

1 Marc D. Fink (MN Bar No. 343407)  
2 Center for Biological Diversity  
209 East 7<sup>th</sup> Street  
3 Duluth, Minnesota 55805  
4 Phone: 218-464-0539  
5 Email: mfink@biologicaldiversity.org  
*Applicant Pro Hac Vice*

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8 **TUCSON DIVISION**

9 Center for Biological Diversity,

10 Plaintiff,

11 vs.

12 United States Forest Service,

13 Defendant

} Case No.:

} **COMPLAINT FOR DECLARATORY**  
} **AND INJUNCTIVE RELIEF**

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16  
17 **INTRODUCTION**

18 1. In this action, the Center for Biological Diversity (“the Center”) challenges  
19 the ongoing failure of the U.S. Forest Service (“Forest Service”) to timely provide  
20 requested records concerning the agency’s “Four Forests Restoration Initiative” (“4FRI”)  
21 on four national forests in Arizona, in violation of the Freedom of Information Act  
22 (“FOIA”), 5 U.S.C. § 552, (“FOIA”), and the Administrative Procedure Act (“APA”), 5  
23 U.S.C. §§ 701-06.  
24  
25  
26

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - I**

1 2. The Center submitted a FOIA request to the Forest Service on March 14,  
2 2018, seeking records related to 4FRI, including the proposed Rim Country project on the  
3 Coconino, Apache-Sitgreaves, and Tonto National Forests. As of the date of this filing,  
4 the Forest Service has not provided a determination or any records responsive to the  
5 Center's request.  
6

7 3. The Center seeks declaratory relief that the Forest Service has violated and  
8 remains in violation of FOIA, or alternatively, the APA. The Center also seeks injunctive  
9 relief ordering the Forest Service to promptly conduct a search for responsive records and  
10 provide the Center with all responsive records without any further delay.  
11

#### 12 JURISDICTION

13 4. This Court has jurisdiction over this matter pursuant to FOIA, 5 U.S.C. §  
14 552(a)(4)(B); the APA, 5 U.S.C. § 702; 28 U.S.C. § 1331, because this action arises  
15 under laws of the United States; and 28 U.S.C. § 1346, because this action involves the  
16 United States as a defendant. An actual justiciable controversy exists between Plaintiff  
17 and Defendant. The requested relief is proper and appropriate. 5 U.S.C. § 552(a)(4)(B);  
18 5 U.S.C. § 706; 28 U.S.C. §§ 2201, 2202.  
19

#### 20 VENUE

21 5. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) because  
22 the Center has its principal place of business in the district, and a portion of the  
23 responsive records are in the district. Venue is also proper pursuant to 28 U.S.C. §  
24

1 1391(e) because Defendant Forest Service has offices in the district, and a substantial part  
2 of the events or omissions giving rise to the claim occurred in the district.

3 6. Venue is proper in the Tucson Division because the Center for Biological  
4 Diversity is headquartered in Tucson. LRCiv 77.1(a).

5  
6 **PARTIES**

7 7. Plaintiff Center for Biological Diversity (“the Center”) is a non-profit  
8 corporation headquartered in Tucson, Arizona, with offices in a number of states and  
9 Mexico. The Center works through science, law, and policy to secure a future for all  
10 species, great or small, hovering on the brink of extinction. The Center is actively  
11 involved in endangered species and habitat protection issues nationwide, and has more  
12 than 63,000 members throughout the United States and the world.

13  
14 8. The Center and its members are harmed by the Forest Service’s violations  
15 of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a  
16 full understanding of the activities, priorities, and communications of the Forest Service,  
17 including the Forest Service’s implementation and oversight of 4FRI and the Rim County  
18 proposal.

