

1 YUTING CHI, CA Bar No. 310177  
Earthjustice  
2 633 17th Street, Suite 1600  
3 Denver, CO 80202  
ychi@earthjustice.org  
4 Tel: (303) 996-9623  
5 Fax: (303) 623-8083

6 *Counsel for Plaintiffs Sierra Club and Friends of the Earth*  
7 *(Additional Counsel Listed on Signature Page)*

8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11 SIERRA CLUB; and FRIENDS OF THE )  
EARTH, )  
12 Plaintiffs, ) Case No. 18-cv-3799  
13 v. )  
14 UNITED STATES DEPARTMENT OF THE ) **COMPLAINT FOR DECLARATORY**  
INTERIOR; and UNITED STATES BUREAU ) **AND INJUNCTIVE RELIEF**  
15 OF LAND MANAGEMENT, ) (FREEDOM OF INFORMATION ACT)  
16 Defendants. )  
17

18  
19 **STATEMENT OF THE CASE**

20 1. Plaintiffs bring this case to remedy violations of the Freedom of Information Act  
21 (“FOIA”), 5 U.S.C. § 552, by the United States Department of the Interior and United States  
22 Bureau of Land Management (collectively “Agency Defendants,” unless identified individually).  
23 The violations arise out of Agency Defendants’ failure to respond to FOIA requests that  
24 Plaintiffs submitted for records regarding policies or guidelines governing Agency Defendants’  
25 handling of FOIA requests that were created, stored, or received under the current  
26 Administration—since January 20, 2017.

1           2.       Agency Defendants’ handling of FOIA requests is a topic of great public interest  
2 and importance. Under the current Administration, the Department of the Interior (“Interior”)  
3 and the Bureau of Land Management (“BLM”) have delayed responding to FOIA requests from  
4 public interest groups such as Plaintiffs seeking information from agencies. Such delay is  
5 particularly evident in the context of Agency Defendants’ review, and in some cases revocation,  
6 of America’s national monuments, during which Plaintiffs—along with at least forty other public  
7 interest organizations and members of the media—sent numerous FOIA requests to Interior and  
8 BLM for information related to national monuments, but received no responses for many  
9 months.

10           3.       On information and belief, Interior has instituted new FOIA policies contributing  
11 to such delay. These policies may require various Interior bureaus, including BLM, to forward  
12 to the Interior Secretary Zinke’s office—a political office—all records responding to FOIA  
13 requests on controversial topics like national monuments, rather than to send them directly to the  
14 public interest groups making the requests.

15           4.       On information and belief, the Secretary’s office then reviews these records and  
16 redacts additional information before making the records available to the public.<sup>1</sup> Such review,  
17 by the political office of an agency, both delays public interest groups’ access to information and  
18 raises concerns that political appointees are inappropriately influencing Interior’s decisions about  
19 how much and what kind of information to make available to the public in response to FOIA  
20 requests.

21           5.       On information and belief, since the start of the new Administration, BLM has  
22 been directing agency FOIA responses to BLM leadership so that the leadership has opportunity  
23 to review FOIA responses regarding their own actions before the responses are made public.  
24  
25

---

26  
27 <sup>1</sup> See Dino Grandoni & Juliet Eiperin, “Trump environmental officials are keeping tight rein over  
28 stampede of FOIA requests,” WASHINGTON POST (Dec. 15, 2017), [https://www.washingtonpost.com/news/powerpost/wp/2017/12/15/trump-environmental-officials-are-keeping-tight-rein-over-stampede-of-foia-requests/?noredirect=on&utm\\_term=.476a99ace675](https://www.washingtonpost.com/news/powerpost/wp/2017/12/15/trump-environmental-officials-are-keeping-tight-rein-over-stampede-of-foia-requests/?noredirect=on&utm_term=.476a99ace675).

1           6.       On information and belief, BLM has directed that its staff cease sharing draft  
2 documents over email and has disallowed hard copies of documents used at meetings to be taken  
3 out of meetings—to prevent the public from gaining access to these drafts and hard copies  
4 through the FOIA process.

