To: Mellinger, Larry[larry.mellinger@sol.doi.gov]
From: Jesup, Benjamin
Sent: 2017-09-28T14:31:14-04:00
Importance: Normal
Subject: Re: FOIA complaint
Received: 2017-09-28T14:32:38-04:00
4962 in.pdf

Try this one.

On Thu, Sep 28, 2017 at 2:19 PM, Jesup, Benjamin <benjamin.jesup@sol.doi.gov> wrote:

> Just an FYI. This showed up in DTS. I will reroute it to DGL.
> Ben

--
Ben Jesup
Assistant Solicitor for Fish and Wildlife
Solicitor's Office
Department of the Interior
202-208-3170

NOTICE: This email message (including any attachments) is intended for the use of the individual(s) or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this message or its contents is strictly prohibited. If you receive this message in error, please notify the sender immediately and destroy all copies.

--
Ben Jesup
Assistant Solicitor for Fish and Wildlife
Solicitor's Office
Department of the Interior
202-208-3170

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FOIA Summons
1/13

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY
Plaintiff

v.

U.S. DEPARTMENT OF THE INTERIOR
Defendant

Civil Action No. 1:17-cv-01595

SUMMONS IN A CIVIL ACTION

012468

To: *(Defendant's name and address)* U.S. DEPARTMENT OF THE INTERIOR
1849 C. Street, NW
Washington, D.C. 20240

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 the 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 and address are:

Margaret E. Townsend
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
mtownsend@biologicaldiversity.org

RECEIVED
2017 SEP 20 PM 2:48
EXECUTIVE SECRETARIAT
OFFICE OF THE

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

ANGELA D. CAESAR, CLERK OF COURT

Date: 9/8/2017

/s/ Nicole M. Wilkens
Signature of Clerk or Deputy Clerk

Civil Action No. 1:17-cv-01595

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:

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS

CENTER FOR BIOLOGICAL DIVERSITY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 88888
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Amy R. Atwood and Margaret E.Townsend
Center for Biological Diversity
P.O. Box 11374; Portland, OR 97211-0374
(971) 717-6401; (971) 717-6409

DEFENDANTS

U.S. DEPARTMENT OF THE INTERIOR

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT 11001
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***

- ☐ 410 Antitrust

○ **B. *Personal Injury/ Malpractice***

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

○ **C. *Administrative Agency Review***

- ☐ 151 Medicare Act

Social Security
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

◉ **E. *General Civil (Other)*** OR ○ **F. *Pro Se General Civil***

Real Property
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy
- ☐ 422 Appeal 27 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark

Federal Tax Suits
- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

Forfeiture/Penalty
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions
- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

○ G. *Habeas Corpus/ 2255* ☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	○ H. *Employment Discrimination* ☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	○ I. *FOIA/Privacy Act* ☒ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	○ J. *Student Loan* ☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
○ K. *Labor/ERISA (non-employment)* ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	○ L. *Other Civil Rights (non-employment)* ☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	○ M. *Contract* ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	○ N. *Three-Judge Court* ☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

◉ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge ○ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
5 U.S.C. § 552 and 5 U.S.C. § 706. Defendant refused to provide documents pursuant to FOIA.

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** **JURY DEMAND:** Check YES only if demanded in complaint YES ☐ NO ☒

VIII. RELATED CASE(S) IF ANY (See instruction) YES ☐ NO ☒ If yes, please complete related case form

DATE: August 9, 2017 SIGNATURE OF ATTORNEY OF RECORD Margaret Barnard

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

CO-386-online
10/03

United States District Court
For the District of Columbia

CENTER FOR BIOLOGICAL DIVERSITY Plaintiff	)	
vs	)	Civil Action No. 1:17-cv-01595
U.S. DEPARTMENT OF THE INTERIOR Defendant	)	

CERTIFICATE RULE LCvR 7.1

I, the undersigned, counsel of record for Plaintiff certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of the Center for Biological Diversity which have any outstanding securities in the hands of the public:

The Center for Biological Diversity has no parent corporations, subsidiaries, or outstanding securities in the hands of the public.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

D.C. Bar No. OR0008
BAR IDENTIFICATION NO.

