsequent landowners if FWS disposes of the property. FWS must have such information on hand to put future property owners on notice if the contamination identified is not remedied prior to disposal.

CONCLUSION

Consistent with its statutory mandate, NARA may not approve Interior's request to destroy numerous categories of records with substantial permanent value both for Interior and outside researchers. But moreover, the scope and impact of Interior's request demonstrate that NARA's review process must be more transparent to allow for effective valuation of such records in the future. We request that NARA deny Interior's proposed records schedule or modify it to ensure that Interior preserves the records described above.

Respectfully Submitted,

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[8] *Available at* https://www.fws.gov/policy/341fw3.html