5           7.       Plaintiffs Sierra Club and Friends of the Earth are both national public interest  
6 environmental organizations that rely on FOIA to obtain access to important information about  
7 government activities that they regularly disseminate to the public. Such information includes  
8 records about the transparency and internal practices of government agencies, such as Agency  
9 Defendants, that are charged with protecting public lands, human health, and environmental  
10 quality.

11           8.       Plaintiffs submitted their FOIA requests, attached as Exhibits A (to Interior) and  
12 B (to BLM), on April 2, 2018, seeking records in five discrete categories that are detailed in the  
13 requests. For each category of records requested, Plaintiffs identify by title the specific staff at  
14 Interior and BLM who are likely custodians of the records sought.

15           9.       To date, the Agency Defendants have not provided determinations on Plaintiffs’  
16 FOIA requests, have not released any records in response to either request, and have not  
17 provided any date by which they will do so. As a result, Agency Defendants have violated  
18 FOIA’s mandate that agencies must, absent unusual or exceptional circumstances, make a  
19 determination on a request within twenty working days and *promptly* release those records. *See*  
20 5 U.S.C. § 552(a)(3)(A), (a)(6)(A)-(C).

## 21 22                   **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

23           10.       This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B)  
24 (FOIA) and 28 U.S.C. § 1331 (federal question).

25           11.       Venue is properly vested in this Court under 5 U.S.C. § 552(a)(4)(B), because  
26 Plaintiff Sierra Club has its principal place of business in Oakland, California.

27           12.       For the same reason, intradistrict assignment is proper in the Oakland Division.  
28 *See* Civil L.R. 3-2.

1 13. Declaratory relief is available under 28 U.S.C. § 2201.

2 14. Injunctive relief is available under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

3 15. This Court has the authority to award reasonable costs and attorneys' fees under  
4 5 U.S.C. § 552(a)(4)(E).

5  
6 **PARTIES**

7 16. Plaintiff SIERRA CLUB was founded in 1892 and is the nation's oldest  
8 grassroots environmental organization. Sierra Club's headquarters is located in Oakland,  
9 California. Sierra Club is a national nonprofit membership organization incorporated in  
10 California with more than 802,000 members in all fifty states and the District of Columbia.  
11 Sierra Club's purpose is to explore, enjoy, and protect the wild places of the earth; to practice  
12 and promote the responsible use of the earth's ecosystems and resources; and to educate and  
13 enlist humanity to protect and restore the quality of natural and human environments.

14 17. Sierra Club draws on its institutional expertise to educate and mobilize the public  
15 on environmental and natural resources issues, as well as the operations of the federal  
16 government related to such issues. Sierra Club routinely uses FOIA to obtain information from  
17 federal agencies, including Agency Defendants, which Sierra Club's legal and policy experts  
18 analyze to inform Sierra Club's members and the public about environmental and natural  
19 resources issues. Sierra Club regularly conveys important information to its members and the  
20 public through publications and press releases, and by publicly releasing information and  
21 documents obtained through the FOIA process. As such, Sierra Club is a "representative of the  
22 news media" as defined under FOIA and Interior regulations. 5 U.S.C. § 552(a)(4)(A)(ii); 43  
23 C.F.R. § 2.70.

24 18. Plaintiff FRIENDS OF THE EARTH is a national nonprofit organization founded  
25 in 1969 and headquartered in Washington, D.C., with a membership of approximately 381,000.  
26 Friends of the Earth U.S. is the U.S. voice of the world's largest network of environmental  
27 groups—Friends of the Earth International—a federation of grassroots groups working in  
28 seventy-four countries on today's most urgent environmental and social issues. For more than

1 forty years, Friends of the Earth has championed a clean and sustainable environment, the  
2 protection of America’s public lands, and the exposure of government malfeasance and corporate  
3 greed.

