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10 **IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA:
12 TUCSON DIVISION**

13 **WESTERN WATERSHEDS PROJECT,**

14 Plaintiff,

15 v.

16 **UNITED STATES DEPARTMENT OF
17 INTERIOR,**

18 Defendant.

Case No. _____

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Freedom of Information Act Case
Administrative Procedure Act Case

19 Plaintiff, Western Watersheds Project (“WWP”), alleges as follows:

INTRODUCTION

20 **1.** In this action, brought pursuant to the Freedom of Information Act (“FOIA” or “the Act”), 5
21 U.S.C. § 552 *et. seq.*, or, in the alternative, the Administrative Procedure Act (“APA”), 5 U.S.C. § 701
22 *et. seq.*, WWP challenges the unlawful acts of the United States Bureau of Land Management (“BLM”),
23 acting on behalf of the Defendant United States Department of Interior (“DOI” or “the Agency”) as well
24 as unlawful acts of the DOI itself in relation to WWP’s May 10, 2017 FOIA request to BLM and
25 WWP’s August 17, 2017 appeal of BLM’s adverse determination regarding that request.

26 **2.** WWP’s May 10, 2017 FOIA request to BLM sought information related to the Twin C grazing
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1 allotment (#40210) on the Safford Field Office of the Gila District of the Arizona BLM. The FOIA
2 request sought information including grazing permits, correspondence, field data, trespass records, and
3 records related to range developments on this allotment.

4 **3.** WWP submitted its FOIA request, in part, so that it could continue to provide meaningful input
5 that would help the public understand the management and condition of the lands of the Twin C
6 allotment which are a part of the Gila Box National Riparian Conservation Area, a specially-designated
7 landscape that protects four perennial waterways and supports and abundance of wildlife and cultural
8 resources. Additionally, the information was requested for possible use in defending an appeal of an
9 administrative law judge's order to stay a grazing decision related to the Twin C grazing allotment
10 before the Interior Board of Land Appeals ("IBLA"). WWP had requested and received the stay as part
11 of its appeal of the same grazing decision.
12

13 **4.** DOI made an untimely final determination on WWP's FOIA request and produced heavily
14 redacted, or completely withheld, documents over three months later, on August 15, 2017. Because DOI
15 failed to adequately respond to WWP's request, WWP timely appealed DOI's final determination on
16 August 17, 2017. Almost four months later, Defendant has not yet made a decision on WWP's appeal.
17

18 **5.** The actions of BLM and DOI in relation to WWP's FOIA requests and appeal violate FOIA in
19 several ways. First, BLM failed to make a timely determination regarding WWP's original FOIA
20 request. Second, BLM improperly withheld almost 2,000 pages of non-exempt information under
21 FOIA's Exemption 5 for materials claimed to be subject to the Deliberative Process Privilege ("DPP").
22 Third, BLM failed to identify, segregate and disclose information responsive to WWP's FOIA request
23 that can be reasonably segregated from information that is exempt from disclosure. Fourth, DOI has
24 failed to make a determination on WWP's appeal within the prescribed statutory period. Fifth, DOI
25 failed to provide WWP with an estimated date on which it would make a determination on WWP's
26 FOIA appeal.
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1 **6.** These failures amount to illegal, constructive withholding of records responsive to WWP’s FOIA
2 request and a pattern and practice of failing to comply with FOIA.

3 **7.** Each of these failures violates FOIA, or, in the alternative, the APA.

4 **8.** WWP is engaged in ongoing public outreach, education, and government “watchdog” efforts
5 regarding state and federal compliance with environmental statutes, and DOI’s repeated failures to
6 comply with FOIA frustrate WWP’s mission.

7 **9.** Accordingly, WWP seeks a declaration from this Court that DOI has violated FOIA, or in the
8 alternative, the APA. WWP also seeks an injunction from this Court that directs DOI to promptly
9 provide WWP with the requested records.
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12 **JURISDICTION, VENUE AND BASIS FOR RELIEF**

13 **10.** This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §
14 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §
15 2201, *et seq.*

16 **11.** Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue in
17 this District because Plaintiff has an office in Tucson, Arizona. Additionally, the requested records are
18 located within this district in the Gila District of the BLM, headquartered in Tucson, Arizona.

19 Assignment is proper in the Tucson judicial division for the same reasons.
20

21 **12.** Declaratory relief is appropriate under 28 U.S.C. § 2201.
22

23 **13.** Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).
24

25 **PARTIES**

26 **14.** Western Watersheds Project has been working to advocate for environmental protection on
27 public land, including BLM lands, in Arizona since 2007. WWP is a 501(c)(3) nonprofit conservation
28

1 organization based in Hailey, Idaho with a mission to protect and restore western watersheds and
2 wildlife through education, public policy initiatives, and legal advocacy. WWP has been in operation
3 since 1993 and has a long track record of success in its work to watchdog compliance with
4 environmental laws on public lands. WWP made the information request and appeal at issue in this case.

