

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

WILDEARTH GUARDIANS	)	
516 Alto St.	)	
Santa Fe, NM 87501	)	
	)	
Plaintiff,	)	Case No. 1:17-cv-1161
	)	
v.	)	
	)	
BUREAU OF LAND MANAGEMENT	)	
1849 C St. NW	)	
Washington, D.C. 20240,	)	
	)	
Defendant.	)	

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**INTRODUCTION**

1. Defendant United States Bureau of Land Management (“BLM”) has violated the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* by failing to provide a determination on Plaintiff WildEarth Guardians’ (“Guardians”) FOIA request within the time limits provided by the FOIA. This lawsuit requests an order that declares that BLM has violated FOIA by withholding documents responsive to Guardians’ request, and that enjoins the agency to immediately provide a determination on Guardians’ FOIA request and to provide Guardians with the files it has requested.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question).

3. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. This Court has authority to grant injunctive relief pursuant to 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

4. This Court has authority to award costs and attorney fees pursuant to 28 U.S.C. § 2414 and 5 U.S.C. § 552(a)(4)(E).

5. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B), 703, and 28 U.S.C. § 1391.

### **PARTIES**

6. Plaintiff WILDEARTH GUARDIANS (“Guardians”) is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Guardians has offices in Colorado, Montana, New Mexico, Arizona, Washington, and Oregon. With more than 200,000 members and supporters, Guardians works to sustain a transition from fossil fuels to clean energy in order to safeguard the West. The records sought in this action are requested in support of these efforts.

7. Guardians works in furtherance of its goals in part by acquiring information regarding federal programs and activities through the federal Freedom of Information Act. Guardians then compiles and analyzes that information and, subsequently, disseminates that information to its membership, the general public, and public officials through various sources including publications, reports, its website and newsletter, general news media coverage, and public presentations. Guardians’ successful efforts at educating the public on issues concerning federal government program and activities that affect the environment contribute significantly to the public’s understanding of governmental operations and activities. Guardians also uses the information that it acquires through FOIA to participate in federal decision making processes, to

file administrative appeals and civil actions, and generally to ensure that federal agencies comply with federal environmental laws.

8. Guardians and its members are directly injured by BLM's failure to comply with the statutory requirements of FOIA and a favorable outcome of this litigation will redress that injury. Guardians bring this action on behalf of itself, its staff, and its members.

9. Defendant U.S. BUREAU OF LAND MANAGEMENT is a federal agency within the U.S. Department of the Interior. It is in possession and control of the records sought by Guardians, and as such, is subject to FOIA pursuant to 5 U.S.C. § 552(f).

### **FACTUAL AND LEGAL BACKGROUND**

10. FOIA requires that an agency "shall—[] determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor." 5 U.S.C. § 552(a)(6)(A)(i).

11. On January 30, 2017, Guardians submitted a Freedom of Information Act request to the Colorado, Montana, New Mexico, Utah, and Wyoming State Offices of BLM. Guardians submitted the FOIA requests to all five offices via email. The FOIA request was for any and all records concerning or relating in any way to the August 11, 2016 complaint filed by the Western Energy Alliance ("WEA") against the Secretary of the U.S. Department of the Interior and the U.S. Bureau of Land Management in the U.S. District Court for the District of New Mexico. The FOIA request also included a request for any and all records of communications between any agent, employee, official, contractor, and/or appointee of the U.S. Bureau of Land Management, and any agent, including, staff, board member, and/or other representative of WEA produced since January 1, 2017.

12. On February 22, 2017, the BLM Washington Office acknowledged receipt of Guardians' FOIA requests sent to the five state BLM offices, and consolidated the five requests into a single request to be further addressed by the Washington Office. The tracking number given for the consolidated request is 2017-00287. At this time, BLM designated Guardians as an "other-use" requester, and determined that the consolidated FOIA request fell into the "voluminous" track. BLM stated that requests in the voluminous track take more than 60 workdays to process.

13. On March 10, 2017, Guardians appealed BLM's failure to respond to the January 30, 2017, FOIA requests within the required time limits. The Washington Office of BLM had failed to assert any "unusual circumstances" to require a 10 day work extension, and therefore, the failure to grant or deny Guardians' FOIA request by February 27, 2017, resulted in a failure to meet the statutory deadline.

14. On May 31, 2017, Guardians e-mailed the Washington Office of BLM and the Department of the Interior Solicitor's office to inquire after the status of the FOIA requests and FOIA Appeals.

15. On June 5, 2017, BLM sent an e-mail to Guardians saying the agency is still gathering records for the request and will begin to process the request shortly. BLM further stated that it will also send interim releases as the records come in. BLM did not provide a date certain or estimated time frame by which it would respond to Guardians' FOIA request.

16. A determination consists of (1) a decision to comply or not comply with the request, (2) the reasons for the decision, (3) and, in the case of an adverse decision, a description of the requester's rights to an appeal. 5 U.S.C. § 552(a)(6)(A)(i).

17. BLM has not yet issued a determination on Guardians' January 30, 2017, FOIA requests.

18. Guardians has fully exhausted all administrative remedies required by FOIA. 5 U.S.C. §§ 522(a)(6)(A), (a)(6)(C).

### **CLAIM FOR RELIEF**

#### **Violation of FOIA—Failure to Respond to Guardians' FOIA Request Within the Statutory Time Frame**

19. All previous paragraphs are incorporated herein by reference.

20. BLM's failure to respond to Guardians' FOIA request within the 20-day statutory time frame violated FOIA. 5 U.S.C. § 552(a)(6)(A)(i).

21. BLM continues to violate FOIA by failing to respond to Guardians' request for documents and records relating to WEA's lawsuit against BLM.

22. Unless enjoined and made subject to a declaration of Guardians' legal rights by this Court, BLM will continue to violate the Guardians' rights to receive public records under FOIA.

23. Guardians is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA, for this violation. 5 U.S.C. § 552(a)(4)(E).

### **REQUEST FOR RELIEF**

WHEREFORE, WildEarth Guardians respectfully requests that this Court:

A. Declare that Defendant violated FOIA by failing to make a timely determination on Guardians' records request;

B. Order BLM to immediately make a determination on Guardians' records request and provide Guardians with the records responsive to its request;

- C. Maintain jurisdiction over this action until BLM complies with FOIA;
- D. Award Guardians its costs and reasonable attorney fees incurred in prosecuting this action, 5 U.S.C. § 552(a)(4)(E); and
- E. Grant such other and additional relief as the Court deems just and proper.

Respectfully submitted on this 14th day of June 2017

/s/ Samantha Ruscavage-Barz  
Samantha Ruscavage-Barz (Bar No. CO0053)  
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