

IN THE UNITED STATES DISTRICT COURT  
FOR DISTRICT OF COLUMBIA

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THE WILDERNESS SOCIETY,	)	)	
1660 Wynkoop St. # 850	)	)	
Denver, Colorado, 80202	)	)	CIV # 19-1802
	)	)	
Plaintiff,	)	)	<b>COMPLAINT FOR</b>
v.	)	)	<b>DECLARATORY AND</b>
	)	)	<b>INJUNCTIVE RELIEF</b>
U.S. DEPARTMENT OF THE	)	)	
INTERIOR	)	)	
1849 C Street, NW	)	)	
Washington, D.C. 20240	)	)	
	)	)	
U.S. BUREAU OF LAND	)	)	
MANAGEMENT,	)	)	
1849 C St., NW,	)	)	
Washington, D.C., 20240.	)	)	
	)	)	
U.S. DEPARTMENT OF	)	)	
AGRICULTURE	)	)	
1400 Independent Ave., S.W.	)	)	
Washington, D.C. 20250	)	)	
	)	)	
U.S. FOREST	)	)	
SERVICE	)	)	
201 14th St, SW	)	)	
Washington, D.C. 20024	)	)	
	)	)	
Defendants.	)	)	
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**I. INTRODUCTION**

1. Defendants United States Department of the Interior (DOI), United States Bureau of Land Management (BLM), United States Department of Agriculture (USDA), and United States Forest Service (USFS, collectively

“Agencies”) have violated the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), by unlawfully failing to timely issue determinations in response to records requested by Plaintiff, The Wilderness Society, regarding the abrupt cancellation of a proposed mineral withdrawal of approximately 234,000 acres of Superior National Forest lands in the Rainy River watershed in northeastern Minnesota, by unlawfully withholding such documents, and by failing to issue an estimated date of completion of the requests. This lawsuit requests an order declaring that Defendants have violated FOIA, and enjoining Defendants to issue final determinations and provide Plaintiff with the records it has requested.

## **II. JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Venue in this Court is proper under 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district.

## **III. PARTIES**

4. Plaintiff THE WILDERNESS SOCIETY, founded in 1935, is a national, non-profit membership organization devoted to protecting wilderness and inspiring Americans to care for wild places. It has led the effort to permanently protect 109 million acres of wilderness and ensure sound management of our shared national lands. The Wilderness Society has more than 1 million members and supporters. As part of its organizational mission, The Wilderness Society monitors

threats to the Boundary Waters Canoe Area Wilderness (“Boundary Waters”), including proposed sulfide-ore copper mining on national forest lands that comprise the headwaters of the wilderness. The Wilderness Society has long advocated for permanent protection of the Boundary Waters watershed from this threat and worked to inform the public about the threat, including through email action alerts, social media posts and blogs, press releases, published materials such as its 2017 report “Too Wild to Drill” and interactive website, and other means. The Wilderness Society routinely collects information through FOIA and other means to inform our public outreach and advocacy on the threat of sulfide-ore copper mining to the Boundary Waters and surrounding Superior National Forest.

5. Plaintiff monitors compliance with the law regarding Federal activity within the Boundary Waters watershed, and educates its members and the public concerning the management of these lands. Plaintiff advocates for policies, practices, and decisions that protect the watershed and the wilderness, including the proposed twenty-year administrative withdrawal of approximately 230,000 acres of Superior National Forest lands in the watershed of the Boundary Waters from disposition under applicable mineral leasing laws. The Wilderness Society advocated for the proposed withdrawal, educated its members and the public about it, and developed and submitted detailed technical comments in support of withdrawal in February 2018 and August 2018. On September 6, 2018, however, USDA Secretary Sonny Perdue announced via a press release that the Forest Service was cancelling its application for the withdrawal and terminating the