Margaret E. Townsend
Print Name

P.O. Box 11374
Address

Portland OR 97211-0374
City State Zip Code

(971) 717-6409
Phone Number

UNITED STATES DISTRICT AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA

ANGELA D. CAESAR
Clerk of Court

NOTICE OF RIGHT TO CONSENT TO TRIAL BEFORE A UNITED STATES MAGISTRATE JUDGE

The substantial criminal caseload in this Court and the requirements of the criminal Speedy Trial Act frequently result in the delay in the trial of civil cases. Aware of the hardship and expense to the parties, counsel, and witnesses caused by the delays which are beyond the control of the Court, this notice is to advise you of your right to trial of your case by a United States Magistrate Judge. By statute, 28 USC §636(c), Fed.R.Civ.P. 73 and Local Civil Rule 73.1, the parties, by consent, can try their case by means of a jury trial or bench trial before a United States Magistrate Judge. Appeals from judgments and final orders are taken directly to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from a judgment of a United States District Judge in a civil case.

WHAT IS THE PROCEDURE?

One of the matters you are required to discuss at the meet-and-confer conference mandated by Local Civil Rule 16.3 is whether the case should be assigned to a United States Magistrate Judge for all purposes, including trial

All parties must consent before the case is assigned to a Magistrate Judge for trial. You may consent at any time prior to trial. If you expressly decline to consent or simply fail to consent early in the case, you are <u>not</u> foreclosed from consenting later in the case. However, a prompt election to proceed before a Magistrate Judge is encouraged because it will facilitate a more orderly scheduling of the case.

Counsel for the plaintiff has been furnished a copy of the "Consent to Proceed Before a United States Magistrate Judge for all Purposes" form. If and when the form is executed, your response should be made to the Clerk of the United States District Court only.

WHAT IS THE ADVANTAGE?

The case will be resolved sooner and less expensively. The earlier the parties consent to assigning the case to a Magistrate Judge the earlier a firm and certain trial date can be established, even if the case is to be tried to a jury.

Upon the filing of the consent form the case will be randomly assigned for all purposes to a Magistrate Judge.

AO 85(Rev 11/11)
Consent to Trial by MJ

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____
Plaintiff

v. Civil Action No.

_____
Defendant

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. Once judgment is entered an appeal must be taken to the U.S. Court of Appeals for the D.C. Circuit and not to the United States District Judge. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Parties' printed names	*Signatures of parties or attorneys*	*Dates*

Note: Return this form to the clerk of court only if you are consenting to the exercise jurisdiction by a United States magistrate judge. Do not return this form to a judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, 378 N. Main Avenue Tucson, AZ 85701, Plaintiff, v. U.S. DEPARTMENT OF THE INTERIOR, 1849 C. Street, NW Washington, D.C. 20240, Defendant.	Case No.: 17-cv-01595-RC **FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. In this action, the Center for Biological Diversity ("Center")—an environmental conservation organization that works to protect native wildlife species and their habitats—challenges the failure of the U.S. Department of the Interior ("Interior Department") to provide the communications and schedules of Secretary of the Interior Ryan Zinke, records that reference national monuments designated since 1996, and records that discuss the Interior Department's review of national monuments, all in violation of the Freedom of Information Act, 5 U.S.C. § 552, *as amended* ("FOIA"), or alternatively, the Administrative Procedure Act, 5 U.S.C. §§ 701-06 ("APA").

