

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

CENTER FOR BIOLOGICAL DIVERSITY,
378 N. Main Ave.
Tucson, AZ 85702-0710

Plaintiff,

v.

U.S. BUREAU OF LAND MANAGEMENT,
1849 C Street NW, Rm. 5665
Washington, DC 20240

Defendant.

Civil Action No.: _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. In this action, the Center for Biological Diversity (“Center”) – an environmental conservation organization that works to protect native wildlife species and their habitats, including on public lands – challenges Defendant U.S. Bureau of Land Management’s (“BLM”) violations 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”), in connection with the Center’s December 1, 2014, FOIA request (“FOIA Request”) for records related to a “Predator Derby” (“Derby”) on BLM lands in eastern Idaho.

2. The Derby is a three-day annual contest, sponsored by a private organization, to shoot and kill wolves, coyotes, and other animals for cash and prizes. The Derby, which takes place on public lands in Idaho and is sponsored by an organization called “Idaho for Wildlife,” is thought to be the first such wildlife-killing event since the 1970s to include gray wolves among its target species. The Derby has taken place twice, once on December 28-29, 2013 and again on

January 2-4, 2015, on the Salmon-Challis National Forest, which is located adjacent to the BLM lands that are at issue in the Center's FOIA Request.

3. In a lawsuit that is pending before the U.S. District Court for the District of Idaho, *WildEarth Guardians v. Kraayenbrink*, No. 14-488 (D. Idaho filed Nov. 13, 2014), the Center – along with several other environmental organizations – is prosecuting claims against BLM for violations of the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h (“NEPA”) and the APA, stemming from BLM's initial approval of a “special recreation permit” (“Permit”) for the Derby, which allowed it to expand to BLM lands in the BLM Idaho Falls District. Although BLM rescinded its approval shortly thereafter (as the Plaintiffs were preparing to seek expedited judicial review), substantial questions remain about why BLM withdrew the Permit and whether it plans to approve another Permit, waive the Permit requirement, or look the other way.

4. After BLM provided the Center with only 10 pages of responsive records about this highly-controversial event on August 19, 2015, the Center appealed the agency's failure to search adequately for all responsive records and challenged BLM's sweeping withholding of 26 additional pages of records that it did identify as responsive (“FOIA Appeal” or “Appeal”). To date, however, the Center has not received an acknowledgement of its Appeal from BLM, let alone a final determination or any indication of when the agency will respond to the Center's Appeal.

5. Thus, although BLM has released minimal records to the Center, it has refused to search for and disclose all records that are responsive to the Center's Request, to justify its sweeping application of FOIA Exemption 5 to the records that it has located, or to issue a timely determination on the Center's FOIA Appeal.

6. This is not the only case in which the Center must prosecute BLM's refusal to provide records that concern the Derby under FOIA. In another complaint that is being filed today in the U.S. District Court for the District of Idaho, the Center is pursuing FOIA violations against BLM that stem from another FOIA request, for which BLM has likewise refused to provide responsive, Derby-related records in a timely fashion.

7. BLM's refusal to release information pertaining to the Derby directly contravenes FOIA's policy of government transparency.

8. Thus, because prompt access to these records is necessary to effectuate FOIA's purpose, but where BLM is unlawfully withholding responsive records by improperly applying FOIA's disclosure exemptions and refusing to provide a determination on the Center's FOIA Appeal, the Center seeks declaratory relief establishing that BLM has violated FOIA, or alternatively, the APA. The Center also seeks injunctive relief directing BLM to provide it with a determination on its FOIA Appeal without any further delay.

JURISDICTION AND VENUE

9. 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.

10. 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.

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

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

PARTIES

13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 50,000 members. The Center has filed several FOIA requests for BLM records that concern the Derby since August 22, 2014 – including, most recently, the FOIA Request that is at issue in this action.

14. The Center and its members are harmed by BLM's violations of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a full understanding about the Derby, including BLM's regulatory approach to this and other wildlife-killing contests on public lands.

