

2014 Chief FOIA Officer Report

Tennessee Valley Authority

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Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

FOIA Training:

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

Answer: TVA did not conduct formal training sessions for agency personnel specifically on FOIA during the 2013 reporting period. Informal training and counsel is provided to agency personnel by the FOIA Office year-round, as needed. In addition, TVA's standard procedures governing communications incorporate the presumption of openness and outline the responsibilities of all agency personnel to comply with the requirements of FOIA.

2. If so, please provide the number of conferences or trainings held, a brief description of the topics covered, and an estimate of the number of participants from your agency who were in attendance.

Answer: N/A

3. Did your FOIA professionals attend any FOIA training during the reporting period such as that provided by the Department of Justice?

Answer: TVA has a small FOIA Office (FOIA Officer and part time legal and clerical support) located at TVA headquarters in Knoxville, Tennessee. This makes it more difficult and less cost effective to attend training based primarily in the Washington DC area. We would like to see OIP offer webinars or computer based training modules for FOIA personnel to help meet the training requirements. Both the FOIA Officer and the attorneys who support the FOIA Office have over 10 years experience working with FOIA and FOIA personnel have attended training provided by the Department of Justice in the past, most recently in 2012. The FOIA Officer and the advisory attorneys stay informed of news and developments in FOIA through online resources available from the Department of Justice such as FOIA Post and the FOIA Guide; membership in professional organizations such as the American Society of Access Professionals (ASAP); subscriptions to newsletters such as Access Reports and Privacy Times; and through social media sites such as the FOIA Blog, among others.

4. Provide an estimate of the percentage of your FOIA professionals who attended substantive FOIA training during this reporting period.

Answer: N/A

5. OIP has issued guidance that [every agency should make core, substantive FOIA training available to all their FOIA professionals at least once each year](#). Provide your agency's plan for ensuring that such training is offered to all agency FOIA professionals by March 2015. Your plan should anticipate an upcoming reporting requirement for your 2015 Chief FOIA Officer Reports that will ask whether all agency FOIA professionals attended substantive FOIA training in the past year.

Answer: The American Society of Access Professionals (ASAP) recently announced the availability of online webinars on FOIA topics. We plan to investigate this avenue for future training requirements. Attendance at DOJ or ASAP sponsored training will be considered. We would like to see OIP offer webinars or computer based training modules for FOIA personnel to help meet the training requirements.

Outreach:

6. Did your FOIA professionals engage in any outreach and dialogue with the requester community or open government groups regarding your administration of the FOIA? If so, please briefly discuss that engagement.

Answer: TVA is providing ongoing opportunities to build understanding, increase transparency and have more dialogue with our stakeholders, including groups who have made FOIA requests. These opportunities range from one-on-one phone calls and face-to-face meetings with TVA staff and leaders to understand key issues and concerns; to small group meetings around topics of interest; to more formalized stakeholder processes, including TVA's two Federal Advisory Committee Act groups that provide formal advice to TVA leadership and the TVA Board.

Discretionary Disclosures:

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

7. Does your agency have a formal process in place to review records for discretionary release? If so, please briefly describe this process. If your agency is decentralized, please specify whether all components at your agency have a process in place for making discretionary releases.

Answer: TVA conducts a thorough review of all records responsive to each FOIA request to determine whether full or partial disclosure is possible. TVA routinely makes discretionary releases of internal information if no specific foreseeable harm is identified.

8. During the reporting period did your agency make any discretionary releases of otherwise exempt information?

Answer: Yes.

9. What exemptions would have covered the information that was released as a matter of discretion?

Answer: Exemption 5

10. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

Answer: Examples include information related to TVA's planned conversion of wet coal ash and gypsum to dry storage; information related to a proposed economic development project; reports on the possible use of MOX fuel at TVA nuclear plants; a safety investigation and related records on a fatal accident near a TVA plant; and inter-agency correspondence regarding a state road project.

11. If your agency was not able to make any discretionary releases of information, please explain why.

Answer: N/A

Other Initiatives:

12. Did your agency post all of the required quarterly FOIA reports for Fiscal Year 2013? If not, please explain why not and what your plan is for ensuring that such reporting is successfully accomplished for Fiscal Year 2014.

Answer: Yes.

13. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied. If any of these initiatives are online, please provide links in your description.

Answer: TVA's standard procedure on FOIA, which applies to all agency personnel, incorporates the President's January 21, 2009, memorandum instructing agencies to adopt a presumption in favor of disclosure of agency records.

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Describe here the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

Personnel:

During Sunshine Week 2012 OPM announced the creation of a new job series entitled the Government Information Series, to address the work performed by FOIA and Privacy Act professionals. Creation of this distinct job series was a key element in recognizing the professional nature of their work.