4 19. Friends of the Earth is primarily engaged in information dissemination, public  
5 education, and advocacy on environmental issues, and routinely uses FOIA to do so. The  
6 organization has a demonstrated and longstanding capacity to disseminate important government  
7 information acquired from the FOIA process through direct communication to journalists and  
8 other members of the media, press releases, newsletters, email alerts to members and supporters,  
9 its website and social media accounts, public meetings, and other legislative and executive fora.  
10 As such, Friends of the Earth is a “representative of the news media” as defined under FOIA and  
11 Interior regulations. 5 U.S.C. § 552(a)(4)(A)(ii); 43 C.F.R. § 2.70.

12 20. Defendant U.S. DEPARTMENT OF THE INTERIOR is a federal agency within  
13 the meaning of FOIA, 5 U.S.C. § 552(f)(1). It is a cabinet-level agency of the executive branch  
14 of the U.S. government, responsible for protecting and managing much of this country’s wildlife,  
15 natural resources, public lands, and cultural heritage. Interior has nine bureaus, including BLM.  
16 Plaintiffs submitted the first of the two FOIA requests underlying this Complaint to Interior’s  
17 Office of the Secretary. Interior is in possession and control of records that Plaintiffs seek, and  
18 therefore it is subject to FOIA pursuant to 5 U.S.C. § 552(f). Interior is a federal agency  
19 responsible for applying and implementing the federal laws and regulations at issue in this  
20 Complaint.

21 21. Defendant U.S. BUREAU OF LAND MANAGEMENT is a federal agency  
22 within the meaning of FOIA, 5 U.S.C. § 552(f)(1). It is an agency of the executive branch of the  
23 U.S. government, under Interior. Plaintiffs submitted the second of the two FOIA requests  
24 underlying this Complaint to BLM’s FOIA office. BLM is in possession and control of records  
25 that Plaintiffs seek, and therefore it is subject to FOIA pursuant to 5 U.S.C. § 552(f). BLM is a  
26 federal agency responsible for applying and implementing the federal laws and regulations at  
27 issue in this Complaint.

## LEGAL BACKGROUND

22. Congress enacted the Freedom of Information Act to protect the American people’s “right to be informed about what their government is up to.” *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989) (internal quotations omitted). FOIA’s basic purpose is “to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *Nat’l Labor Relations Bd. v. Robbins Tires & Rubber Co.*, 437 U.S. 214, 242 (1978). To this end, FOIA allows access to government information “long shielded unnecessarily from public view” and vindicates the public’s right to “secure such information from possibly unwilling official hands.” *Env’tl. Prot. Agency v. Mink*, 410 U.S. 73, 80 (1973).

23. FOIA imposes strict deadlines on federal agencies once they receive a request for records. Specifically, within twenty working days of receiving a FOIA request, an agency must determine whether to disclose responsive records and must immediately notify the requester of its determination and the reasons therefore. 5 U.S.C. § 552(a)(6)(A)(i).

24. The Northern District has held that such agency determinations must indicate the scope of the documents that the agency will produce and the exemptions it will claim with respect to any withheld documents. *Our Children’s Earth Found. v. Nat’l Marine Fisheries Serv.*, 85 F. Supp. 3d 1074, 1089 (N.D. Cal. 2015) (citing *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 711 F.3d 180, 184 (D.C. Cir. 2013)). An adverse determination must inform the requester of its right to appeal the agency’s determination. *See id.*

25. An agency may extend this twenty-day period only in “unusual circumstances” as defined by 5 U.S.C. § 552(a)(6)(B)(iii), and only for a maximum of ten working days. 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.16(a).

26. The agency must also provide “an estimated date on which the agency will complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii).

27. The agency must then make the requested records “promptly” available, *id.* § 552(a)(3)(A), (a)(6)(C)(i), unless it can establish that it may lawfully withhold records, or portions of records, from disclosure under narrowly-defined FOIA exemptions listed in § 552(b).