15. Defendant U.S. BUREAU OF LAND MANAGEMENT is an agency of the executive branch of the U.S. government within the U.S. Department of the Interior. BLM is in possession and control of the records that the Center seeks, and as such, is subject to FOIA pursuant to 5 U.S.C. § 552(f). BLM 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, as it establishes that all federal agency records must be accessible to the public unless such records may be withheld from this disclosure mandate pursuant to one of nine, narrowly-construed FOIA exemptions. 5 U.S.C. § 552.

17. FOIA imposes strict and rigorous deadlines on federal agencies when they receive a request for records pursuant to FOIA. Specifically, an agency must determine if it will release requested records and notify the requester of its determination within 20 business days of

receiving a FOIA request, and it must make responsive 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. 5 U.S.C. § 552(a)(3)(A), (a)(6). Also within 20 business days, the agency must inform the requester that it has a right to appeal the agency’s determination to invoke one or more of FOIA’s narrow exemptions. *Id.* § 552(a)(6)(A)(i).

18. FOIA places the burden on the agency to show 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 business-day deadline for up to 10 additional days to seek additional information from a requester. 5 U.S.C. § 552(a)(6)(A)(ii).

21. Second, an agency may extend the 20 business-day deadline for an additional 10 business days by giving a written notice to the requester that sets forth “unusual circumstances” that justify a deadline extension, and providing the date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B). However, when invoking “unusual circumstances,” the agency must provide the requester “an opportunity to limit the scope of the request so that it may be processed within” 20 business 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 also imposes strict and rigorous deadlines on federal agencies when they receive an appeal pursuant to FOIA. Specifically, an agency must make a determination on the appeal within 20 business days after receiving the appeal. 5 U.S.C. § 552(a)(6)(A)(ii). An agency may extend the 20 business-day deadline for making a determination on an appeal by an additional 10 business days, but only if it provides written notice to the requester that sets forth “unusual circumstances” that justify an extension and a date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B).

24. This Court has 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).

25. Alternatively, an agency’s response to a FOIA request and/or a FOIA appeal is subject to judicial review under the APA. The APA 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).

STATEMENT OF FACTS

FOIA Request BLM-WO-2015-00224

26. The Derby, which is characterized as an annual event, has taken place twice. The first time was on December 28-29, 2013. The second time was on January 2-4, 2015. Both

years, the Derby took place on private lands and on the Salmon-Challis National Forest, which is located near the town of Salmon, Idaho.

27. Both years, the proponent of the wildlife-killing contest sought a “special recreation permit” from BLM, to allow it to include three million acres of public lands that are managed by BLM’s Idaho Falls District within the geographic area of the killing contest. In 2013, BLM attempted to issue a permit for the Derby but did not do so, as it did not have sufficient time to comply with NEPA between the date it received the Derby proponent’s Permit application and the dates when the event was scheduled to take place. In 2014, the Derby proponent submitted a new Permit application, allowing BLM to prepare an “environmental assessment” for the event and to issue a Permit for the killing contest on November 13, 2014.

28. After Plaintiffs and other environmental organizations challenged BLM’s decision to permit the highly-controversial event – for which nearly 100,000 people from around the world submitted comments, expressing dismay that such an activity could be allowed on public lands – on November 25, 2014, less than a week and a half after it approved the Permit, BLM withdrew its approval. However, it did not provide specific reasons for its withdrawal at that time.

29. To better understand the reasons for BLM’s withdrawal of the Permit, and hence, how BLM intends to regulate such events in the future, on December 1, 2014, the Center sent its FOIA Request for records related to the Derby via electronic and certified mail to BLM headquarters in Washington, D.C.

30. The Center requested all records that concern the Derby, including BLM’s approval, and subsequent withdrawal, of the Permit, and other records.

31. BLM received the Center’s FOIA Request on December 1, 2014.

32. BLM failed to issue a final determination within 20 business days of receiving the Center's FOIA Request, or by December 31, 2014, as required by 5 U.S.C. § 552(a)(6)(A)(i).