associated public process and environmental assessment. This announcement occurred 20 months into a 24-month review period during which the lands proposed for withdrawal were temporarily segregated. The USDA press release referenced the Forest Service's "extensive review of environmental information related to the proposed mineral activities," including "a mineral resources report, a biological and economic impact assessment, and potential impacts to water resources, wilderness areas, and cultural resources." The press release further stated that "[t]he analysis did not reveal new scientific information." In response to the unexpected announcement by Secretary Perdue, The Wilderness Society submitted a series of FOIA requests for the documents referenced in the press release and communications related to the proposed withdrawal and its cancellation. Obtaining and sharing those government records with our members and the public is necessary to fully achieving Plaintiff's organizational purposes and objectives with respect to protection of the Boundary Waters watershed.

6. Defendant DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY ("DOI"), is an independent agency of the U.S. Federal government. DOI is in possession and control of the records that Plaintiff seeks and so is subject to FOIA pursuant to 5 U.S.C. § 552(f). Defendant DOI is responsible for fulfilling Plaintiff's FOIA requests to it.

7. Defendant U.S. BUREAU OF LAND MANAGEMENT ("BLM") is a federal agency within the DOI. BLM is in possession and control of the records that Plaintiff seeks and so is subject to FOIA pursuant to 5 U.S.C. § 552(f). Defendant

BLM is responsible for fulfilling Plaintiff's FOIA requests to it.

8. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE ("USDA") is an independent agency of the U.S. Federal government. USDA is in possession and control of the records that Plaintiff seeks and so is subject to FOIA pursuant to 5 U.S.C. § 552(f). Defendant USDA is responsible for fulfilling Plaintiff's FOIA requests to it.

9. Defendant U.S. FOREST SERVICE ("USFS") is a federal agency within the USDA. USFS is in possession and control of the records that Plaintiff seeks and so is subject to FOIA pursuant to 5 U.S.C. § 552(f). Defendant USFS is responsible for fulfilling Plaintiff's FOIA requests to it.

10. The interests and organizational purposes of Plaintiff are directly and irreparably injured by Defendants' violations of law as described in this complaint.

11. The Defendants' violations of law have denied Plaintiff the information to which it is entitled, and Plaintiff and its members are injured by its inability to fulfill its organizational objectives and purpose, including monitoring compliance with the law regarding Federal activity within the Boundary Waters watershed and surrounding Superior National Forest, engaging the public regarding this topic, and advocating for policy objectives that protect and conserve the area, and by the deprivation of government information to which Plaintiff is entitled.

#### **IV. STATUTORY FRAMEWORK**

12. FOIA promotes governmental accountability through transparency by requiring agencies to disclose records and imposing firm deadlines for releasing

documents in response to FOIA requests. 5 U.S.C. §§ 552(a)(3)(A), (6)(A). FOIA requires agencies to issue a determination on a FOIA request within 20 working days, and to make requested records “promptly available.” 5 U.S.C. §§ 552(a)(3)(A), 552(a)(6)(A)(i). A determination “must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 771 F.3d 180, 186 (D.C. Cir. 2013). Agencies may invoke a ten (10) business day extension where “unusual circumstances” exist and upon written notice to the requestor. 5 U.S.C. § 552(a)(6)(B). FOIA also requires agencies to provide “an estimated date on which the agency will complete action on the request” for requests that require “longer than ten days to process.” 5 U.S.C. § 552(a)(7). FOIA requires that agencies provide reasonably segregable portions of requested records that are not lawfully exempt. 5 U.S.C. § 552(b)(9).

13. When an agency fails to respond to a FOIA request within the statutory timeframe it has constructively denied the request. In such cases, plaintiffs are deemed to have exhausted any administrative remedies and may seek judicial relief. 5 U.S.C. § 552(a)(6)(C)(i). A FOIA requester may seek injunctive and declaratory relief from the court for an agency’s continued withholding of public records. 5 U.S.C. § 552(a)(4)(B).