5 **15.** The records in this action are requested in support of its WWP's ongoing efforts to improve
6 protection of species and ecosystem health through oversight of land management decisions by the BLM
7 and DOI. Because the information requested herein has not been publicly disclosed, its disclosure would
8 significantly enhance public understanding concerning Defendant's land management decisions.
9

10 **16.** Defendant DOI is an agency of the executive branch of the United States government, and is in
11 possession, custody, or control of the records sought by WWP, and as such, it is subject to FOIA
12 pursuant to 5 U.S.C. § 552(f). The BLM is an administrative component of the DOI.
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14

15 STATUTORY BACKGROUND

16 **17.** FOIA imposes strict and rigorous deadlines on federal agencies. The Act requires a federal
17 agency that receives a FOIA request to determine whether the requested records are exempt from
18 disclosure under 5 U.S.C. § 552(b) and to communicate that determination to the requester within 20
19 business days. 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines the records are not exempt from
20 public disclosure, the agency is required to make the requested records "promptly available" to the
21 requester. 5 U.S.C. § 552(a)(3)(A),
22

23 **18.** If the requester appeals an agency's determination, the agency must make a determination with
24 respect to that appeal within 20 business days. 5 U.S.C. § 552(a)(6)(A)(ii). The 20-business-day period
25 commences on the date on which the request is first received by the appropriate component of the
26 agency, "but in any event not later than ten days after the request is first received by any component of
27 the agency" that is designated in the agency's regulations to receive requests under FOIA. *Id.*
28

1 **19.** Congress set forth the circumstances in which federal agencies may take longer than 20 business
2 days to make the initial determination. First, the agency may toll the 20 business-day deadline for up to
3 ten additional business days while the agency is waiting for the information that it has reasonably
4 requested from the requester. 5 U.S.C. § 552(a)(6)(A)(ii)(I).

5
6 **20.** Second, the agency may also toll the 20 business-day deadline for up to ten additional business
7 days if it needs to clarify with the requester any issues regarding fee assessment. 5 U.S.C. §
8 552(a)(6)(A)(ii)(II). If the agency faces “unusual circumstances,” the agency may extend the 20-
9 business-day deadline if the agency sets “forth the unusual circumstances for such extension and the
10 date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i). No extension
11 will exceed 10 business days unless the agency provides written notice to the requester explaining the
12 “unusual circumstances” requiring an extension, establishes the date on which the agency expects to
13 make the determination, and gives the requester “an opportunity to limit the scope of the request so that
14 it may be processed within that time limit or an opportunity to arrange with the agency an alternative
15 time frame for processing the request or a modified request.” 5 U.S.C. § 552(a)(6)(B)(ii).

16
17 **21.** Under FOIA, “unusual circumstances” are defined as “the need to search for and collect the
18 requested records from field facilities or other establishments that are separate from the office
19 processing the request[,]” or “the need to search for, collect, and appropriately examine a voluminous
20 amount of separate and distinct records which are demanded in a single request,” or “the need for
21 consultations ... with another agency having a substantial interest in the determination of the request or
22 among two or more components of the agency having substantial subject-matter interest therein.” 5
23 U.S.C. § 552(a)(6)(B)(iii).

24
25 **22.** If the agency fails to meet the disclosure deadlines established by FOIA, including the deadline
26 to determine within 20 business days whether to respond to the request, the agency may not charge the
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1 requester for the costs incurred in searching for or duplicating the requested documents unless unusual
2 or exceptional circumstances apply. 5 U.S.C. § 552(a)(4)(A)(viii).

3 **23.** Unless an agency subject to FOIA properly establishes a different timeline for disclosing
4 responsive records, FOIA’s mandate to make public records “promptly available” to a requester requires
5 federal agencies to provide responsive records to a requester within or shortly after the 20-business-day
6 deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

7
8 **24.** FOIA mandates that every federal agency “(A) establish a system to assign an individualized
9 tracking number for each request received that will take longer than ten days to process and provide to
10 each person making a request the tracking number assigned to the request; and (B) establish a telephone
11 line or Internet service that provides information about the status of a request to the person making the
12 request using the assigned tracking number, including—(i) the date on which the agency originally
13 received the request; and (ii) an estimated date on which the agency will complete action on the
14 request.” 5 U.S.C. § 552(a)(7).

15
16 **25.** An agency may avoid disclosure of information responsive to a FOIA request only if it proves
17 that the requested documents fall within one of the nine enumerated exemptions to the general
18 disclosure requirement. 5 U.S.C. § 552(b)(1)–(9). FOIA requires that when an agency withholds info, it
19 must provide the requester with “the reasons therefore.” 5 USC § 552(a)(6)(A)(i).

20
21 **26.** Consistent with encouraging disclosure, the exemptions under § 552(b) are discretionary, not
22 mandatory. *Chrysler Corp. v. Brown*, 441 U.S. 281, 291 (1979). “Subsection (b), 5 U.S.C. § 552(b),
23 which lists the exemptions, simply states that the specified material is not subject to the disclosure
24 obligations set out in subsection (a). By its terms, subsection (b) demarcates the agency’s obligation to
25 disclose; it does not foreclose disclosure.” *Id.* at 292.