19  
20 9. The Center has staff and members who regularly use and enjoy the national  
21 forests that may be adversely affected by 4FRI and the Rim County proposal for a variety  
22 of purposes, including hiking, fishing, camping, and photographing scenery and wildlife.  
23 The Center’s members derive health, aesthetic, recreational, inspirational, spiritual,  
24

1 scientific, and educational benefits from their activities on these national forests. The  
2 Center's members intend to continue to use and enjoy these national forests frequently  
3 and on an ongoing basis, including specific areas that 4FRI and the Rim Country  
4 proposal would adversely affect.  
5

6 10. The interests of the Center and its members have been and will continue to  
7 be adversely affected if the Forest Service's ongoing violations of FOIA and the APA  
8 continue. These are actual, concrete injuries caused by the Forest Service's violations of  
9 FOIA and the APA. The relief sought will redress the Center and its members' injuries.  
10

11 11. Defendant U.S. Forest Service is an agency within the U.S. Department of  
12 Agriculture. The Forest Service is responsible for managing and overseeing the National  
13 Forest System. The Forest Service is in possession and control of the records that the  
14 Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).  
15

#### 16 **STATUTORY BACKGROUND**

17 12. FOIA's basic purpose is for government transparency. It establishes the  
18 public's right to access all federal agency records unless such records may be withheld  
19 pursuant to one of nine, narrowly construed exemptions. 5 U.S.C. § 552(b)(1)-(9).  
20

21 13. FOIA imposes strict deadlines on federal agencies. Within 20 working  
22 days of receiving a FOIA request, an agency must determine whether to disclose  
23 responsive records and notify the requester of its determination, and it must then make  
24 records "promptly" available unless it can establish that certain unusual circumstances  
25

1 are present and/or that it may lawfully withhold records, or portions thereof, from  
2 disclosure. 5 U.S.C. § 552(a)(3)(A), (a)(6). Also within 20 working days, the agency  
3 must inform the requester that it has a right to appeal the agency's determination. *Id.* §  
4 552(a)(6)(A)(i).

6 14. FOIA places the burden on the agency to prove that it may withhold  
7 responsive records from a requester. 5 U.S.C. § 552(a)(4)(B).

8 15. Congress has specified limited circumstances in which federal agencies  
9 may obtain more time to make the determination that is required by 5 U.S.C. §  
10 552(a)(6)(A)(i).

12 16. First, an agency may toll the 20-working-day deadline to seek additional  
13 information or clarification from a requester, but that tolling period ends when the agency  
14 receives such information or clarification. 5 U.S.C. § 552(a)(6)(A).

15 17. Second, an agency may extend the 20-working-day deadline for an  
16 additional 10 working days only by giving a written notice to the requester that sets forth  
17 "unusual circumstances" to justify a deadline extension, and also providing the date by  
18 which the agency expects to make the determination. 5 U.S.C. § 552(a)(6)(B)(i). To  
19 invoke such "unusual circumstances," the agency must provide the requester with "an  
20 opportunity to limit the scope of the request so that it may be processed within [20  
21 working days] or an opportunity to arrange with the agency an alternative time frame for  
22 processing the request or a modified request." *Id.* § 552(a)(6)(B)(ii). In addition, when  
23  
24

1 asserting unusual circumstances, the agency “shall make available its FOIA Public  
2 Liaison” to “assist in the resolution of any disputes between the requester and the  
3 agency.” *Id.*

4  
5 18. FOIA requires each agency to make reasonable efforts to search for records  
6 in a manner that is reasonably calculated to locate all records that are responsive to the  
7 FOIA request. 5 U.S.C. § 552(a)(3)(C)-(D).

8 19. FOIA requires federal agencies to expeditiously disclose requested records,  
9 *see* 5 U.S.C. § 552, and mandates a policy of broad disclosure of government records.  
10 Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

11  
12 20. Congress recognized that in certain, limited instances, records may be  
13 withheld as exempt from FOIA’s broad disclosure mandate, and thus it created nine  
14 categories of exemptions. 5 U.S.C. § 552(b). These exemptions, however, must be  
15 narrowly construed in light of FOIA’s objective of disclosure, not secrecy.