## V. STATEMENT OF FACTS

**A. FOIA Request No. OS-2018-01620 to Department of Interior**

14. On September 10, 2018, Plaintiff submitted a FOIA request to Defendant DOI, Office of the Secretary, seeking:

All documents and correspondence related to the proposed mineral withdrawal of approximately 234,000 acres of Superior National Forest lands in the Rainy River watershed produced, transmitted, or received by the BLM (agency) or the Department of the Interior (Department) between June 1, 2018 and the date of the search for responsive records, including but not limited to electronic mail, hard copy mail, text or instant messages, memoranda, meeting notes, environmental review documents, and telephone records. This request includes but is not limited to correspondence between agency or Department employees; between agency or Department employees and other Executive Branch employees or elected or appointed officials; between agency or Department employees and non-federal entities; between agency or Department employees and Congressmen Tom Emmer or his staff; between agency or Department employees and Congressman Rick Nolan or his staff; and between agency or Department employees and members of the Congressional Western Caucus or their staff.

15. On September 28, 2018, Plaintiff sent a follow up letter requesting a tracking number and estimated completion date.

16. On October 5, 2018, Plaintiff received a confirmation letter from Defendant DOI assigning the request a tracking number, OS-2018-01620, and notifying Plaintiff that Defendant DOI was taking a 10-workday extension under 43 C.F.R. § 2.19.

17. On November 7, 2018, Plaintiff sent a follow up letter to Defendant DOI providing notification of a violation of FOIA's statutory deadlines and requesting an estimated completion date and release of the requested documents.

18. On February 7, 2019, Plaintiff sent a second follow up letter to

Defendant DOI providing notification of a violation of FOIA's statutory deadlines and requesting an estimated completion date and release of the requested documents.

19. On March 8, 2019, Plaintiff sent a third follow up letter to Defendant DOI providing notification of a violation of FOIA's statutory deadlines and requesting an estimated completion date and release of the requested documents.

20. The original FOIA request and all three follow up letters stated that "time is of the essence" because Plaintiff planned to use the information to engage and inform the public regarding the substance of the requested documents.

21. The statutory deadline for Defendant DOI to respond to this FOIA request, accounting for the ten (10) day extension, passed on October 23, 2018.

22. No documents have been provided to Plaintiff as the date of the filing of this complaint.

**B. FOIA Request No. BLM-2019-00003 to Bureau of Land Management**

23. On September 10, 2018, Plaintiff submitted a FOIA request to Defendant BLM, seeking:

All documents and correspondence related to the proposed mineral withdrawal of approximately 234,000 acres of Superior National Forest lands in the Rainy River watershed produced, transmitted, or received by the BLM (agency) or the Department of the Interior (Department) between June 1, 2018 and the date of the search for responsive records, including but not limited to electronic mail, hard copy mail, text or instant messages, memoranda, meeting notes, environmental review documents, and telephone records. This request includes but is not limited to correspondence between agency or Department employees; between agency or Department employees and other Executive Branch employees or elected or appointed officials; between agency or

Department employees and non-federal entities; between agency or Department employees and Congressmen Tom Emmer or his staff; between agency or Department employees and Congressman Rick Nolan or his staff; and between agency or Department employees and members of the Congressional Western Caucus or their staff.

24. On September 28, 2018, Plaintiff sent a follow up letter requesting a tracking number and estimated completion date.

25. On October 1, 2018, Defendant BLM responded with a tracking number of BLM-2019-00003.

26. On November 7, 2018, Plaintiff sent a follow up letter notifying Defendant BLM that it had violated FOIA's statutory deadlines and requesting an estimated completion date and release of the requested documents.

27. On February 7, 2019, and March 8, 2019 Plaintiff sent additional follow up letters to Defendant BLM again notifying the agency that it had violated FOIA's statutory deadlines and requesting an estimated completion date and release of the requested documents.

28. Plaintiff's original FOIA request and all three follow up letters stated that "time is of the essence" because Plaintiff planned to use the information to engage and inform the public regarding the substance of the requested documents.