1. Has your agency converted all of its FOIA professionals to the new Government Information Specialist job series?

Answer: TVA personnel are not subject to the General Schedule.

2. If not, what proportion of personnel has been converted to the new job series?

Answer: N/A

3. If not, what is your plan to ensure that all FOIA professionals' position descriptions are converted?

Answer: N/A

Processing Procedures:

4. For Fiscal Year 2013 did your agency maintain an average of ten or less calendar days to adjudicate requests for expedited processing? If not, describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Answer: Yes.

5. Has your agency taken any steps to make the handling of consultations and referrals more efficient and effective, such as entering into agreements with other agencies or components on how to handle certain categories or types of records involving shared equities so as to avoid the need for a consultation or referral altogether, or otherwise implementing procedures that speed up or eliminate the need for consultations. If so, please describe those steps.

Answer: TVA has received fewer than 10 consultations and referrals in the past three years and has not referred any requests to other agencies for handling. Thus, we are able to handle these items in a timely manner without entering into formal agreements with other agencies.

Requester Services:

6. Do you use e-mail or other electronic means to communicate with requesters when feasible?

Answer: Yes.

7. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at NARA?

Answer: Yes.

8. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc.

Answer: The FOIA Officer closely monitors the progress of information requests throughout the search and review process. This includes corresponding and counseling personnel responsible for providing the responsive records on FOIA disclosure standards; monitoring the time required for processing and properly placing the requests into the appropriate processing tracks; requesting expedited search and review when warranted; and promptly communicating with requesters to clarify and modify requests as appropriate.

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2013 to March 2014). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

Posting Material:

1. Do your FOIA professionals have a system in place to identify records for proactive disclosures?

Answer: Yes.

2. If so, describe the system that is in place.

Answer: The TVA FOIA Office is part of TVA's Communications organization. As such, the FOIA Office is closely aligned with TVA's public relations and media staff. This alignment, along with knowledge of information being requested under FOIA, allows the FOIA Office to stay abreast of issues and information of interest to the public and to advocate for the proactive disclosure of such information. TVA also posts information as required by the FOIA's proactive disclosure provisions.

3. Provide examples of material that your agency has posted this past reporting period, including links to where this material can be found online.

Answer: TVA posts information of interest to stakeholders on its website daily during the business week. Some examples are:

- fuel cost information (<http://www.tva.gov/fuelcost/>)
- statements and news releases (<http://www.tva.com/news/index.htm>)
- SEC financial filings, and video archive and transcripts of quarterly financial calls with analysts and media (<http://www.snl.com/IRWebLinkX/docs.aspx?iid=4063363>)
- Quarterly progress reports on completion of Watts Bar 2 nuclear reactor (http://www.tva.gov/power/nuclear/wattsbar_unit2.htm)
- video streaming and video archive of TVA board meetings and public listening sessions (<http://www.tva.com/abouttva/board/meeting.htm>)
- air and water quality information (<http://www.tva.com/environment/air/index.htm>) (<http://www.tva.com/environment/water/index.htm>)
- lake levels (<http://www.tva.com/river/lakeinfo/index.htm>)

Making Posted Material More Useful:

4. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of posted material, improving search capabilities on the site, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.?

Answer: Yes.

5. If so, provide examples of such improvements.

1. **Answer:** TVA continues to make information available in multiple formats for its website users, including mobile users. In 2010, TVA developed the TVA Lake Info app, which is an easy-to-use resource for operating on and around reservoirs and dams in the TVA region. In 2012, TVA added an interactive recreation map to the Lakes & Recreation section, which is the most popular section of the TVA website. In 2014, TVA will perform a content audit of the TVA website in order to make search results more relevant and improve its overall usability, particularly for mobile users. TVA has several feedback mechanisms in place for website visitors to comment on all aspects of the information posted.

6. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If so, was social media utilized?

Answer: TVA strives to make key executives, subject matter experts or agency representatives available to the news media and other audiences to provide official agency position statements and news releases (<http://www.tva.com/news/index.htm>) that provide proactive disclosure of matters of public importance. During the March-to-March period, TVA produced and distributed approximately 130 proactive news releases, alerts and advisories on agency developments or activities that were of interest to TVA stakeholders and the general public, with Internet links for further content, including photos, fact sheets and power point presentations. These were issued directly to some or all of the more than 300 members of a local, regional and national news media distribution list of print, broadcast and web outlets that follow TVA. Some releases were distributed more broadly via wire distribution services. All were posted on TVA's website (TVA.gov) and many were circulated by TVA Twitter and Facebook social media. TVA's Facebook page reaches an audience of more than 12,000 and TVA's Twitter messages have more than 5,000 followers. The official agency position statements and proactive news releases concerned important developments at the public utility and often encouraged participation at public meetings or requests for public comments on TVA operations and policies. TVA also provided live video streams on its public website of major events, such as board of directors meetings, (as well as highlights on Twitter) to increase transparency of decision-making on important agency actions. In addition, TVA conducts a quarterly teleconferences for the Chief Executive Officer and the Chief Financial Officer to discuss agency financial and operational performance and to answer questions from analysts and media that often include insights and perspective on pending and future agency issues. TVA posts an audio replay of the call that same day on its website and a full transcript a few days later. All financial filings that TVA submits to the Securities and Exchange Commission are posted on TVA's Investor Relations webpage as soon as they are posted by the SEC. The public can receive automatic electronic alerts to these postings through TVA's webpage.

7. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? If so, please briefly explain what those challenges are.

Answer: No.

8. Describe any other steps taken to increase proactive disclosures at your agency.

2. **Answer:** Information is posted regularly to all TVA social media assets, including Facebook and Twitter. The information is posted proactively and transparently to the public for information disclosure rather than for public relations or marketing. TVA keeps its employees informed of important issues through frequent posts to the internal TVA website and through distribution of a TVA-wide employee newsletter, among other methods. TVA has a customer relations staff that interfaces daily with local power companies to keep them informed of important issues and activities. In addition, TVA has created two panels of interested citizens and constituent

representatives who meet regularly in public sessions to discuss and provide direction to TVA on current or anticipated issues involving resource stewardship and energy policy. The panels are known as the Regional Resource Stewardship Council and the Regional Resource Energy Council, respectively. TVA publicizes these meetings in advance through traditional news releases and social media postings. TVA also is conducting public meetings to update its Integrated Resource Plan, a strategy for meeting future energy requirements. TVA has held two meetings at either end of TVA's service territory to receive comments on setting the breadth or scope of this review. TVA provided live video streams of these sessions so members of the public could react and comment immediately from remote distances. Comments also have been taken by mail and e-mail. Similar meetings are planned before and after a draft of the plan is developed later in 2014.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. Over the past several years agencies have reported widespread use of technology in receiving and tracking FOIA requests and preparing agency Annual FOIA Reports. For 2014, as we have done over the past years, the questions have been further refined and now also address different, more innovative aspects of technology use.

Online tracking of FOIA requests:

1. Can a FOIA requester track the status of his/her request electronically?

Answer: No. TVA provides a phone number and email address on its FOIA requester service center webpage to contact for the status of a FOIA request.

2. If yes, how is this tracking function provided to the public? For example, is it being done through regularly updated FOIA logs, online portals, or other mediums?

Answer: N/A

3. Describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

Answer: N/A

4. In particular, does your agency tracking system provide the requester with an estimated date of completion for his/her request?

Answer: N/A. TVA provides estimated dates of completion upon request, and when appropriate, in connection with interim responses.

5. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability? If not, please explain why.

Answer: We have had no feedback from requesters that indicate online tracking of FOIA requests is of interest to them. Requesters frequently comment favorably on the timely and personal attention that TVA FOIA personnel provide in response to their concerns.

Use of technology to facilitate processing of requests:

6. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Answer: TVA has a multi-year project to modernize its enterprise content management system for the agency.

7. If so, describe the technological improvements being made.

Answer: This project will provide improved document search and sharing capabilities and efficiencies including improved indexing and retrieval options and Google-type search capabilities.

8. Are there additional technological tools that would be helpful to achieving further efficiencies in your agency's FOIA program?

Answer: None have been identified at this time.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2013 Annual FOIA Report and, when applicable, your agency's 2012 Annual FOIA Report.*

Simple Track Requests:

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

- a. Does your agency utilize a separate track for simple requests?

Answer: Yes.

- b. If so, for your agency overall, for Fiscal Year 2013, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes.

- c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

Answer: N/A

Backlogs and "Ten Oldest" Requests, Appeals and Consultations:

2. Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests –Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2012 and Fiscal Year 2013 when completing this section of your Chief FOIA Officer Report.

Backlogs

- a. If your agency had a backlog of requests at the close of Fiscal Year 2013, did that backlog decrease as compared with Fiscal Year 2012?

Answer: Yes.

- b. If your agency had a backlog of administrative appeals in Fiscal Year 2013, did that backlog decrease as compared to Fiscal Year 2012?

Answer: TVA had no back log of administrative appeals in FY 2012 or FY 2013.

Ten Oldest Requests

- c. In Fiscal Year 2013, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2012?

Answer: Seven of the ten pending requests were closed in fiscal year 2013

- d. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2012 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed two of them, you should note that you closed two out of seven "oldest" requests.

Answer: Seven of the ten pending requests were closed in fiscal year 2013.

Ten Oldest Appeals

- e. In Fiscal Year 2013, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2012?