16  
17 21. United States district courts have jurisdiction “to enjoin the agency from  
18 withholding agency records and to order the production of any agency records improperly  
19 withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

20  
21 22. Alternatively, an agency’s response to a FOIA request is subject to judicial  
22 review under the APA, which confers a right of judicial review on any person who is  
23 adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to  
24 compel agency action that is unlawfully withheld or unreasonably delayed. *Id.* § 706(1).

**FACTUAL BACKGROUND**

1  
2 23. The “Four Forest Restoration Initiative” (“4FRI”) is a collaborative,  
3 landscape-scale initiative of the Forest Service, with the purpose of restoring fire-adapted  
4 ecosystems in the ponderosa pine forests of northern Arizona. The four national forests  
5 within 4FRI are the Kaibab, Coconino, Apache-Sitgreaves, and Tonto National Forests.  
6 4FRI dates back a number of years, and the Center has been extensively involved in the  
7 4FRI process.  
8

9 24. The Forest Service is currently planning the second landscape-scale, multi-  
10 forest “environmental impact statement” (“EIS”) pursuant to 4FRI. The “Rim County”  
11 EIS, which is being prepared pursuant to the National Environmental Policy Act, 42  
12 U.S.C. § 4332, will analyze proposed activities on portions of the Coconino, Apache-  
13 Sitgreaves, and Tonto National Forest. A draft EIS for the Rim County proposal is  
14 anticipated in the summer or fall of 2018.  
15

16 25. On March 14, 2018, the Center submitted a FOIA request to the Region 3  
17 of the Forest Service (the Southwestern Region), and to the Forest Supervisor offices for  
18 the Apache-Sitgreaves, Coconino, Kaibab, and Tonto National Forests. The Center  
19 requested:  
20

21 all records, including but not limited to records of internal and external  
22 communications, including those of Four Forests Restoration Initiative (“4FRI”) Executive Board, 4FRI Chief Executive, and 4FRI Planning/Implementation  
23 Team, with parties including but not limited to universities, forest industries, local, state, and federal officials, mentioning, including, and/or referencing Preliminary  
24 Alternative 3 “Maximizing Functional Restoration” for the Rim Country

1 environmental impact statement ("EIS"), Extended Duration Treatments and/or  
2 Extended Duration Restoration.

3 26. The Forest Service emailed the Center on March 14, 2018, asking if the  
4 Center could identify a "date range" for the March 14<sup>th</sup> FOIA request. The Center  
5 emailed the Forest Service on March 15, 2018, stating that the Forest Service could use  
6 the timeframe "1/1/15 to the date the Forest Service conducts this search" for the March  
7 14<sup>th</sup> FOIA request.

8  
9 27. On March 20, 2018, the Forest Service emailed the Center to state that the  
10 March 14<sup>th</sup> FOIA request had been received, and had been assigned the FOIA request  
11 tracking number 2018-FS-R#-030390-F.

12 28. On March 20, 2018, the Forest Service sent a second email to the Center to  
13 acknowledge receipt of the March 14<sup>th</sup> FOIA request, which the agency said was received  
14 by the Region 3 FOIA office on March 15, 2018. The Forest Service stated that it was  
15 diligently working to process each FOIA request in the order in which it was received.  
16 The Forest Service further stated that every attempt would be made to respond to the  
17 request within 20 working days from the date of its receipt of the request.  
18

19 29. On April 26, 2018, the Center contacted the Forest Service to request a  
20 status update and estimated date of completion for its March 14, 2018 FOIA request.  
21

22 30. On June 6, 2018, the Center sent a letter to the Forest Service concerning its  
23 March 14, 2018 FOIA request. The Center notified the Forest Service that the Center had  
24 not received any records or an estimated completion date for its March 14<sup>th</sup> request. The  
25



1 Center also notified the Forest Service that the requested records were very time sensitive  
2 due to the ongoing Rim County EIS process. The Center requested that the Forest  
3 Service immediately provide an estimated date by which the Center could expect  
4 completion of the agency's unlawfully delayed response to its March 14<sup>th</sup> FOIA request.  
5 The Center further notified the Forest Service that legal action would be required if the  
6 Forest Service failed to make a prompt determination on the Center's March 14<sup>th</sup> request.  
7

8 31. As of the date of this filing, the Forest Service has not responded to the  
9 Center's June 6, 2018 letter.