26
27 **27.** An agency bears the burden of proving that a requested document falls within one of the nine
28 exemptions. *See Schiller v. NLRB*, 964 F.2d 1205, 1207 (D.C. Cir. 1992) (“Under FOIA, ‘the burden is

1 on the agency to sustain its action.”); *Assembly of State of California v. U.S. Dep’t of Commerce*, 968
2 F.2d 916, 920 (9th Cir. 1992) (“The government has the burden to prove that a requested document falls
3 within one of FOIA’s exemptions.”).

4 **28.** Given the policy behind the FOIA, the federal courts have consistently refused to allow agencies
5 to meet their burden of proving the requested documents fall within one of the FOIA’s exemptions by
6 making conclusory and generalized allegations of confidentiality. “We repeat, once again, that
7 conclusory assertions of privilege will not suffice to carry the Government’s burden of proof in
8 defending FOIA cases.” *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 861 (D.C.
9 Cir. 1980); *see also Anderson v. Dep’t of Health & Human Servs.*, 907 F.2d 936, 941 (10th Cir. 1990)
10 (“The district court must determine whether all of the requested materials fall within an exemption to the
11 FOIA and may not simply conclude that an entire file or body of information is protected without
12 consideration of the component parts.”).

13 **29.** “Any reasonably segregable portion of a record shall be provided to any person requesting such
14 record after deletion of the portions which are exempt under this subsection.” *Anderson*, 907 F.2d at
15 941. Defendant BLM cannot simply redact entire records or pages if a small portion is subject to an
16 exemption. *Oglesby v. U.S. Dep’t of the Army*, 79 F.3d 1172, 1176 (D.C. Cir. 1996) (“If a document
17 contains exempt information, the agency must still release ‘any reasonably segregable portion’ after
18 deletion of the nondisclosable portions.”) (quoting 5 U.S.C. § 552(b)). “[T]he exemptions to the FOIA
19 do not apply wholesale. An item of exempt information does not insulate from disclosure the entire file
20 in which it is contained, or even the entire page on which it appears.” *Arieff v. Dep’t of the Navy*, 712
21 F.2d 1462, 1466 (D.C. Cir. 1983).

22 **30.** A U.S. district court has jurisdiction “to enjoin the agency from withholding agency records and
23 to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. §
24 552(a)(4)(B).

1 **31.** If the government can show that “exceptional circumstances” exist and that the agency is
2 exercising due diligence in responding to the request, the court may retain jurisdiction and allow the
3 agency additional time to complete its review of the records. 5 U.S.C. § 552(a)(6)(C)(i). Notably, the
4 term “exceptional circumstances” does *not* include a delay that results from a predictable agency
5 workload of FOIA requests, unless the agency demonstrates reasonable progress in reducing its backlog
6 of pending requests. 5 U.S.C. § 552(a)(6)(C)(ii).

8 **32.** Agency action arising under FOIA has also been subject to judicial review under the APA.

9 **33.** Under the judicial review provisions of the APA, district courts are authorized to compel agency
10 action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1). District courts must also set
11 aside any agency action found to be arbitrary, capricious, an abuse of discretion, not in accordance with
12 law, or made without observation of required procedures. 5 U.S.C. § 706(2).

15 STATEMENT OF FACTS

16 **34.** On May 10, 2017, Plaintiff submitted a FOIA request to the BLM Arizona State Office via email
17 seeking records related to the Twin C grazing allotment (#40210) on the Safford Field Office of the Gila
18 District of the BLM. The FOIA request sought information including grazing permits, correspondence,
19 field data, trespass records, and records related to range developments on this allotment. As noted above,
20 *see*, ¶ 3, the requested information was sought for possible use in defending a legal challenge to an ad-
21 ministrative law judge’s decision to stay a grazing decision on the Twin C grazing allotment before the
22 IBLA, an appeal of which was ultimately filed on April 12, 2017. Accordingly, Plaintiff sought records
23 dating back to November 3, 2012.

25 **35.** Plaintiff had submitted a nearly identical FOIA request in November 2012 (AZ-13-2007) in
26 which all responsive records were provided with no exemptions or redaction. Plaintiff had every reason
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1 to believe that the 2017 request for similar information would be non-controversial and merely serve to
2 update Plaintiff's understanding of the management of the grazing allotment.

3 **36.** To comply with FOIA and the 20 business day decision deadline imposed by the FOIA and
4 DOI's request resolution regulations at 5 U.S.C. 552(1)(6)(A)(i) and 43 C.F.R. § 2.16(a) respectively,
5 the deadline for DOI to issue a final determination on WWP's May 10, 2017 information request (and
6 accounting for the Memorial Day holiday) elapsed on June 8, 2017.

7
8 **37.** DOI did not issue a final determination on WWP's May 10, 2017 information request by June 8,
9 2017.