2. On April 26, 2017, President Trump signed Executive Order Number 13792, Review of Designations under the Antiquities Act, 82 Fed. Reg. 20,429 (Apr. 26, 2017) ("Exec. Order 13792"). Exec. Order 13792 directs the Interior Department to review every national monument designated since 1996 that is larger than 100,000 acres, along with any other

monument that Secretary Zinke deems should be reviewed. Under the terms of Exec. Order 13792, the Interior Department conducted a review of 27 national monuments. As a result of that review, Secretary Zinke recommended that President Trump reduce the size of at least three national monuments: Cascade-Siskiyou National Monument in Oregon, and Bears Ears National Monument and Grand Staircase Escalante National Monument in Utah.

3. Exec. Order 13792 is widely expected to trigger dramatic changes in monument protections or boundaries to accommodate extractive interests like coal, oil and gas, livestock grazing, and logging. Secretary Zinke made his final recommendations to President Trump on August 24, 2017.

4. The Center submitted two FOIA requests to the Interior Department on April 6, 2017: one seeking the communication records of Secretary Zinke ("Zinke Communications FOIA Request"), and the other seeking Secretary Zinke's schedules ("Zinke Schedules FOIA Request"). As of the date of this filing, the Interior Department still has not provided any determination or records responsive to the Center's FOIA requests, which the Interior Department received 106 workdays ago.

5. On May 5, 2017, the Interior Department started a public-comment process on the 27 national monuments that are currently under review pursuant to Exec. Order 13792.

6. On May 8, 2017, the Center submitted a FOIA request to the Interior Department seeking—from January 20, 2017, to the date of the agency's search—records that mention national monuments designated since 1996 and records that reference Exec. Order 13792 ("National Monuments FOIA Request"). The Center still has not received any determination or records responsive to this FOIA request, which the Interior Department received 84 workdays ago.

7. On July 5, 2017, the Center submitted a FOIA request to the Interior Department seeking records concerning Secretary Zinke's visit and the Interior Department's review of national monuments in Nevada, including: (1) records mentioning Senator Dean Heller (R-Nev) and/or any of his staff visiting Gold Butte National Monument in place of Interior Department staff on June 1, 2017; (2) records mentioning a visit between any Interior Department staff and Carol Bundy; (3) records mentioning Secretary Zinke's meeting(s) with officials from Nye and Lincoln counties in Pahrump, Nevada on June 26, 2017, including but not limited to any discussion related to Basin and Range National Monument; and (4) records mentioning Secretary Zinke's visit to Gold Butte and Basin and Range National Monuments ("Nevada National Monuments FOIA Request"). The Center still has not received any determination or records responsive to this FOIA request, which the Interior Department received 44 workdays ago.

8. The Interior Department's refusal to release the communication records and schedules of its secretary, and its failure to provide Interior Department records generated in connection with its review of national monument designations, undermines FOIA's policy of government transparency.

9. The Interior Department is unlawfully withholding public records, which the Center requested pursuant to FOIA, by failing to conduct an adequate search for responsive records and by failing to provide the Center with responsive records, for which there are no applicable FOIA exemptions. Prompt access to these records is necessary to effectuate FOIA's purpose, thus the Center seeks declaratory relief establishing that the Interior Department violated FOIA, or alternatively, the APA. The Center also seeks injunctive relief directing the Interior Department to conduct a search for responsive records and provide the Center with all responsive records without any further delay.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

11. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district and because a portion of the responsive records may be found in this district.

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

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

PARTIES

14. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 61,000 members. The Center and its members are harmed by the Interior Department's violations of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a full understanding of the activities, priorities, and communications of the Interior Secretary and the Interior Department's review of national monument designations.

15. Defendant U.S. DEPARTMENT OF THE INTERIOR is a cabinet-level agency within the executive branch of the U.S. government. The Interior Department is responsible for protecting and managing much of the nation's wildlife, natural resources, public lands, and cultural heritage. The Interior Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f). The Interior

Department is the federal agency responsible for applying and implementing the federal laws and regulations at issue in this complaint.