10 32. As of the date of this filing, the Forest Service has not provided any records  
11 responsive to the Center's March 14, 2018 FOIA request.  
12

13 33. As of the date of this filing, the Forest Service has not provided the Center  
14 with a date by which the agency will make a determination on the Center's March 14,  
15 2018 FOIA request.

16 34. As of the date of this filing, the Forest Service has not notified the Center of  
17 any "unusual circumstances" that would prevent it from complying with FOIA's  
18 deadlines for the Center's March 14, 2018 FOIA request.  
19

20 35. As of the date of this filing, the Forest Service has not claimed or asserted  
21 that the Center's requested records are exempt from disclosure under FOIA.

22 36. Upon information and belief, the Forest Service has failed to conduct a  
23 search for responsive records to the Center's March 14, 2018 FOIA request.  
24

1 **FIRST CLAIM FOR RELIEF**

2 **The Forest Service Failed to Comply with FOIA's Mandatory Determination Deadline**

3 37. The Center re-alleges and incorporates by reference the allegations made in  
4 all preceding paragraphs.

5 38. The Center has a statutory right to a lawful final determination from the  
6 Forest Service, within the statutory deadline that FOIA mandates. 5 U.S.C. §  
7 552(a)(6)(A)(i).

8 39. The Forest Service has violated FOIA by failing to provide a lawful  
9 determination on the Center's March 14, 2018 FOIA request within the statutory  
10 deadline. *Id.*

11 **SECOND CLAIM FOR RELIEF**

12 **The Forest Service Failed to Conduct an Adequate Search for Responsive Records**

13 40. The Center re-alleges and incorporates by reference the allegations made in  
14 all preceding paragraphs.

15 41. The Center has a statutory right to have the Forest Service process its FOIA  
16 requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3).

17 42. The Forest Service has violated FOIA by failing to undertake a search that  
18 is reasonably calculated to locate all records that are responsive to the Center's March 14,  
19 2018 FOIA request. *Id.*

**THIRD CLAIM FOR RELIEF**

**The Forest Service Failed to Promptly Disclose Records Responsive to  
the Center's March 14, 2018 FOIA Request**

43. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

44. The Center has a statutory right to the Forest Service's prompt availability and disclosure of the requested records following a determination on its FOIA requests. 5 U.S.C. § 552(a)(3)(A).

45. The Forest Service has failed to produce the public records that the Center requested, for which there are no applicable FOIA exemptions.

46. The Forest Service violated FOIA by failing to promptly make available and disclose the records that are responsive to the Center's March 14, 2018 FOIA request. 5 U.S.C. § 552(a)(3)(A).

**FOURTH CLAIM FOR RELIEF**

**In the Alternative to Claims 1-3, the Forest Service Unlawfully Withheld and  
Unreasonably Delayed Actions That FOIA Requires**

47. The Center re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

48. The Forest Service unlawfully withheld required agency action by failing to comply with the mandates of FOIA to: (1) provide a timely determination on the Center's FOIA requests, (2) conduct an adequate search for records that are responsive to the

1 Center's FOIA requests, and (3) promptly disclose records that are responsive to the  
2 Center's FOIA requests. The Forest Service's failures constitute agency actions that are  
3 unlawfully withheld pursuant to the APA, 5 U.S.C. § 706(1).  
4