10 **38.** On June 21, 2017, Plaintiff received a reply from the BLM acknowledging that the FOIA request
11 was received on May 10, 2017, that the request was assigned a tracking number of AZ-17-2017, that ap-
12 proximately 2,000 pages had been identified as responsive to the request, and that BLM anticipated ful-
13 filling the request by August 3, 2017.

14
15 **39.** On August 3, 2017, Plaintiff emailed BLM to inquire about the fulfillment of the FOIA request.

16 **40.** On August 3, BLM responded to Plaintiff's email and said that it anticipated the response would
17 be provided "by the end of next week."

18 **41.** On August 15, 2017, BLM provided its response to Plaintiff's FOIA request: 1,119 pages of par-
19 tially withheld documents and 1,919 pages withheld in full under Exemption 5. The final letter included
20 no details about the specific contents or the form of any of the withheld documents and provided no in-
21 formation as to why records in 2017 were subject to additional exemptions that were not applicable to
22 the 2012 FOIA response. The letter stated that "[t]he recommendation to withhold exempted information
23 is made by Rick Selbach, Resource Information Branch Chief, for the State FOIA Officer, Silvia M.
24 Hart, in consultation with Attorney-Advisor, Wonsook Sprague, Office of the Solicitor, based on the ad-
25 vice of a subject matter expert familiar with the records' content."
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1 **42.** On August 17, 2017, Plaintiff submitted a timely appeal to the FOIA Appeals Officer, via email
2 and fax, of FOIA request AZ-17-2017 for withholding over 1900 pages of responsive records, for failure
3 to provide a *Vaughn* Index, and for failure to segregate non-exempt information. Plaintiff additionally
4 alleged that the withholdings were inconsistent with Exemption 5 and lacked the requisite proof that
5 such records should be withheld. Plaintiff requested that DOI immediately order BLM to provide the
6 disputed records.
7

8 **43.** To comply with FOIA and the 20 business day decision deadline imposed by the FOIA and
9 DOI's appeal resolution regulations at 5 U.S.C. 552(1)(6)(A)(ii) and 43 C.F.R. § 2.62 respectively, the
10 deadline for DOI to issue a final determination on WWP's August 17, 2017 appeal (and accounting for
11 the Labor Day holiday) elapsed on September 15, 2017.
12

13 **44.** DOI did not issue a final determination on WWP's August 17, 2017 appeal by September 15,
14 2017.

15 **45.** As of the date of this filing, DOI has still not issued a final determination on WWP's August 17,
16 2017 appeal.

17 **46.** DOI is required to notify WWP within the 20 business day decision deadline imposed by the
18 FOIA and DOI's appeal resolution regulations of its statutory right to seek judicial review. 5 U.S.C. §
19 552(a)(6)(A)(ii); 43 C.F.R. § 2.62(b),
20

21 **47.** Defendant DOI did not provide WWP of its statutory right to seek judicial review, nor did it pro-
22 vide a written acknowledgement of receipt, of the FOIA appeal.

23 **48.** On August 28, 2017, WWP emailed DOI to request an acknowledgment of the receipt of the ap-
24 peal. DOI did not respond.

25 **49.** In early September 2017, WWP called DOI by telephone and received confirmation that it had
26 received the appeal and assigned it tracking number 2017-181.
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1 **50.** On September 18, 2017, WWP emailed the FOIA Appeals Officer again, notified the agency that
2 it had missed the 20-day deadline to make a final decision on its appeal and requested an estimated
3 completion date.

4 **51.** DOI did not provide WWP with a response to its September 18, 2017 status inquiry email.

5 **52.** On November 20, 2017 WWP again contacted Defendant by a letter sent via email pdf
6 attachment. The letter, entitled “Notice of deadline violation and request for estimated decision date for
7 Western Watersheds Project appeal numbered 2017-181/Offer to Assist” underscored the time-sensitive
8 nature of the requested information and offered to help facilitate DOI’s response to the appeal. The letter
9 also sought an estimated completion date for the appeal as required by FOIA. 5 U.S.C. §
10 552(a)(7)(B)(ii).
11

12 **53.** DOI did not provide WWP with a response to its correspondence of November 20, 2017 seeking
13 a status update and estimated completion date.
14

15 **54.** Because Defendant refused to answer WWP’s repeated requests for a status update on its appeal,
16 on November 27, 2017 WWP again contacted Defendant by a letter sent via email pdf attachment. The
17 letter, entitled “REMINDER: Notice of deadline violation and request for estimated decision date for
18 Western Watersheds Project appeal numbered 2017-181” again sought an estimated completion date for
19 the appeal as required by FOIA. Additionally, the letter noted that:
20

21 WWP has offered a cooperative approach and I offered to assist your office in any way
22 possible to facilitate the prompt release of the requested documents. That offer still
23 stands, but I need a response within the next week to be certain that BLM intends to an-
24 swer the FOIA appeal within a certain time frame.