Answer: TVA had no appeals pending at the end of fiscal year 2012.

- f. If no, please provide the number of these appeals your agency was able to close, as well as the number of appeals your agency had in Section VI.C.(5) of your Fiscal Year 2012 Annual FOIA Report.

Answer: N/A

Ten Oldest Consultations

- g. In Fiscal Year 2013, did your agency close the ten oldest consultations received by your agency and pending as of the end of Fiscal Year 2012?

Answer: TVA had no pending consultations at the end of fiscal year 2012.

- h. If no, please provide the number of these consultations your agency did close, as well as the number of pending consultations your agency listed in Section XII.C. of your Fiscal Year 2012 Annual FOIA Report.

Answer: N/A

Reasons for Any Backlogs:

3. If you answered “no” to any of the questions in item 2 above, describe why your agency was not able to reduce backlogs and/or close the ten oldest pending requests, appeals, and consultations. In doing so, answer the following questions then include any additional explanation:

Request and/or Appeal Backlog

- a. Was the lack of a reduction in the request and/or appeal backlog a result of an increase in the number of incoming requests or appeals?

Answer: N/A

- b. Was the lack of a reduction in the request and/or appeal backlog caused by a loss of staff?

Answer: N/A

- c. Was the lack of a reduction in the request and/or appeal backlog caused by an increase in the complexity of the requests received?

Answer: N/A

- d. What other causes, if any, contributed to the lack of a decrease in the request and/or appeal backlog?

Answer: N/A

“Ten oldest” Not Closed

- e. Briefly explain the obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2012.

Answer: The three pending backlogged requests not closed in fiscal year 2013 are complex, involve a large volume of records, and include confidential information submitted by an outside source that may well be protected by FOIA exemption 4, and by regulation, require outside consultation with private entities.

- f. If your agency was unable to close any of its ten oldest requests or appeals because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

Answer: N/A

Plans for Closing of Ten Oldest Pending Requests, Appeals, and Consultations and Reducing Backlogs:

Given the importance of these milestones, it is critical that Chief FOIA Officers assess the causes for not achieving success and create plans to address them.

4. If your agency did not close its ten oldest pending requests, appeals, and consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2014.

Answer: TVA will continue to dedicate time and resources to these requests and will place priority on completing them in fiscal year 2014.

5. If your agency had a backlog of more than 1000 pending requests and did not reduce that backlog in Fiscal Year 2013, provide your agency’s plan for achieving backlog reduction in the year ahead.

Answer: N/A

Interim Responses:

OIP has issued **guidance** encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information.

6. Does your agency have a system in place to provide interim responses to requesters when appropriate?

Answer: TVA makes interim responses whenever possible for requests that are not able to be processed under the simple track.

7. If your agency had a backlog in Fiscal Year 2013, please provide an estimate of the number or percentage of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Answer: TVA provided interim responses to 40% of the requests in the backlog in fiscal year 2013.

Use of FOIA’s Law Enforcement “Exclusions”

In order to increase transparency regarding the use of the FOIA’s statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to “treat the records as not subject to the requirements of [the FOIA],” 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2013?

Answer: Yes.

2. If so, what was the total number of times exclusions were invoked?

Answer: TVA invoked an exclusion in response to two requests.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2013 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas. As noted above, these agency **success stories** will be highlighted during Sunshine Week by OIP. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of a key achievement. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

Answer:

- The Tennessee Valley Authority's new Regional Energy Resource Council was established by the TVA Board in April 2013 and held its inaugural meeting in October.
- The citizens' advisory group provides a formal channel for TVA to receive diverse perspectives on energy issues on a regular basis, thus providing additional public input and perspective to TVA. The council provides an opportunity for people with diverse perspectives to come together and share concerns, issues and advice as TVA formulates energy policy decisions.
- TVA serves the public in a seven-state region of the southeastern United States through its work in energy, the environment and economic development. TVA sells electricity wholesale to the region's local power companies, which distribute the electricity to the 9 million people of the Tennessee Valley region.
- The advisory group was formed under the Federal Advisory Committee Act. It may have up to 20 members, including a nominee from each governor in the seven-state TVA area, as well as representatives from the Tennessee Valley Public Power Association, local power companies, directly served customers of TVA, business and community members, the academic community and individuals or representatives of organizations on environmental and/or energy issues.
- Council meetings are open to the public, and members of the public are invited to share their comments with the members in person or in writing. Meetings are publicized, and reports are posted on the TVA website, tva.gov.
- The council complements numerous other opportunities for the exchange of information among TVA and its wide range of stakeholders. These include another citizens' advisory group, the Regional Resource Stewardship Council, created in 2000 to advise TVA on its natural resource stewardship activities.