5 49. Alternatively, the Forest Service unreasonably delayed agency action by  
6 failing to comply with the mandates of FOIA to: (1) provide a timely determination on  
7 the Center's FOIA requests, (2) conduct an adequate search for records that are  
8 responsive to the Center's FOIA requests, and (3) promptly disclose records that are  
9 responsive to the Center's FOIA requests. The Forest Service's failures constitute  
10 agency action unreasonably delayed pursuant to the APA, 5 U.S.C. § 706(1).  
11

12 **RELIEF REQUESTED**

13 The Center requests that this Court:

14 A. Declare that the Forest Service's failure to make a timely determination on  
15 the Center's March 14, 2018 FOIA request is unlawful under FOIA, 5 U.S.C. §  
16 552(a)(6)(A), or in the alternative, is agency action that has been unlawfully withheld or  
17 unreasonably delayed pursuant to the APA, 5 U.S.C. § 706(1);  
18

19 B. Declare that the Forest Service's failures to undertake a search for and  
20 promptly disclose to the Center all records that are responsive to the Center's March 14,  
21 2018 FOIA request are unlawful under FOIA, 5 U.S.C. § 552(a)(3), or in the alternative,  
22 constitute agency action that has been unlawfully withheld or unreasonably delayed  
23 pursuant to the APA, 5 U.S.C. § 706(1);  
24

1 C. Order the Forest Service to promptly provide a determination on the  
2 Center's March 14, 2018 FOIA request as required by FOIA;

3 D. Order the Forest Service to promptly conduct a search that is reasonably  
4 calculated to locate all records responsive to the Center's March 14, 2018 FOIA request,  
5 and to provide the Center, by a date certain, with all responsive records;  
6

7 E. Award the Center its costs and reasonable attorney fees and expenses  
8 pursuant to FOIA, 5 U.S.C. § 552(a)(4)(E), or the Equal Access to Justice Act, 28 U.S.C.  
9 § 2412.

10 F. Grant such other and further relief to the Center as the Court may deem just  
11 and proper.  
12

13 DATED: July 10, 2018.

Respectfully submitted,

/s/ Marc D. Fink

Marc D. Fink (MN Bar No. 343407)

Center for Biological Diversity

209 East 7<sup>th</sup> Street

Duluth, Minnesota 55805

Phone: 218-464-0539

Email: mfink@biologicaldiversity.org

*Applicant Pro Hac Vice*



UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

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**Plaintiff(s): , Center for Biological Diversity      Defendant(s): , United States Forest Service**

County of Residence: Pima

County of Residence: Outside the State of  
Arizona

County Where Claim For Relief Arose:  
Coconino

Plaintiff's Atty(s):

Defendant's Atty(s):

**Marc D Fink  
Center for Biological Diversity  
209 East 7th St  
Duluth, Minnesota 55805  
218-464-0539**

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**II. Basis of Jurisdiction:      2. U.S. Government Defendant**

**III. Citizenship of Principal  
Parties (Diversity Cases Only)**

Plaintiff:- N/A  
Defendant:- N/A

**IV. Origin :                      1. Original Proceeding**

**V. Nature of Suit:              895 Freedom of Information Act**

**VI.Cause of Action:            Failure to provide a determination and records, pursuant to the  
Freedom of Information Act, 5 U.S.C. 552**

**VII. Requested in Complaint**

Class Action: **No**  
Dollar Demand:  
Jury Demand: **No**

VIII. This case is not related to another case.

---

**Signature: /s/ Marc D. Fink**

**Date: 07/09/2018**

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.