STATUTORY BACKGROUND

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

17. FOIA imposes strict deadlines on federal agencies. Within 20 working days of receiving a FOIA request, an agency must determine whether to disclose responsive records and notify the requester of its determination, and it must then make records "promptly" available unless it can establish that certain unusual circumstances are present and/or that it may lawfully withhold records, or portions thereof, from disclosure. *Id.* § 552(a)(3)(A), (a)(6). Also within 20 working days, the agency must inform the requester that it has a right to appeal the agency's determination. *Id.* § 552(a)(6)(A)(i).

18. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

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

20. First, an agency may toll the 20-working-day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii).

21. Second, an agency may extend the 20-working-day deadline for an additional 10 working days only by giving a written notice to the requester that sets forth "unusual circumstances" to justify a deadline extension, and also providing the date by which the agency

expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such "unusual circumstances," the agency must provide the requester with "an opportunity to limit the scope of the request so that it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request." *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency "shall make available its FOIA Public Liaison" to "assist in the resolution of any disputes between the requester and the agency." *Id.*

22. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

23. FOIA requires federal agencies to expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

24. Congress recognized that in certain, limited instances, records may be withheld as exempt from FOIA's broad disclosure mandate, and thus it created nine categories of exemptions. *Id.* § 552(b). These exemptions, however, must be narrowly construed in light of FOIA's dominant objective of disclosure, not secrecy.

25. U.S. district courts have jurisdiction "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." *Id.* § 552(a)(4)(B).

26. Alternatively, an agency's response to a FOIA request is subject to judicial review under the APA, which confers a right of judicial review on any person who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is

unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." *Id.* § 706(2)(A).

FACTUAL BACKGROUND

Zinke Communications FOIA Request

27. On April 6, 2017, the Center submitted a FOIA request via electronic mail to the Interior Department. In its FOIA request, the Center sought all of Secretary Zinke's communication records, "including but not limited to, all letters, emails, text messages, instant messages, voicemails, and phone logs for any phones utilized by . . . Secretary of the Interior Ryan Zinke . . . from any and all agency and [Interior Department] servers, cloud portals, secure websites, computers, tablets, smart phones, etc., sent to and/or from Mr. Zinke, with the exception of any records that are or will be publicly available (e.g., through regulations.gov)." The Center made it clear that it is "not requesting the actual email addresses utilized by Mr. Zinke in the course of his official duties, but only the correspondence sent to and from his email addresses."

28. The Interior Department acknowledged the request the same day it was sent and assigned it tracking number OS-2017-00413 ("Zinke Communications FOIA Request"). The Interior Department said that it needed to "search for and collect requested records from field facilities or other establishments that are separate from the office processing the request" and took a 10-workday extension, citing the Interior Department's regulations at 43 C.F.R. § 2.19. It also assigned the request to the "complex" processing track pursuant to 43 C.F.R. § 2.15.

29. After receiving no further communication regarding the Zinke Communications FOIA Request, on July 17, 2017, the Center sent a letter notifying the Interior Department that it

had violated FOIA's mandatory determination deadline and requesting an estimated date of completion for a determination on this FOIA request. The Center also offered to assist the Interior Department in processing the Center's request and stressed that it sought a "cooperative approach" with the agency. As of the filing of this complaint, the Interior Department has not acknowledged receipt of this letter.

30. As of the filing of this complaint, the Center has received no determination, records, or any further communications from the Interior Department. The Interior Department has not (1) requested additional information from the Center, (2) notified the Center of any "unusual circumstances" that actually prevent it from complying with FOIA's deadline for a determination, or (3) provided a date by which it will make a determination on the Center's FOIA request. *Id.* § 552(a)(6)(A)-(B).

31. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records that are responsive to the Center's FOIA request. 5 U.S.C. § 552(b).