25 However, in light of DOI’s continuing refusal to respond to WWP’s efforts to communicate, the letter
26 further informed the Agency that: “WWP’s patience has now run out. We’re left with no other option
27 tha[n] to litigate BLM’s failure to comply with federal law if we still don’t receive a decision on the
28 August 17, 2017 appeal by next Tuesday, December 5, 2017.”

1 **55.** DOI did not provide WWP with a response to its correspondence of November 27, 2017 seeking
2 a status update and estimated completion date.

3 **56.** As of the date of filing this Complaint, Plaintiff has received no response to its appeal. DOI has
4 not requested any extension to respond, nor has it notified Plaintiff of circumstances preventing it from
5 responding within the statutory timeframe.
6

7 **57.** On December 5, 2017, the undersigned counsel logged onto DOI's FOIA request tracker web
8 page (<https://foia.doi.gov/requeststatus/Foia.do>) and used both the tracking number of the original re-
9 quest (AZ-17-2017) as well as the tracking number assigned to the appeal (2017-181). Neither inquiry
10 produced a result of any type and it appeared the system did not contain any information relevant to an
11 estimated date by which the appeal would be completed.
12

13 **58.** Thus, WWP has not been able to obtain any information about the status of its FOIA appeal
14 through the DOI office by email, letter, telephone or using the DOI's FOIA tracker.

15 **59.** As noted above, prompt access to the requested information is crucial to provide public oversight
16 of BLM's management of the Twin C grazing allotment and because Plaintiff is engaged in an adminis-
17 trative appeal before the Interior Board of Land Appeals to which the requested records are relevant and
18 necessary to inform that process.

19 **60.** DOI violated FOIA by failing to make a timely decision on, to or acknowledge in writing its re-
20 ceipt of, Plaintiff's FOIA appeal and by failing to provide a determination letter that advises WWP of its
21 statutory right to judicial review.
22

23 **61.** As for the date this action was filed, DOI has not provided an estimated completion date for
24 FOIA appeal 2017-181.

25 **62.** As of the date this action was filed, WWP has contacted DOI on multiple occasions to inquire
26 about the status of its FOIA appeal and to request an estimated date of completion for the DOI's
27 determination on the appeal. In so doing, WWP invoked 5 U.S.C. § 552(a)(7)(B)(ii).
28

1 **63.** DOI has not responded to any of WWP's requests for information about the status of its appeal.

2 **64.** As of the date this action was filed, DOI has failed to make a final determination resolving
3 WWP's FOIA appeal of FOIA request BLM-2017-00069, and violated the deadline requiring such a
4 decision within 20 business days from its receipt.

5 **65.** As of the date this action was filed, BLM has failed to provide WWP with a written notice
6 setting forth any unusual circumstances that would justify extension of any of FOIA's deadlines, as
7 required by 5 U.S.C. 552(a)(6)(B)(i).

8 **66.** Defendant is overdue in its regulatory obligations to respond to WWP's FOIA appeal and to re-
9 view and provide non-exempt responsive records. Accordingly, Plaintiff seeks declaratory relief estab-
10 lishing that Defendants have violated FOIA and an order to provide non-exempt documents in a reason-
11 able amount of time.

12 **67.** Because DOI has failed to respond to WWP's FOIA appeal within the period required by FOIA,
13 WWP has constructively exhausted all administrative remedies required by FOIA and may seek
14 immediate judicial review. 5 U.S.C. §§ 552(a)(6)(A)(ii), (a)(6)(C)(i).

15 **68.** The filing of this lawsuit is necessary to compel Defendant to disclose all records that are
16 responsive to WWP's FOIA request SOL-2017-00223.

17 **69.** WWP's claims presented herein are not insubstantial within the meaning of 5 U.S.C. §
18 552(a)(4)(E)(ii)(II).

19 **70.** No exceptional circumstances exist within the meaning of FOIA, 5 U.S.C. § 552(a)(6)(C), which
20 would allow this Court to grant Defendant more time to review and disclose requested records.

21 **71.** Defendant has not exercised due diligence in searching for and releasing records responsive to
22 WWP's request.

23 **72.** The delays at issue in this case result from a predictable agency workload of FOIA requests and
24 appeals. Defendant has not made reasonable progress in reducing its backlog of pending requests.
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1 **73.** The circumstances surrounding the withholding raise questions whether agency personnel acted
2 arbitrarily or capriciously with respect to the withholdings at issue in this case.

3 **74.** Based on the nature of WWP’s professional activities, WWP will continue to employ FOIA’s
4 provisions in information requests to BLM and DOI in the foreseeable future. Indeed, WWP has firm
5 and definite plans to submit additional FOIA requests to BLM and DOI in the near future, including
6 requests regarding the Twin C allotment. WWP’s professional activities will be adversely affected if
7 BLM or DOI are allowed to continue violating FOIA’s disclosure provisions. Unless enjoined and made
8 subject to a declaration of WWP’s legal rights by this Court, BLM will continue to violate the rights of
9 WWP to receive public records under FOIA.
10

11 **75.** WWP has been required to expend costs and to obtain the services of attorneys to prosecute this
12 action.
13

14 **CAUSES OF ACTION**

15 **COUNT I**

16 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:
17 UNLAWFUL, CONSTRUCTIVE DENIAL OF FOIA APPEAL AND
18 WITHHOLDING OF INFORMATION**

18 **76.** WWP hereby incorporates by reference the allegations in the preceding paragraphs.