1 Name Marc D. Fink  
 2 Bar # MN Bar No. 343407  
 3 Firm Center for Biological Diversity  
 4 Address 209 East 7th St  
Duluth, MN 55805  
 5 Telephone 218-464-0539

7 IN THE UNITED STATES DISTRICT COURT  
 8 FOR THE DISTRICT OF ARIZONA

10 Center for Biological Diversity  
 11  
 12 Plaintiff,  
 13 vs.  
 14 United States Forest Service  
 15 Defendant.

Case No.  
 Corporate Disclosure Statement

17  
 18 This Corporate Disclosure Statement is filed on behalf of Center for Biological Diversity  
 19 in compliance with the provisions of: *(check one)*

- 20  Rule 7.1, Federal Rules of Civil Procedure, a nongovernmental corporate party to an  
 21 action in a district court must file a statement that identifies any parent corporation  
 22 and any publicly held corporation that owns 10% or more of its stock or states that  
 23 there is no such corporation.  
 24  Rule 12.4(a)(1), Federal Rule of Criminal Procedure, any nongovernmental corporate  
 25 party to a proceeding in a district court must file a statement that identifies any  
 26 parent corporation and any publicly held corporation that owns 10% or more of its  
 27 stock or states that there is no such corporation.  
 28  Rule 12.4(a)(2), Federal Rule of Criminal Procedure, if an organizational victim of  
 alleged criminal activity is a corporation the government must file a statement  
 identifying the victim and the statement must also disclose the information required  
 by Rule 12.4(a)(1).

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**The filing party hereby declares as follows:**

No such corporation.

Party is a parent, subsidiary or other affiliate of a publicly owned corporation as listed below. *(Attach additional pages if needed.)*

Publicly held corporation, not a party to the case, with a financial interest in the outcome. *List identity of corporation and the nature of financial interest. (Attach additional pages if needed.)*

Other(please explain)

**A supplemental disclosure statement will be filed upon any change in the information provided herein.**

Dated this 10th day of July, 2018.

/s/ Marc D. Fink  
Counsel of Record

Certificate of Service:

Attached at the end of all documents.

**(For Use In Civil Cases With District Judge as President)**

UNITED STATES DISTRICT COURT

\_\_\_\_\_ District of \_\_\_\_\_

Plaintiff

v.

Defendant

NOTICE, CONSENT, AND ORDER OF REFERENCE-  
EXERCISE OF JURISDICTION BY A UNITED STATES  
MAGISTRATE JUDGE

Case Number:

**NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE  
TO EXERCISE JURISDICTION**

In accordance with the provisions of 28 U.S.C. 636(c) and Fed.R.Civ.P.73, you are hereby notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

**CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. 636(c) and Fed.R.Civ.P. 73, the parties in this case hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Signatures	Party Represented	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**ORDER OF ASSIGNMENT**

IT IS HEREBY ORDERED that this case be assigned to \_\_\_\_\_  
United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S.C. 636(c), Fed.R.Civ.P. 73 and the foregoing consent of the parties. All further documents filed with the court are to carry the following case number  
\_\_\_\_\_.

\_\_\_\_\_ Date \_\_\_\_\_ United States District Judge

**NOTE: RETURN THIS FORM, IN PAPER, TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.  
PLEASE DO NOT FILE THIS FORM ELECTRONICALLY.**



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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Center for Biological Diversity

Plaintiff

v.

United States Forest Service

Defendant

Civil Action No. CV-18-340-TUC-JGZ

Summons In A Civil Action

To: United States Forest Service  
1400 Independence Ave., SW  
Washington, D.C. 20250-1111

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name or address are:

Marc D. Fink  
Center for Biological Diversity  
209 East 7<sup>th</sup> Street  
Duluth, MN 55805

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date:



CLERK OF COURT

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Center for Biological Diversity

**Plaintiff(s)/Petitioner(s),**

vs.

United States Forest Service

**Defendant(s)/Respondent(s)**

**CASE NO:**

**Application of Attorney For Admission To Practice Pro Hac  
Vice Pursuant to LRCiv 83.1(b)(2)**

**NOTICE: APPLICATION FEE REQUIRED!**

I, Marc D. Fink, hereby apply to the Court under LRCiv 83.1(b)(2) for pro hac vice admission to appear and practice in this action on behalf of Plaintiff Center for Biological Diversity.