32. Upon information and belief, the Interior Department has failed to conduct a search for responsive records.

33. The Interior Department failed to provide the Center with reasonably segregable portions of the requested records after deletion of any portions that may be lawfully withheld from disclosure under any FOIA exemption(s). *Id.*

34. The Center has been required to expend resources to prosecute this action.

Zinke Schedules FOIA Request

35. On April 6, 2017, the Center sent a FOIA request to the Interior Department seeking "all schedules, including but not limited to travel and/or meeting schedules" of Secretary Zinke. The Interior Department acknowledged the request the same day it was sent and assigned

it tracking number OS-2017-00414 ("Zinke Schedules FOIA Request"). The Interior Department said it needed to "search for and collect requested records from field facilities or other establishments that are separate from the office processing the request" and took a ten-workday extension, citing the Interior Department's regulations at 43 C.F.R. § 2.19. It also assigned the request to the "complex" processing track pursuant to 43 C.F.R. § 2.15.

36. After receiving no further communication from the Interior Department regarding the Zinke Schedules FOIA Request, on July 17, 2017, the Center sent a letter notifying the Interior Department that it had violated FOIA's mandatory determination deadline and requesting an estimated date of completion for a determination on the FOIA request. The Center also offered to assist the Interior Department in processing the Center's request and stressed that it sought a "cooperative approach" with the agency. As of the filing of this lawsuit, the Interior Department has not acknowledged its receipt of this letter.

37. As of the filing of this complaint, the Center has received no determination, records, or any further communications from the Interior Department. The Interior Department has not (1) requested additional information from the Center, (2) notified the Center of any "unusual circumstances" that actually prevent it from complying with FOIA's deadline for a determination, or (3) provided a date by which it expects to make a determination on the Center's FOIA request. *Id.* § 552(a)(6)(A)-(B).

38. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records that are responsive to the Center's FOIA request. *Id.* § 552(b).

39. Upon information and belief, the Interior Department has failed to conduct a search for responsive records.

40. The Interior Department failed to provide the Center with reasonably segregable portions of the requested records after deletion of any portions which may be lawfully withheld from disclosure under any FOIA exemption(s). *Id.*

41. The Center has been required to expend resources to prosecute this action.

National Monuments FOIA Request

42. On May 8, 2017, the Center sent a request for records to the Interior Department, also pursuant to FOIA, seeking "[a]ll records . . . that mention, include, or reference national monument designations made by any President of the United States since January 1, 1996," and "[a]ll records mentioning, including, or referencing [Exec. Order 13792]" from January 20, 2017 to the date of the search for responsive records.

43. The Interior Department acknowledged the request on May 9, 2017, and assigned it tracking number OS-2017-00540 ("National Monuments FOIA Request"). The Interior Department said it needed to "search for and collect requested records from field facilities or other establishments that are separate from the office processing the request" and took a ten-workday extension, citing the Interior Department's regulations at 43 C.F.R. § 2.19. It also assigned the request to the "complex" processing track pursuant to 43 C.F.R. § 2.15.

44. After receiving no further communication from the Interior Department regarding the National Monuments FOIA Request, on July 17, 2017, the Center sent a letter notifying the Interior Department that it had violated FOIA's mandatory determination deadline and requesting an estimated date of completion for a determination on the FOIA request. The Center also offered to assist the Interior Department in processing the Center's request and stressed that it sought a "cooperative approach" with the agency. As of the filing of this lawsuit, the Interior Department has not acknowledged its receipt of this letter.

45. As of the filing of this complaint, the Center has received no determination, records, or any further communications from the Interior Department. The Interior Department has not (1) requested additional information from the Center, (2) notified the Center of any "unusual circumstances" that actually prevent it from complying with FOIA's deadline for a determination, or (3) provided a date by which it expects to make a determination on the Center's FOIA request. *Id.* § 552(a)(6)(A)-(B).

46. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records that are responsive to the Center's FOIA request. *Id.* § 552(b).