29. The statutory deadline for Defendant BLM to respond to this FOIA request passed on October 9, 2018.

30. No documents have been provided to Plaintiff as the date of the filing of this complaint.

**C. Request No. 2018-01262 to Bureau of Land Management, Eastern States Office**

31. On September 10, 2018, Plaintiff submitted a FOIA request to Defendant BLM, through the Eastern States Office, seeking:

All documents and correspondence related to the proposed mineral withdrawal of approximately 234,000 acres of Superior National Forest lands in the Rainy River watershed produced, transmitted, or received by the Forest Service (agency) or the Department of Agriculture (Department) between June 1, 2018 and the date of the search for responsive records, including but not limited to electronic mail, hard copy mail, text or instant messages, memoranda, meeting notes, environmental review documents, and telephone records. This request includes but is not limited to correspondence between agency or Department employees; between agency or Department employees and other Executive Branch employees or elected or appointed officials; between agency or Department employees and non-federal entities; between agency or Department employees and Congressmen Tom Emmer or his staff; between agency or Department employees and Congressman Rick Nolan or his staff; and between agency or Department employees and members of the Congressional Western Caucus or their staff.

32. On September 28, 2018, Plaintiff sent a demand for a tracking number and estimated completion date.

33. On October 1, 2018, Defendant BLM sent a confirmation email including a tracking number of BLM-2018-01262. The email stated “[w]e are expediting our response, based on your ‘time is of the essence’ statement, and plan to send you the results of that search by the end of this week.” The letter also stated “there will be approximately 200 pages of responsive documents.”

34. On October 11, 2018, Defendant BLM, through Brian Smith, State Records Administrator, sent an email stating “I had expected to release documents

to you at the end of last week. However, the Solicitor's office is still reviewing the documents. They have assured me that they will process them as soon as possible.”

35. On November 7, 2018, Plaintiff sent a follow up letter notifying Defendant BLM that it had violated FOIA’s statutory deadlines and requesting an estimated completion date and release of the requested documents.

36. On November 20, 2018, Defendant BLM sent response through Mr. Smith stating “[t]he Solicitor's office expects to be completed with their review by early December.”

37. On February 7, 2019, Plaintiff sent a second follow up letter notifying Defendant BLM that it had violated FOIA’s statutory deadlines and requesting an estimated completion date and release of the requested documents.

38. On March 4, 2019, Defendant BLM sent a response stating:

The Solicitor's office has authorized me to release some documents, but recommends a number of predecisional documents be withheld if they are materially different from final versions. Rather than holding up the release of all documents, I am separating non-predecisional documents and putting them in interim release to send to you. The remaining documents will be released once they are analyzed and redacted, if redaction is necessary. I expect to have the initial release sent out by the end of this week.

39. On March 13, 2019, Defendant BLM sent an interim release of documents but inadvertently included a document that was not intended for release. After a phone conversation with Mr. Smith, Plaintiff agreed to permanently destroy the unintentionally-released document, and did so.

40. On March 13, 2019, Defendant BLM, through Mr. Smith, sent an

interim release of 249 pages with the email transmittal stating:

Per our phone conversation, here is the re-send of our initial release with the Federal Register notice pulled from the list of released documents. I have also pulled EF-1, EF-4 and EF-6, temporarily, as they were connected to the notice document. I hope to release these in the next release, after further discussions with management. As I mentioned in the phone call, releasing these documents was entirely my mistake.

41. The transmittal letter associated with the interim release stated “[a]fter consultation with the Solicitor’s Office, a number of documents were withheld as pre-decisional requiring further review for potential redaction. These will be released as soon as the review is completed.”