19 **77.** WWP has a statutory right to the records it seeks, which are “agency records” within the
20 meaning of FOIA, and there is no legal basis for Defendant to assert that any of FOIA’s nine disclosure
21 exemptions apply to the records requested. *See* 5 U.S.C. § 552(b)(1)-(9).
22

23 **78.** Defendant violated WWP’s rights under FOIA by failing to comply with the Act’s decision
24 deadlines and to make a determination on WWP’s FOIA appeal and by thus constructively withholding
25 information responsive to WWP’s FOIA appeal.

26 **79.** Based on the nature of WWP’s professional activities, it will continue to employ FOIA’s
27 provisions in information requests to Defendant in the foreseeable future.
28

1 **80.** WWP’s professional activities will be adversely affected if Defendant is allowed to continue
2 violating FOIA’s disclosure provisions as it has in this case.

3 **81.** Unless enjoined and made subject to a declaration of WWP’s legal rights by this Court,
4 Defendant will continue to violate the rights of WWP to receive public records under FOIA.

5 **82.** WWP is entitled to reasonable costs of litigation, including attorneys’ fees and costs pursuant to
6 FOIA. 5 U.S.C. § 552(a)(4)(E).
7

8
9 **COUNT II**

10 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**
11 **UNLAWFUL APPLICATION OF DISCLOSURE EXEMPTION**

12 **83.** The allegations made in all preceding paragraphs are re-alleged and incorporated by reference
13 herein.

14 **84.** Plaintiff has a statutory right to the records it seeks, which are “agency records” within the mean-
15 ing of FOIA, and there is no legal basis for Defendant DOI to assert that any of the FOIA’s nine disclo-
16 sure exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).
17

18 **85.** Defendant DOI violated Plaintiff’s rights under FOIA by unlawfully withholding information
19 responsive to Plaintiff’s FOIA request and appeal based on an overly broad application of FOIA’s ex-
20 emptions to mandatory information disclosure. Specifically, Defendant has unlawfully withheld in their
21 entirety almost 2,000 pages of information responsive to WWP’s information request under a claim that
22 FOIA’s Exemption 5 applying the Deliberative Process Privilege precludes their public disclosure.
23

24 **86.** Based on the nature of Plaintiff’s professional activities, it will continue to employ FOIA’s pro-
25 visions in information requests to Defendant DOI in the foreseeable future.

26 **87.** Plaintiff’s professional activities will be adversely affected if Defendant DOI is allowed to con-
27 tinue to violate FOIA’s disclosure provisions as it has in this case.
28

1 **88.** Unless enjoined and made subject to a declaration of Plaintiff’s legal rights by this Court, Defen-
2 dant DOI will continue to violate the rights of Plaintiffs to receive public records under FOIA.

3 **89.** Plaintiffs are entitled to reasonable costs of litigation, including attorneys’ fees and costs pursu-
4 ant to FOIA. 5 U.S.C. § 552(a)(4)(E).
5

6
7 **COUNT III**

8 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**
9 **FAILURE TO SEGREGATE NON-EXEMPT INFORMATION**

10 **90.** The allegations made in all preceding paragraphs are re-alleged and incorporated by reference
11 herein.

12 **91.** As noted above, FOIA requires that “Any reasonably segregable portion of a record shall be pro-
13 vided to any person requesting such record after deletion of the portions which are exempt under this
14 subsection.” 5 U.S.C. § 552(b).

15 **92.** The overly expansive withholding of almost 2,000 responsive documents in their entirety indi-
16 cates that Defendant has failed to release all “reasonably segregable non-exempt information” as re-
17 quired by FOIA.

18 **93.** Defendant has failed to describe the “mix of privileged and non-privileged information and ex-
19 plain [] why it would not be possible to simply redact the privileged materials.” *Judicial Watch v. U.S.*
20 *Postal Serv.*, 297 F. Supp. 2d 252, 267 (D.D.C. 2004).
21

22 **94.** Plaintiff has a statutory right to the non-exempt information it seeks and there is no legal basis
23 for Defendant DOI to assert that it cannot reasonably segregate such information from records it deems
24 exempt from disclosure and release it to the public.

25 **95.** Defendant’s blanket withholding of non-exempt information is unlawful under FOIA.

26 **96.** Defendant DOI violated Plaintiff’s rights under FOIA by unlawfully withholding non-exempt
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1 information responsive to Plaintiff's FOIA request that can be segregated from otherwise exempt infor-
2 mation.

3 **97.** Based on the nature of Plaintiff's professional activities, it will undoubtedly continue to employ
4 FOIA's provisions in information requests to Defendant DOI in the foreseeable future.