47. Upon information and belief, the Interior Department has failed to conduct a search for responsive records.

48. The Interior Department failed to provide the Center with reasonably segregable portions of the requested records after deletion of any portions which may be lawfully withheld from disclosure under any FOIA exemption(s). *Id.*

49. The Center has been required to expend resources to prosecute this action.

Nevada National Monuments FOIA Request

50. On July 5, 2017, the Center sent a request to the Interior Department pursuant to FOIA seeking records concerning Secretary Zinke's review of national monuments in Nevada, including: (1) records mentioning Senator Dean Heller (R-Nev) and/or any of his staff visiting Gold Butte National Monument in place of Interior Department staff on June 1, 2017; (2) records mentioning a visit between any Interior Department staff and Carol Bundy; (3) records mentioning Secretary Zinke's meeting(s) with officials from Nye and Lincoln counties in Pahrump, Nevada on June 26, 2017, including but not limited to any discussion related to Basin

and Range National Monument; and (4) records mentioning Secretary Zinke's visit to Gold Butte and Basin and Range National Monuments.

51. The Interior Department sent an email to the Center requesting clarification on July 6, 2017. Specifically, the Interior Department requested that the Center "furnish specific names of no more than 2-3 [Interior Department] personnel regarding only Items #1 and #2 of [the] FOIA request so that we can move forward with processing." Following a series of emails and a phone conversation between Interior Department FOIA staff and the Center on July 11, 2017, the Center provided the requested information to the Interior Department and the Interior Department confirmed that it received the necessary information from the Center.

52. On July 13, 2017, the Interior Department sent an email containing a formal letter acknowledging the request and assigning it tracking number OS-2017-00793 ("Nevada National Monuments FOIA Request").

53. As of the filing of this complaint, the Center has received no determination, records, or any further communications from the Interior Department. The Interior Department has not (1) requested additional information from the Center, (2) notified the Center of any "unusual circumstances" that actually prevent it from complying with FOIA's deadline for a determination, or (3) provided a date by which it expects to make a determination on the Center's FOIA request. *Id.* § 552(a)(6)(A)-(B).

54. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records that are responsive to the Center's FOIA request. *Id.* § 552(b).

55. Upon information and belief, the Interior Department failed to conduct a search for responsive records.

56. The Interior Department failed to provide the Center with reasonably segregable portions of the requested records after deletion of any portions which may be lawfully withheld from disclosure under any FOIA exemption(s). *Id.*

57. The Center has been required to expend resources to prosecute this action.

FIRST CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

The Interior Department Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Requests

58. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

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

60. The Interior Department has violated the Center's rights in this regard by failing to provide a lawful determination on all of the following FOIA requests:

a. Zinke Communications FOIA Request, number OS-2017-00413;

b. Zinke Schedules FOIA Request, number OS-2017-00414;

c. National Monuments FOIA Request, number OS-2017-00540; and

d. Nevada National Monuments FOIA Request, number OS-2017-00793.

61. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

62. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's mandatory determination deadline and disclosure provisions as it has in this case.

63. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

The Interior Department Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Requests

64. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

65. The Center has a statutory right to have the Interior Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Interior Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to the following FOIA requests:

a. Zinke Communications FOIA Request, number OS-2017-00413;

b. Zinke Schedules FOIA Request, number OS-2017-00414;

c. National Monuments FOIA Request, number OS-2017-00540; and

d. Nevada National Monuments FOIA Request, number OS-2017-00793.

66. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

67. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

68. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

The Interior Department Failed to Promptly Disclose Records Responsive to the Center's FOIA Requests

69. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

70. The Center has a statutory right to the Interior Department's prompt disclosure of records following a determination on its FOIA requests. 5 U.S.C. § 552(a)(4)(B); 43 C.F.R. § 2.12.