33. By letter dated January 6, 2015, the Center requested an estimated date of completion of a determination on their FOIA Request ("ECD") as required by FOIA. 5 U.S.C. § 552(a)(7)(B). BLM ignored the Center's ECD request.

34. On February 18, 2015 – 53 business days after the date that it received the Center's FOIA Request, BLM acknowledged the Center's FOIA Request and informed the Center that it assigned the FOIA Request tracking number BLM-WO-2015-00224. BLM stated that the FOIA Request fell into BLM's "Normal" processing track and that BLM would "dispatch a determination ... within 20 workdays."

35. After two additional months passed without any further developments, on April 20, 2015, the Center again requested an ECD from BLM. BLM replied by letter dated April 21, 2015, but again failed to provide the Center with an ECD.

36. On July 9, 2015, BLM made a "final determination" on the Center's FOIA Request – more than six months after the date of the FOIA Request and nearly five months after BLM stated that it would "dispatch a determination ... within 20 workdays."

37. In its determination, BLM stated that it had located 36 pages of responsive records. However, BLM redacted 26 pages in their entirety under both the "attorney-client" and "deliberative process" privileges under FOIA Exemption 5. 5 U.S.C. § 552(b)(5). BLM only provided 10 pages of records in response to the Center's FOIA Request.

38. BLM has no lawful basis to withhold or redact records concerning the Derby under FOIA.

39. BLM failed to explain how the withheld and redacted records qualify for the deliberative process and/or attorney-client privileges under FOIA Exemption 5.

40. BLM failed to provide reasonably-segregable portions of any lawfully exempt records. *Id.* § 552(b).

41. BLM failed to produce or disclose any additional records, even though BLM's Washington headquarters generated additional records concerning the Derby, and even though there are likely many more pages of responsive records that have been generated or received by BLM offices in Idaho and/or Washington, D.C., given the substantial amount of controversy the Derby has attracted.

42. The Center timely appealed BLM's decision regarding its FOIA Request on August 19, 2015.

43. BLM failed to issue a determination on the Center's FOIA Appeal within 20 business days from receipt of the appeal, as required by 5 U.S.C. § 552(a)(6)(A)(ii).

44. BLM did not request additional information from the Center, did not notify the Center of any "unusual circumstances" that prevent it from complying with FOIA's deadline for a determination, and has not provided a date by which BLM expects to make any determination on the Center's FOIA Appeal. *Id.* § 552(a)(6)(A), (B).

45. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the withheld records at issue that are responsive to the Center's FOIA Request. Thus, BLM has unlawfully invoked Exemption 5 in connection with the Center's FOIA Request.

46. As of this date, BLM's determination of the Center's FOIA Appeal is 61 business days overdue.

47. Time is of the essence, as the Center needs the records that it seeks through its FOIA request that have been unlawfully withheld by BLM in order to determine the status of the annual Derby this winter.

48. As of this date, BLM has not provided a final determination on the Center's FOIA Appeal.

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

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

BLM Failed to Comply with 5 U.S.C. § 552(a)(7)(B)(ii) (Estimated Completion Date)

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

51. Pursuant to 5 U.S.C. § 552(a)(7)(B)(ii), “[e]ach agency shall ... establish a telephone line or Internet service that provides information about the status of a request to the person making the request ... including an estimated date on which the agency will complete action on the request.”

52. The Center repeatedly asked BLM for an estimated date of completion of a determination on its FOIA Request, and in so doing, invoked 5 U.S.C. § 552(a)(7)(B)(ii).

53. BLM repeatedly failed to provide an estimated date of completion of its determination on the Center's FOIA Request.

54. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in information requests to BLM in the foreseeable future.

55. The Center's organizational activities will be adversely affected if BLM is allowed to continue violating FOIA's requirement to provide an estimated date of completion of a determination as it has in this case.

56. Unless made subject to a declaration of the Center's legal rights by this Court, BLM 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
BLM Violated the Determination Deadline Mandated by FOIA

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

58. The Center has a statutory right to a final determination from BLM on its FOIA Request and FOIA Appeal in a manner that complies with FOIA. BLM has violated the Center's rights in this regard by unlawfully delaying its response to the Center's FOIA Request and FOIA Appeal beyond the deadlines that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i), (ii).