5 **98.** Plaintiff's professional activities will be adversely affected if Defendant DOI is allowed to con-
6 tinue to violate FOIA's disclosure provisions as it has in this case.

7 **99.** Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, Defen-
8 dant DOI will continue to violate the rights of Plaintiffs to receive public records under FOIA.

9 **100.** Plaintiffs are entitled to reasonable costs of litigation, including attorneys' fees and costs pursu-
10 ant to FOIA. 5 U.S.C. § 552(a)(4)(E).
11
12

13
14 **COUNT IV**

15 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**
16 **DECISION DEADLINE VIOLATIONS**

17 **101.** WWP hereby incorporates by reference the allegations in the preceding paragraphs.

18 **102.** WWP has a statutory right to have Defendant process its FOIA request and appeal in a manner
19 that complies with FOIA. WWP's rights in this regard were violated when the Defendant failed to make
20 a determination on WWP's FOIA request and appeal by the deadlines imposed by FOIA. 5 U.S.C. §§
21 552(a)(6)(A)(i); 552(a)(6)(A)(ii).

22 **103.** Defendant is unlawfully withholding public disclosure of records sought by WWP, records
23 which are "agency records" within the meaning of FOIA, to which WWP is entitled, and for which no
24 valid disclosure exemption applies.

25 **104.** Based on the nature of WWP's professional activities, it will continue to employ FOIA's
26 provisions in information request to Defendant in the foreseeable future.

27 **105.** WWP's professional activities will be adversely affected if Defendant is allowed to continue
28

1 violating FOIA’s decision deadlines as it has in this case.

2 **106.** Unless enjoined and made subject to a declaration of WWP’s legal rights by this Court,
3 Defendant will continue to violate the rights of WWP to have its information requests and appeals
4 processed as required by FOIA.

5 **107.** WWP is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5
6 U.S.C. § 552(a)(4)(E).
7

8
9 **COUNT V**

10 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**
11 **FAILURE TO PROVIDE AN ESTIMATED DATE ON WHICH THE AGENCY WILL**
12 **COMPLETE ACTION ON PLAINTIFF’S FOIA APPEAL**

13 **108.** FOIA requires federal agencies to provide the requester with information about the status of the
14 agency’s response to an appeal, including an estimated date on which the agency will complete action
15 on the appeal. 5 U.S.C. § 552(a)(7)(B)(ii).

16 **109.** WWP has repeatedly asked Defendant for an estimated date on which Defendant would
17 complete action on WWP’s administrative appeal. In so doing, WWP constructively invoked 5 U.S.C. §
18 552(a)(7)(B)(ii).

19 **110.** As of the date this action was filed, Defendant has failed to provide an estimated date on which
20 Defendant would complete action on WWP’s pending FOIA appeal.

21 **111.** Defendant has repeatedly violated and continues to violate FOIA by failing to provide WWP
22 with an estimated date of completion for WWP’s pending FOIA appeal.

23 **112.** WWP is entitled to reasonable costs of litigation and attorney fees pursuant to FOIA. 5 U.S.C. §
24 552(a)(4)(E).
25

26 ///

27 ///

COUNT VI

**VIOLATION OF FOIA AND THE APA:
ENGAGING IN A PATTERN, PRACTICE OR POLICY OF UNLAWFUL CONDUCT OF
FAILURE TO PROVIDE ESTIMATED COMPLETION DATES**

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2
3
4 **113.** WWP hereby incorporates by reference the allegations in the preceding paragraphs.

5 **114.** Defendant has adopted and is engaged in a pattern, practice, or policy of violating FOIA's
6 procedural requirements when processing FOIA appeals by repeatedly refusing to issue an estimated
7 date on which it will complete action on such appeals as required by 5 U.S.C. § 552(a)(7)(B)(ii).

8 **115.** Defendant's pattern, practice or policy regarding its online FOIA tracker is that it does not
9 monitor the progress of FOIA appeals of information requests.

10 **116.** Defendant has a pattern, practice or policy of not providing requesters with estimated dates of
11 completion for appeals of information requests.

12 **117.** In this case Defendant has engaged in a pattern, practice, or policy of violating FOIA in
13 responding to WWP's August 17, 2017 appeal by its failure to provide estimated dates by which
14 Plaintiff's appeal would be completed.

15 **118.** Defendant's pattern, practice, or policy of failing to provide estimated completion dates for
16 processing information associated appeals violates the intent and purpose of FOIA.

17 **119.** Defendant's patterns, practices, or policies for processing FOIA requests and appeals have
18 resulted in violations of WWP's rights to the lawful implementation of FOIA as alleged above.

19 **120.** Additionally, Defendant's patterns, practices, or policies for processing FOIA appeals are likely
20 to result in future violations of FOIA that will harm WWP and its members because WWP is likely to
21 continue seeking public records from Defendant.