**City and State of Principal Residence:** Duluth, Minnesota

**Firm Name:** Center for Biological Diversity

**Address:** 209 East 7th St

**Suite:** \_\_\_\_\_

**City:** Duluth

**State:** MN

**Zip:** 55805

**Firm/Business Phone:** ( 218 ) 464-0539

**Firm Fax Phone:** ( 817 ) 582-3884

**E-mail Address:** mfink@biologicaldiversity.org

I am admitted to practice before the following courts. (attach additional sheets if necessary)

TITLE OF COURT	DATE OF ADMISSION	IN GOOD STANDING?	
Supreme Court for the State of Minnesota	05/12/2005	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No*
U.S. District Court for the District of Minnesota	09/15/2006	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No*
U.S. Supreme Court	02/20/2007	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No*

\* Explain:

(An **Original** Certificate of Good Standing from a **FEDERAL BAR** in which an applicant has been admitted dated no more than 45 days prior to submission of this application is required.)

I have concurrently, or within 1 year of this application, made *pro hac vice* applications to this Court in the following actions (attach additional sheets if necessary):

Case Number	Title of Action	Date Granted or Denied*
17-cv-00475-TUC-JAS	Center for Biological Diversity v. U.S. FWS	09/25/2017

\* Explain:

**ALL APPLICANTS ARE REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.**

*If you answer YES to either of the following questions, please explain all circumstances on a separate page.*

Are you currently the subject of a disciplinary investigation or proceeding by any Bar or Court?  Yes  No

Have you ever been disbarred from practice in any Court?  Yes  No

I declare under penalty of perjury that the foregoing is true and correct; that I am not a resident of, nor am I regularly employed, engaged in business, professional or other activities in the State of Arizona; and that I am not currently suspended, disbarred or subject to disciplinary proceedings in any court. I certify that I have read and will ascribe to the Standards for Professional Conduct, will comply with the Rules of Practice of the United States District Court for the District of Arizona ("Local Rules"), and will subscribe to receive court notices as required by LRCiv 83.1(c).

07/09/2018

/s/ Marc D. Fink

Date

Signature of Applicant

Fee Receipt # \_\_\_\_\_

Additional Courts In Which I Am Admitted To Practice:

United States Court of Appeals for the Ninth Circuit	1997
United States Court of Appeals for the Fifth Circuit	07/06/2010
United States District Court for the District of Colorado	08/12/2013
United States District Court for the Western District of Wisconsin	08/25/2011
State of Idaho (inactive)	
State of Oregon (inactive)	



UNITED STATES DISTRICT COURT  
for the  
District of Minnesota

CERTIFICATE OF GOOD STANDING

I, Kate M. Fogarty, Clerk of this Court,  
certify that Marc D. Fink, Bar # 343407,  
was duly admitted to practice in this Court on 09/15/2006, and is in good standing as a member  
of the Bar of this Court.

Dated at Minneapolis on 07/06/2018  
*(Location)* *(Date)*



Kate M. Fogarty  
CLERK

Sarah Erickson  
DEPUTY CLERK



**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the Complaint, Civil Cover Sheet, Summons, Pro Hac Application, and Corporate Disclosure Statement, on the following parties by U.S. Certified Mail pursuant to Federal Rules of Civil Procedure Rule 4(i)(1)(A)(ii) and (i)(2):

United States Forest Service  
1400 Independence Ave. SW  
Washington, D.C. 20250-1111

Jeff Sessions  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530-0001

U.S. Attorney for District of Arizona  
Attn: Civil Process Clerk  
United States Attorney's Office  
405 W. Congress Street, Ste. 4800  
Tucson, AZ 85701-5040

Dated: July 11, 2018

/s/ Elise Ferguson  
CENTER FOR BIOLOGICAL DIVERSITY  
1212 Broadway, Suite 800  
Oakland, CA 94612