1 In doing so, it must make reasonable efforts to search for records in a manner that is reasonably  
2 calculated to locate all records responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

3 28. If an agency withholds responsive records, in whole or in part, the burden is on  
4 the agency to prove that an exemption applies and that this interest outweighs FOIA's policy of  
5 disclosure. *See, e.g., id.* § 552(a)(4)(B); *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991).

6 29. Whenever an agency determines that a portion of a record should be withheld  
7 under one of FOIA's exemptions, the agency must still release to the public any portions of that  
8 record that contain "reasonably segregable" non-exempt information. 5 U.S.C. § 552(b).

9 30. Interior FOIA regulations provide for a tracked response process that  
10 distinguishes requests based on the estimated number of workdays needed to respond. 43 C.F.R.  
11 § 2.15(a). "Simple" requests take one to five workdays to process; "normal" requests take six to  
12 twenty workdays; "complex" requests take between twenty-one and sixty workdays; and  
13 "exceptional/voluminous" requests, which involve "very complex processing challenges" and  
14 potentially include a large number of responsive records, take over sixty workdays to process.  
15 *Id.* § 2.15(c)(1)-(4).

16 31. The multi-track processing system does not alter FOIA's statutory deadline for an  
17 agency to determine whether to comply with the FOIA request. *Id.* § 2.15(f). An agency must  
18 make a determination whether to comply with the request and notify the requester accordingly,  
19 within the mandatory deadlines described above.

20 32. If the agency fails to make a determination within the statutory time period, the  
21 requestor may immediately commence litigation in district court to compel an adequate response  
22 from the agency and is deemed to have exhausted its administrative remedies. 5 U.S.C.  
23 § 552(a)(4)(B), (a)(6)(C)(i).

24 33. The United States district courts have jurisdiction "to enjoin the agency from  
25 withholding agency records and to order the production of any agency records improperly  
26 withheld from the complainant." *Id.* § 552(a)(4)(B).

27 34. FOIA and Interior's regulations state that a requester is entitled to a waiver of fees  
28 associated with responding to a FOIA request when the information sought "is likely to



1 contribute significantly to public understanding of the operations or activities of the government  
2 and is not primarily in the commercial interest of the requester.” *Id.* § 552(a)(4)(A)(iii); 43  
3 C.F.R. § 2.48(a). Further, an agency cannot assess fees against a requester who is a  
4 representative of the news media if the agency does not respond to the request within the time  
5 established by FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(viii).

## 7 **FACTUAL BACKGROUND**

8 35. Plaintiffs submitted two outstanding FOIA requests to which Agency Defendants  
9 have failed to respond.

### 10 ***FOIA Request to Interior***

11 36. On April 2, 2018, Plaintiffs submitted a FOIA request to Interior seeking records  
12 regarding policies or guidelines governing Interior’s handling, processing, and disposition of  
13 FOIA requests created, stored, or received since January 20, 2017 (“April 2 Interior Request”).  
14 *See* Ex. A, attached. The April 2 Interior Request identified five specific categories of records  
15 that Plaintiffs requested and provided a detailed description of the records sought for each  
16 category. *Id.* Both Plaintiffs established their status as “representatives of the news media” in  
17 this request. *Id.* at 11-13.

18 37. Having received no acknowledgement from Interior regarding the request,  
19 Plaintiffs called Interior on April 11. An Interior FOIA officer, Nicholas Banco, stated that the  
20 FOIA request was in the queue, ready to be processed, and assigned control number OS-2018-  
21 00959. But Mr. Banco was unable to provide any further information.