22 **121.** Defendant's patterns, practices, or policies of unlawful conduct in violation of the FOIA's clear
23 requirement to issue an estimated date on which it will complete action on appeals is likely to recur
24 absent intervention by this Court.

1 **122.** Defendant's pattern, practice, or policy exists, whether formal or informal in nature.

2 **123.** FOIA imposes no limits on courts' equitable powers in enforcing its terms, and this Court should
3 exercise its equitable powers to compel Defendant to comply with the clear requirements of FOIA and
4 prevent it from continuing to apply its unlawful FOIA pattern, practice, or policy.

5 **124.** WWP is entitled to a declaration that Defendant's actions violated FOIA and to an injunction
6 barring Defendant from violating FOIA in the future when responding to WWP's FOIA requests or
7 associated appeals. Whether made under FOIA or the APA, declaratory or injunctive relief will clarify
8 and settle the legal relations at issue and afford relief from the uncertainty and controversy giving rise to
9 these proceedings.
10

11 **125.** Defendant's unlawful patterns, practices, or policies of violating FOIA when responding to
12 WWP's FOIA appeal entitles WWP's to an award of reasonable attorney fees and other litigation costs
13 pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.
14

15
16 **COUNT VII**

17 **(In the alternative to Counts I through V)**

18 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT:**
19 **FAILING TO COMPLY WITH FOIA IN RESPONDING TO**
20 **WWP's MAY 10, 2017 FOIA REQUEST AND AUGUST 17, 2017 APPEAL**

21 **126.** WWP hereby incorporates by reference the allegations in the preceding paragraphs.

22 **127.** Defendant has failed to act in an official capacity under color of legal authority by failing to
23 comply with the mandates of FOIA consequent to its failure and refusal to: (1) issue a timely final
24 determination of WWP's FOIA request and appeal, and; (2) provide WWP with the estimated
25 completion date for its August 17, 2017 appeal.

26 **128.** WWP has been adversely affected and aggrieved by the Defendant's failure to comply with the
27 mandates of FOIA. Defendant's failure and refusal to: (1) issue a timely final determination of WWP's
28

1 FOIA request and appeal, and; (2) provide WWP with the estimated completion date for its August 17,
2 2017 appeal has injured WWP's interests in public oversight of governmental operations and constitute
3 a violation of Defendant's statutory duties under the APA.

4 **129.** WWP has suffered a legal wrong as a result of the Defendant's failure to comply with the
5 mandates of FOIA. Defendant DOI's failure and refusal to: (1) issue a timely final determination of
6 WWP's FOIA request and appeal, and; (2) provide WWP with the estimated completion date for its
7 August 17, 2017 appeal has injured WWP's interests in public oversight of governmental operations and
8 constitute a violation of Defendant's statutory duties under the APA.

9 **130.** Defendant's failure and refusal to: (1) issue a timely final determination of WWP's FOIA request
10 and appeal, and; (2) provide WWP with the estimated completion date for its August 17, 2017 appeal,
11 constitutes agency action unlawfully withheld and unreasonably delayed and is therefore actionable
12 pursuant to the APA, 5 U.S.C. § 706(1).

13 **131.** Alternatively, Defendant's failure and refusal to: (1) issue a timely final determination of
14 WWP's FOIA request and appeal, and; (2) provide WWP with the estimated completion date for its
15 August 17, 2017 appeal, is a violation of FOIA and is therefore arbitrary, capricious, or an abuse of
16 discretion and not in accordance with law, and is therefore actionable pursuant to the APA, 5 U.S.C. §
17 706(2).

18 **132.** WWP is entitled to judicial review under the Administrative Procedure Act 5 U.S.C. §§ 702,
19 706.

20 **133.** WWP is entitled to costs of disbursements and costs of litigation, including reasonable attorney
21 and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C.S. § 2412.

22 **REQUESTS FOR RELIEF**

23 WHEREFORE, WWP requests that this Court:

24 **1.** Adjudge and declare that Defendant has violated FOIA for the reasons set forth above;

- 1 **2.** Order Defendant to comply immediately with FOIA by providing WWP all non-exempt public
2 records subject to WWP's FOIA request and appeal;
- 3 **3.** Declare that Defendant has engaged in an unlawful pattern or practice of violating FOIA when
4 responding to WWP's FOIA request and appeal;
- 5 **4.** Enjoin Defendant from continuing that unlawful pattern or practice of violating FOIA when
6 responding to WWP's FOIA requests for documents and appeals of same;
- 7 **5.** Award WWP its reasonable attorneys' fees and litigation costs pursuant to 5 U.S.C. §
8 552(a)(4)(E) and/or award WWP its reasonable fees, expenses, costs, and disbursements, including
9 attorneys' fees associated with this litigation, under the Equal Access to Justice Act, 28 U.S.C. § 2412;
10
- 11 **6.** Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and
- 12 **7.** Grant such further and additional relief as this Court may deem just and proper.
- 13

14 Respectfully submitted for the Court's consideration, this 7th day of December, 2017.

15
16 /s/ David A Bahr
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