42. A majority of the 249 pages included in the March 13, 2019 interim release constitute basic reference materials or outdated reports that are otherwise available to the public. For instance, the release includes a 76-page USFS General Technical Report from 1995 entitled “Anatomy of a Mine from Prospect to Production,” as well as a 36-page Minnesota Geological Survey report from 1984 entitled “The Search for Oil and Gas in Minnesota.” Basic reference materials include a map and list of all Minnesota watersheds, township and range information for northeastern Minnesota, and a map of geothermal resources in the United States. Another significant portion of the interim release consists of emails between BLM and USFS geologists working to compile basic information on all State and Federal mineral activities within the proposed withdrawal area. Only two documents pertain directly to the cancellation of the proposed withdrawal. The first is a September 6, 2018 letter from USFS Regional Forester Kathleen Atkinson to

BLM Acting Eastern States Director Mitchell Leverette stating that the USFS was cancelling its withdrawal application. The second is a curious email from September 18, 2018 entitled “DTS for Superior National Forest Federal Register Notice,” with attached flowcharts related to “surnaming” federal register notices for “DOI Withdrawal Petitions/Applications” and “Standard Land Tenure FRN Packages.” To Plaintiff’s knowledge, Defendants did not publish a federal register notice related to cancellation of the proposed withdrawal.

43. The 249 pages included in the March 13, 2019 interim release are not fully responsive to the request. When the USFS cancelled its withdrawal application on September 6, 2018, the agency had invested 20 months of environmental review and public process to study the proposed withdrawal. It is inconceivable that such an about-face would not be preceded by correspondence documenting the change in agency position. Such correspondence fall squarely within the scope of this FOIA request.

44. The original FOIA request and follow up letter stated that “time is of the essence” because Plaintiff plans to use the information to engage and inform the public regarding the substance of the requested documents.

45. The statutory deadline for Defendant BLM to respond to this FOIA request passed on October 9, 2018.

46. No additional documents, including the pre-decisional documents referenced in the March 13, 2019, transmittal letter that were being reviewed for redaction, have been provided to Plaintiff since the March 13, 2019 interim release

as the date of the filing of this complaint.

**D. Request No. 2018-DA-06077-F to U.S. Department of Agriculture**

47. On September 11, 2018, Plaintiff sent a FOIA request to Defendant USDA seeking:

All documents and correspondence related to the proposed mineral withdrawal of approximately 234,000 acres of Superior National Forest lands in the Rainy River watershed produced, transmitted, or received by the Forest Service (agency) or the Department of Agriculture (Department) between June 1, 2018 and the date of the search for responsive records, including but not limited to electronic mail, hard copy mail, text or instant messages, memoranda, meeting notes, environmental review documents, and telephone records. This request includes but is not limited to correspondence between agency or Department employees; between agency or Department employees and other Executive Branch employees or elected or appointed officials; between agency or Department employees and non-federal entities; between agency or Department employees and Congressmen Tom Emmer or his staff; between agency or Department employees and Congressman Rick Nolan or his staff; and between agency or Department employees and members of the Congressional Western Caucus or their staff.

48. On September 12, 2018, Defendant USDA sent a confirmation letter with a tracking number of 2018-DA-06077-F.

49. On February 20, 2019, Plaintiff sent a follow up letter notifying Defendant BLM that it had violated FOIA's statutory deadlines and requesting an estimated completion date and release of the requested documents.

50. On February 22, 2019, Defendant USDA sent a response stating that Plaintiff should expect to receive the documents by the end of the following week.

51. On February 26, 2019, Defendant USDA sent an email stating:  
Some of the records that have been uncovered in relation to your FOIA

request include email attachments, which provide links to publicly available material. To expedite the processing of your FOIA request, would you be willing to waive receipt of content that is already publicly available? If you choose to waive receipt of these attachments, reference to them will not be removed from the record, and you retain the option to request the attachments at any future point, if you so choose.

52. On February 28, 2019, Plaintiff responded stating:

Thank you for your email and your phone message this morning. I have communicated with [The Wilderness Society] regarding the content of this request and we would like to err on the side of inclusiveness and ask that the substantive response include everything, i.e. we do not wish to waive receipt of any content, including attachments. Hopefully this will not significantly delay your response. Can you please let me know if that is the case? Thank you so much for your time and efforts to respond to our request.