22 38. On April 12 and 13, Plaintiffs contacted Interior to inquire about the status of the  
23 acknowledgment letter. On April 13, Interior FOIA officer Clarice Julka issued a letter to  
24 Plaintiffs stating that Interior would need ten additional working days to process the request,  
25 because Interior “need[ed] to consult with one or more bureaus in the Department to properly  
26 process [Plaintiffs’] request.” Ex. C at 3, attached. Although Interior had not yet assessed the  
27 universe of responsive records, the letter stated that Interior had placed the request in the  
28 “Complex” processing track. *Id.* The acknowledgement letter did not provide a determination



1 on the scope of the documents the Interior would produce, nor did it indicate any planned  
2 withholdings or exemptions. *See generally id.*

3 39. The due date for Interior's FOIA determination on the April 2 Interior Request,  
4 inclusive of its ten-day extension, was May 11, 2018. *See* 5 U.S.C. § 552(a)(6)(A), (a)(6)(B)(i);  
5 43 C.F.R. § 2.16(a).

6 40. On May 29, 2018, Plaintiffs contacted Interior's FOIA office, notifying the  
7 agency that Interior's thirty working-day determination on Plaintiffs' April 2, 2018 FOIA request  
8 was overdue and requesting a determination and response to the FOIA request. The FOIA  
9 officer responded that Interior's FOIA office could not provide the determination or a timeline  
10 for releasing the records.

11 41. On the same day, Interior's FOIA officer, Clarice Julka, contacted Plaintiffs. Ms.  
12 Julka indicated to Plaintiffs that the Interior FOIA office will search only for records generated  
13 or received by the Interior Secretary's office and the Interior's FOIA Policy Office and not by  
14 other Interior bureaus, such as the Solicitor's office. Ms. Julka also stated that Plaintiffs' request  
15 was too broad, and asked for clarifications. Finally, Ms. Julka indicated that Interior had  
16 recently published a two-page FOIA policy.<sup>2</sup>

17 42. On June 11, 2018, Plaintiffs' counsel contacted Ms. Julka with clarifications on  
18 the April 2 Interior Request, which Ms. Julka accepted. Plaintiffs' counsel informed Ms. Julka  
19 that Plaintiffs were looking for records other than the two-page FOIA policy published by  
20 Interior regarding Interior's handling of FOIA requests that were created, stored, or received  
21 under the current Administration.

22 43. On June 12, 2018, Ms. Julka informed Plaintiffs' counsel over telephone that  
23 Plaintiffs' FOIA request would remain in the "complex" track, and that she could not provide a  
24 determination date or a timeline for the release of records.

25  
26  
27 <sup>2</sup> U.S. Dep't of the Interior, Office of the Secretary, May 24, 2018 Memorandum on Awareness  
28 Process for Freedom of Information Act Productions, [https://www.doi.gov/sites/doi.gov/files/uploads/awareness\\_process\\_memo\\_final.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_final.pdf).

1 ***FOIA Request to BLM***

2 44. Also on April 2, 2018, Plaintiffs submitted a FOIA request to BLM seeking  
3 similar records—regarding policies or guidelines governing BLM’s handling, processing, and  
4 disposition of FOIA requests created, stored, or received since January 20, 2017 (“April 2 BLM  
5 Request”). *See* Ex. B, attached. The April 2 BLM Request also identified five specific  
6 categories of records that Plaintiffs requested and provided a detailed description of the records  
7 sought for each category. *Id.* Both Plaintiffs established their status as “representatives of the  
8 news media” in this request. *Id.* at 11-13.

9 45. Having received no acknowledgement from BLM regarding the request, Plaintiffs  
10 contacted BLM on April 11 and April 13 seeking the status of the request. BLM provided no  
11 response.

12 46. On April 19, 2018, Plaintiffs again contacted BLM seeking the status of the  
13 request. On April 19, BLM FOIA Officer Ryan Witt responded via email that he would “check  
14 with our Washington Office FOIA specialists and get an update on the acknowledgement and  
15 processing of your request.” Ex. D at 2, attached.

16 47. On April 20, BLM acknowledged in an email that it received the FOIA request,  
17 assigning it control number 2018-00730. *Id.* Although BLM had not yet assessed the universe  
18 of responsive records, it placed the request in the “Complex” processing track.

19 48. The acknowledgement did not provide a determination on the scope of the  
20 documents BLM would produce, nor did it indicate any planned withholdings or exemptions.