71. The Interior Department violated FOIA and the Interior Department's own FOIA Regulations by failing to promptly disclose records that are responsive to the following FOIA Requests:

a. Zinke Communications FOIA Request, number OS-2017-00413;

b. Zinke Schedules FOIA Request, number OS-2017-00414;

c. National Monuments FOIA Request, number OS-2017-00540; and

d. Nevada National Monuments FOIA Request, number OS-2017-00793.

72. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

73. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

74. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

The Interior Department Failed to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records

75. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

76. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

77. The Interior Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to the following FOIA requests:

a. Zinke Communications FOIA Request, number OS-2017-00413;

b. Zinke Schedules FOIA Request, number OS-2017-00414;

c. National Monuments FOIA Request, number OS-2017-00540; and

d. Nevada National Monuments FOIA Request, number OS-2017-00793.

78. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

79. The Center's organizational activities will be adversely affected if the Interior Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

80. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fourth Claims)

The Interior Department Unlawfully Withheld or Unreasonably Delayed Actions That FOIA Requires

81. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

82. The Interior Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) provide a timely determination on the Center's FOIA requests, (2) conduct an adequate search for records that are responsive to the Center's FOIA requests, (3) promptly disclose records that are responsive to the Center's FOIA requests, and (4) provide the Center with reasonably segregable portions of responsive records to the Center FOIA requests in the event that records may be subject to an exemption. The Interior Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

83. Alternatively, the Interior Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) provide a timely determination on the Center's FOIA requests, (2) conduct an adequate search for records that are responsive to the Center's FOIA requests, (3) promptly disclose records that are responsive to the Center's FOIA requests, and (4) provide the Center with reasonably segregable portions of responsive records to the Center FOIA requests in the event that records may be

subject to an exemption. The Interior Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

84. As alleged above, the Interior Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

85. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

86. The Center has no other adequate remedy at law to redress the violations noted above.

87. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fifth Claims)

The Interior Department's Violations of FOIA's Requirements Are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

88. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

89. The Interior Department violated FOIA's statutory mandates due to its failure and refusal because it failed to: (1) provide a timely determination on the Center's FOIA requests, (2) conduct an adequate search for records that are responsive to the Center's FOIA requests, (3) promptly disclose records that are responsive to the Center's FOIA requests, and (4) provide the Center with reasonably segregable portions of responsive records to the Center FOIA requests in the event that records may be subject to an exemption. By repeatedly violating FOIA's statutory

mandates, the Interior Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore are actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

90. As alleged above, the Interior Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

91. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

92. The Center has no other adequate remedy at law to redress the violations noted above.

93. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendant to provide a determination on Plaintiff's FOIA requests as required by FOIA.

2. Order Defendant to conduct searches that are reasonably calculated to locate all records responsive to Plaintiff's FOIA Requests—numbers OS-2017-00413, OS-2017-00414, OS-2017-540, and OS-2017-00793—with the cut-off date for such searches being the date the searches are conducted, and to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

3. Declare that Defendant's failures to undertake a search for and promptly disclose to Plaintiff all records that are responsive to Plaintiff's FOIA Requests, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, are agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2).

4. Declare that Defendant's failure to make a timely determination on Plaintiff's FOIA Requests is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i) and (ii), or in the alternative, is agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

5. Declare that Defendant's failure to provide Plaintiff with reasonably segregable portions of records which may be lawfully subject to a FOIA exemption, as alleged above, is unlawful under FOIA, U.S.C. § 552(a)(7)(b), or in the alternative, is agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2).

6. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

7. Grant such other and further relief as the Court may deem just and proper.

DATED: September 6, 2017

Respectfully submitted

/s/ Margaret E. Townsend

Margaret E. Townsend (D.C. Bar No. OR0008)
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
(971) 717-6409
mtownsend@biologicaldiversity.org

/s/ Amy R. Atwood
Amy R. Atwood (D.C. Bar No. 470258)
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
(971) 717-6401
atwood@biologicaldiversity.org

Attorneys for Plaintiff