53. On March 1, 2019, Plaintiff received “Interim Release No. 1” from Defendant USDA along with a letter stating “Please remember this is only an interim response. The DFO’s review of the potentially responsive CEC records is still ongoing. You will be provided appeal rights upon completion of our review and processing of those records.”

54. The first interim response yielded forty-seven (47) responsive pages from the Office of the Executive Secretariat and three (3) responsive pages from the Office of the Chief Information Officer. Both responses were redacted pursuant to 5 U.S.C. § 552(b)(5) (FOIA Exemption 5) and 5 U.S.C. § 552(b)(6) (FOIA Exemption 6).

55. The 47 pages from the Office of the Executive Secretariat in the March 1, 2019 first interim response consist entirely of a series of letters from businesses,

conservation organizations (including Plaintiff), and sportsmen groups sent on May 31, 2018 to DOI Secretary Ryan Zinke and USDA Secretary Sonny Perdue requesting that the proposed withdrawal study be completed and that additional mineral authorizations be suspended pending completion; what appears to be a checklist and “official clearance sheet[s]” for producing USDA correspondence; several completely redacted pages; and USDA’s formal July 19, 2018 responses to the May 31, 2018 letters. The 3 pages from the Office of the Chief Information Officer consist of an August 13, 2018 email from the Chair of Jobs for Minnesota to various recipients within Defendant agencies demanding a response regarding “the intention of your agencies to fulfill President Trump’s directives” to support copper mining in Minnesota, along with redacted email correspondence among USDA staff about the August 13, 2018 email.

56. The interim release was not fully responsive to Plaintiff’s FOIA request.

57. The statutory deadline for Defendant BLM to respond to this FOIA request passed on October 10, 2018.

58. No documents beyond those included in the March 1, 2019 interim release have been provided to Plaintiff as the date of the filing of this complaint.

**E. FOIA Request No. 2018-DA-06107-F to U.S. Department of Agriculture**

59. On September 7, 2018, a day after the September 6, 2018, USDA press release was issued, Plaintiff submitted a FOIA request to Defendant USDA seeking:

All records, draft and final, comprising the ‘extensive review of environmental information related to the proposed mineral activities’ described in the September 6, 2018 press release, regarding the proposed withdrawal of approximately 234,000 acres of Superior National Forest lands in the Rainy River watershed from disposition under the mineral and geothermal leasing laws.

60. On September 14, 2018, Defendant USDA, through Kathleen Drohan, confirmed receipt of Plaintiff’s request and provided a tracking number of 2018-DA-06107-F.

61. On September 14, 2018, following confirmation of the FOIA request, the USDA sent a letter stating:

Following a review of your FOIA request, the DFO has determined that a portion of records sought are likely to be maintained by the Forest Service (FS). For that reason, the DFO is routing your request to FS for processing and direct response to you .... The records you are seeking may also exist in the Office of the Secretary and DA components. For this reason, your request will remain open with the DFO while it conducts a search for responsive records. The DFO will notify you regarding the results of the search.

62. On September 18, 2018, Defendant USDA asked for clarification regarding the date range of the search. Plaintiff responded on September 20, 2018, asking for search dates of January 1, 2016 through September 6, 2018.

63. Plaintiff has received no further communications regarding the portion of the request that was retained by Defendant USDA, 2018-DA-06107-F.

64. The statutory deadline for Defendant USDA to respond to FOIA request 2018-DA-06107-F passed on October 5, 2018.

65. On September 17, 2018, Plaintiff received a confirmation email from Defendant USFS for the portion of the request that Defendant USDA referred to

that agency with a tracking number of 2018-FS-WO-06141.

66. No documents have been provided to Plaintiff for request 2018-DA-06107-F as of the date of the filing of this complaint.