21 *See generally id.*

22 49. The due date for BLM’s FOIA determination on the April 2 BLM Request was  
23 April 27, 2018. *See* 5 U.S.C. § 552(a)(6)(A); 43 C.F.R. § 2.16(a).

24 50. On May 29, Plaintiffs contacted BLM’s FOIA office, notifying the agency that  
25 BLM’s twenty working-day determination on the April 2 BLM Request was overdue and  
26 requesting a determination and response to the FOIA request. BLM failed to respond.

27 51. On June 11, Plaintiffs’ counsel contacted the BLM office to again notify the  
28 agency that its determination was overdue. BLM’s FOIA officer, Mr. Witt, responded that he

1 would confer with other BLM FOIA officers and assess BLM's progress for giving a  
2 determination, and that he would contact Plaintiffs' counsel with this information by the  
3 afternoon of June 12. But neither Mr. Witt nor other BLM FOIA officers did so.

4 52. On June 20, 2018, Plaintiffs' counsel again contacted BLM for an update on the  
5 determination and a timeline for the release of records. A BLM FOIA officer responded that the  
6 FOIA office was still searching for records, that the search was incomplete, and that Mr. Witt  
7 would be in contact by email regarding the status of the determination.

8 53. On June 22, 2018, Mr. Witt informed Plaintiffs in an emailed letter that BLM  
9 "ha[d] not reached a final determination on whether responsive material is exempt from release,"  
10 but that it had "gathered the responsive material and conducted an initial survey to identify the  
11 quantity and nature of the records," that it "expect[s] the pages of responsive material to exceed  
12 10,000 pages," and that it plans to make "monthly interim releases for this request starting in  
13 July of 2018." Ex. E at 3, attached. However, the letter did not provide any information  
14 concerning the volume of material that BLM anticipates including in its expected interim  
15 releases, or the estimated date by which BLM anticipates making a determination or completing  
16 its production of records in response to the request. *See generally id.*

17 54. To date, neither Interior nor BLM has made a determination in response to either  
18 of Plaintiffs' FOIA requests or released any agency records in response to the requests.

19 55. Plaintiffs now bring this action on their own behalf and on behalf of their  
20 members. Agency Defendants' FOIA violations have harmed and continue to harm Plaintiffs  
21 and their members by preventing Plaintiffs from gaining and communicating a full understanding  
22 of the nature, scope, and rationale behind Agency Defendants' handling of FOIA requests and  
23 administration of the FOIA process. The relief requested below will redress these injuries.

1 **FIRST CLAIM FOR RELIEF**  
2 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**  
3 **Failure to Make a Determination on FOIA Requests, 5 U.S.C. § 552(a)(6)-(7)**  
4 **(Against Defendant Department of the Interior)**

5 56. Plaintiffs reallege and incorporate by reference each of the allegations set forth in  
6 the preceding paragraphs.

7 57. Plaintiffs properly requested records within Interior's control.

8 58. FOIA requires Interior to provide Plaintiffs with a determination on their FOIA  
9 request within the timeframe that Congress required through FOIA and an estimated date on  
10 which the agency will complete action on the request.

11 59. Interior violated FOIA by failing to make the required determination, or provide  
12 an estimated date of completion, in response to the April 2 Interior Request.

13 **SECOND CLAIM FOR RELIEF**  
14 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**  
15 **Failure to Respond to FOIA Requests, 5 U.S.C. § 552(a)(3), (a)(4)(B), (b); 43 C.F.R. § 2.12**  
16 **(Against Defendant Department of the Interior)**

17 60. Plaintiffs reallege and incorporate by reference each of the allegations set forth in  
18 the preceding paragraphs.

19 61. FOIA requires Interior to process the records request described herein and to  
20 promptly provide responsive records, or any reasonably segregable portions of responsive  
21 records, not subject to specified FOIA exemptions.

22 62. Interior violated FOIA when it failed to promptly disclose records, or to disclose  
23 reasonably segregable portions of lawfully exempt records, that are responsive to the April 2  
24 Interior Request.

25 63. Interior has wrongfully withheld the requested records from Plaintiffs.

26 64. Plaintiffs have exhausted the applicable administrative remedies.

27 65. Plaintiffs are entitled to obtain the requested records immediately at no cost.  
28

1                                   **THIRD CLAIM FOR RELIEF**  
2                                   **VIOLATION OF THE FREEDOM OF INFORMATION ACT**  
3                                   **Failure to Make a Determination on FOIA Requests, 5 U.S.C. § 552(a)(6)-(7)**  
4                                   ***(Against Defendant Bureau of Land Management)***

4           66.     Plaintiffs reallege and incorporate by reference each of the allegations made in the  
5 preceding paragraphs.

6           67.     Plaintiffs properly requested records within BLM's control.

7           68.     FOIA requires BLM to provide Plaintiffs with a determination on their FOIA  
8 request within the timeframe that Congress required through FOIA and an estimated date on  
9 which the agency will complete action on the request.

10          69.     BLM violated FOIA by failing to make the required determination, or provide an  
11 estimated date of completion, in response to the April 2 BLM Request.

12  
13                                   **FOURTH CLAIM FOR RELIEF**  
14                                   **VIOLATION OF THE FREEDOM OF INFORMATION ACT**  
15                                   **Failure to Respond to FOIA Requests, 5 U.S.C. § 552(a)(3), (a)(4)(B), (b); 43 C.F.R. § 2.12**  
16                                   ***(Against Defendant Bureau of Land Management)***

16          70.     Plaintiffs reallege and incorporate by reference each of the allegations set forth in  
17 the preceding paragraphs.

18          71.     FOIA requires BLM to process the Plaintiffs' FOIA request and to provide  
19 responsive records, or any reasonably segregable portions of responsive records, not subject to a  
20 FOIA exemption.

21          72.     BLM violated FOIA when it failed to provide records, or reasonably segregable  
22 portions of lawfully exempt responsive records, responsive to the April 2 BLM Request.

23          73.     BLM has wrongfully withheld the requested records from Plaintiffs.

24          74.     Plaintiffs have exhausted the applicable administrative remedies.

25          75.     Plaintiffs are entitled to obtain the requested records immediately at no cost.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

1. Declare that Agency Defendants' failure to respond to Plaintiffs' FOIA requests, as alleged above, are unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i);

2. Order Agency Defendants to provide a determination on Plaintiffs' FOIA requests as required by FOIA;

3. Order Agency Defendants to conduct searches that are reasonably calculated to locate all records—up to the date when the searches are conducted—responsive to Plaintiffs' FOIA requests, at no cost to Plaintiffs;

4. Order Agency Defendants to promptly provide Plaintiffs all responsive records—or reasonably segregable portions of lawfully exempt records—at no cost to Plaintiffs;

5. Retain jurisdiction over this action to rule on any assertions by Agency Defendants that any responsive records, in whole or in part, are exempt from disclosure;

6. Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

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

Respectfully submitted this 26th day of June 2018,

/s/ Yuting Chi

Yuting Chi, CA Bar No. 310177  
Earthjustice  
633 17th Street, Suite 1600  
Denver, CO 80202  
ychi@earthjustice.org  
Tel: (303) 996-9623  
Fax: (303) 623-8083

Adrienne Bloch, CA Bar No. 215471  
Earthjustice  
50 California Street, Suite 500  
San Francisco, CA 94111  
abloch@earthjustice.org  
Tel: (415) 217-2164  
Fax: (415) 217-2040

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Thomas Cmar, N.Y. Bar No. 4289443  
*(pro hac vice pending)*  
Earthjustice  
1101 Lake Street, Suite 405B  
Oak Park, IL 60301  
tcmar@earthjustice.org  
Tel: (312) 257-9338  
Fax: (212) 918-1556

*Counsel for Plaintiffs Sierra Club and Friends  
of the Earth*