**F. FOIA Request No. 2018-FS-WO-06097-F to U.S. Forest Service**

67. On September 11, 2018, Plaintiff submitted a FOIA request to the USFS seeking:

All documents and correspondence related to the proposed mineral withdrawal of approximately 234,000 acres of Superior National Forest lands in the Rainy River watershed produced, transmitted, or received by the Forest Service (agency) or the Department of Agriculture (Department) between June 1, 2018 and the date of the search for responsive records, including but not limited to electronic mail, hard copy mail, text or instant messages, memoranda, meeting notes, environmental review documents, and telephone records. This request includes but is not limited to correspondence between agency or Department employees; between agency or Department employees and other Executive Branch employees or elected or appointed officials; between agency or Department employees and non-federal entities; between agency or Department employees and Congressmen Tom Emmer or his staff; between agency or Department employees and Congressman Rick Nolan or his staff; and between agency or Department employees and members of the Congressional Western Caucus or their staff.

68. On September 28, 2018, Plaintiff sent a follow up letter requesting a tracking number and estimated completion date.

69. On October 1, 2018, Defendant USFS sent an email stating that an acknowledgement letter was sent to Plaintiff on September 13, 2018 (which Plaintiff did not receive) and providing a tracking number of 2018-FS-WO-06097-F.

70. On November 16, 2108, Plaintiff contacted USFS FOIA Officer, Harald Fuller-Bennett, to inquire about the status of 2018-FS-WO-06097, and the portion

of USDA-2018-DA-06107 that was referred by USDA to USFS and given a tracking number of 2018-FS-WO-06141.

71. Mr. Fuller-Bennett stated that Defendant USFS had assembled approximately 3,000 documents in response to 2018-FS-WO-06097 and 2018-FS-WO-06141, a response letter had been drafted, the documents were undergoing a final review, and Defendant USFS would not release the documents for at least two weeks.

72. On November 16, 2018, Plaintiff sent a letter notifying Defendant USFS of a violation of FOIA's statutory deadlines regarding 2018-FS-WO-06097 and 2018-FS-WO-06141, requesting an estimated completion date and release of documents, and confirming the substance of the November 16, 2018 phone call with Mr. Fuller-Bennett. Plaintiff did not receive a response to this letter.

73. On February 7, 2019, sent a second follow up letter to Defendant USFS notifying Defendant USFS of a violation of FOIA's statutory deadlines and asking for an estimated completion date and the requested documents.

74. On March 8, 2019, Plaintiff sent Defendant USFS a third follow up letter notifying Defendant USFS of a violation of FOIA's statutory deadlines and asking for an estimated completion date and the requested documents.

75. The original FOIA request and all three follow-up letters for 2018-FS-WO-06097 and 2018-FS-WO-06141 stated that "time is of the essence" because Plaintiff planned to use the information to engage and inform the public regarding the substance of the requested documents.

76. The statutory deadline for Defendant USFS to respond to 2018-FS-WO-06097 passed on October 10, 2018.

77. The statutory deadline for Defendant USFS to respond to FOIA request 2018-FS-WO-06141 passed on October 15, 2018.

78. No documents have been provided to Plaintiff for 2018-FS-WO-06097 and 2018-FS-WO-06141 as of the date of the filing of this complaint.

## **VI. CAUSES OF ACTION**

### **COUNT I**

#### **VIOLATION OF THE FREEDOM OF INFORMATION ACT: FAILURE TO TIMELY RESPOND**

79. Plaintiff realleges and incorporates the allegations in the above paragraphs by reference.

80. Defendants DOI, BLM, USDA, and USFS are “agencies” under FOIA. 5 U.S.C. § 552(f)(1). The Agencies have possession and control of the requested records.

81. Defendant BLM was required to provide a determination within 20 working days in response to requests BLM-2019-00003 and BLM-2018-01262 submitted on September 10, 2018. 5 U.S.C. § 552(a)(6).

82. Defendant BLM was required to provide an estimated date “on which the agency [would] complete action on the request” for requests BLM-2019-00003 and BLM-2018-01262. 5 U.S.C. § 552(a)(7)(B)(ii).

83. Defendant USDA was required to provide a determination within 20

working days in response to 2018-DA-06107-F, submitted on September 7, 2018, and 2018-DA-06077-F, submitted on September 10, 2018. 5 U.S.C. § 552(a)(6).

84. Defendant USDA was required to provide an estimated date “on which the agency [would] complete action on the request” for requests 2018-DA-06107-F and 2018-DA-06077-F. 5 U.S.C. § 552(a)(7)(B)(ii).

85. Defendant USFS was required to provide a determination within 20 working days in response to 2018-FS-WO-06141, submitted on September 7, 2018, and referred by USDA to the USFS on September 14, 2018, and 2018-FS-WO-06097-F, submitted on September 10, 2018. 5 U.S.C. § 552(a)(6).

86. Defendant USFS was required to provide an estimated date “on which the agency [would] complete action on the request” for requests 2018-FS-WO-06141 and 2018-FS-WO-06097-F. 5 U.S.C. § 552(a)(7)(B)(ii).

87. Defendant DOI invoked a 10-day extension due to “unusual circumstances” and was required to provide a determination in response to OS-2018-01620 within 30 working days. 5 U.S.C. § 552(a)(6)(B)(i).

88. Defendant DOI was required to provide an estimated date “on which the agency [would] complete action on the request” for request OS-2018-01620. 5 U.S.C. § 552(a)(7)(B)(ii).

89. Defendants failed to comply with these deadlines, and so have violated FOIA.

90. Plaintiff has constructively and completely exhausted all administrative remedies required by FOIA. 5 U.S.C. § 552(a)(6)(c).

**COUNT II**

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:  
FAILURE TO DISCLOSE RESPONSIVE RECORDS**

91. Plaintiff realleges and incorporates the allegations in the above paragraphs by reference.

92. Plaintiff has a statutory right to the records it has requested, which are “agency records” within the meaning of the FOIA, and Defendants have no legal basis for failure to disclose them. 5 U.S.C. § 552(a)(3)(A).

93. FOIA requires Defendants to promptly process requests and provide records, or provide a reasonably segregable portion of the records that are not subject to exemptions. 5 U.S.C. § 552(a)(3), (b)(9).

94. Defendant DOI has not provided any responsive documents for request OS-2018-01620 as the date of the filing of this complaint.

95. Defendant BLM has not provided any responsive documents for requests BLM-2019-00003 as of the date of the filing of this complaint.

96. Defendant BLM provided an interim response for request BLM-2018-01262 on March 13, 2019, but has not provided the complete set of documents that are responsive to this FOIA request as of the date of the filing of this complaint.

97. Defendant USDA provided an interim response to request 2018-DA-7-77-F on March 3, 2019, but has not provided the complete set of documents that are responsive to this FOIA request as of the date of the filing of this complaint.

98. Defendant USDA has not provided any responsive documents for

request 2018-DA-06107-F as the date of the filing of this complaint.

99. Defendant USFS has not provided any responsive documents for request 2018-FS-WO-06141 as of the date of the filing of this complaint.

100. Defendant USFS has not provided any responsive documents to request 2018-FS-WO-06097 as of the date of filing this complaint.

101. Defendants have violated FOIA by failing to promptly provide responsive records to Plaintiff and failing to provide reasonably segregable portions of requested records that are not lawfully exempt. 5 U.S.C. §§ 552 (a)(3)(A), (b)(9).

## **VI. REQUEST FOR RELIEF**

FOR THESE REASONS, the Plaintiff respectfully requests that this Court enter judgment providing the following relief:

1. Declare that Defendants violated FOIA by failing to issue determinations on Plaintiff's records within FOIA's deadlines, by failing to produce records, and by failing to provide estimated dates of completion;

2. Direct by injunction that Defendants immediately issue determinations on Plaintiff's records requests and provide the Plaintiff with the records it has requested;

3. Grant the Plaintiff its costs of litigation, including reasonable attorney fees as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and

4. Provide such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED June 20, 2019.

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