59. BLM is unlawfully withholding public disclosure of information that the Center sought, information to which the Center is entitled, and for which no valid disclosure exemption applies.

60. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in information requests to BLM in the foreseeable future.

61. The Center's organizational activities will be adversely affected if BLM is allowed to continue violating FOIA's decision deadlines as it has in this case.

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

63. The Center is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

BLM Failed to Conduct an Adequate Search

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

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

66. BLM is unlawfully withholding public disclosure of information sought by the Center, information to which the Center is entitled and for which no valid disclosure exemption applies.

67. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in information requests to BLM in the foreseeable future.

68. The Center's organizational activities will be adversely affected if BLM is allowed to continue violating FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA Request and FOIA Appeal.

69. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, BLM 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

BLM Unlawfully Withheld Records Responsive to the Center's FOIA Request

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

71. The Center has a statutory right to the records it seeks, and there is no legal basis for BLM to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)–(9).

72. BLM violated the Center's rights in this regard by failing to comply with FOIA's decision deadlines and by withholding records that are responsive to the Center's FOIA Request.

73. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in information requests to BLM in the foreseeable future.

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

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

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

BLM Unlawfully Applied FOIA's Disclosure Exemptions to the Center's FOIA Request

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

77. The Center has a statutory right to the records it seeks, and there is no legal basis for BLM to assert that any of FOIA's nine exemptions to mandatory disclosure apply. *See* 5 U.S.C. § 552(b)(1)–(9).

78. BLM violated the Center's rights in this regard by unlawfully withholding records that are responsive to the Center's FOIA Request based on the improper and overly broad application of FOIA's Exemption 5, 5 U.S.C. § 552(b)(5).

79. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in information requests to BLM in the foreseeable future.

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

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

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

BLM's Violation of FOIA's Requirements Constitutes Agency Action Unlawfully Withheld or Unreasonably Delayed

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

83. BLM has unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) provide the Center with records that are responsive to its FOIA Request, which are not within the scope of any of FOIA's exemptions to mandatory disclosure; (2) issue a timely final determination on the Center's FOIA Request and FOIA Appeal; (3) provide the Center with an estimated date of completion of a determination on its FOIA Request; and (4) undertake a search that is reasonably calculated to locate all records that are responsive to the Center's FOIA Request. BLM's failure constitutes

agency action that is unlawfully withheld and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

84. Alternatively, BLM has unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) provide the Center with records that are responsive to its FOIA Request, which are not within the scope of any of FOIA's exemptions to mandatory disclosure; (2) issue a timely final determination on the Center's FOIA Request and FOIA Appeal; (3) provide the Center with an estimated date of completion of a determination on its FOIA Request; and (4) undertake a search that is reasonably calculated to locate all records that are responsive to the Center's FOIA Request. BLM's failure constitutes agency action unreasonably delayed and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

85. As alleged above, BLM's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and violated its statutory duties under the APA.

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

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

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

SEVENTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the alternative to the First through Sixth Claims)

BLM's Violation of FOIA's Requirements Is Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

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

90. BLM has violated FOIA's statutory mandates, consequent to its failure and refusal to: (1) provide the Center with records that are responsive to its FOIA Request, which are not within the scope of any of FOIA's exemptions to mandatory disclosure; (2) issue a timely final determination on the Center's FOIA Request and FOIA Appeal; (3) provide the Center with an estimated date of completion of a determination on its FOIA Request; and (4) undertake a search that is reasonably calculated to locate all records that are responsive to the Center's FOIA Request. BLM's failures are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

91. As alleged above, BLM's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and violated its statutory duties under the APA.

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

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

94. The Center is entitled to judicial review under the APA, 5 U.S.C. § 706.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

95. Order Defendant to promptly provide Plaintiff with all of the records sought in this action.

96. Declare that Defendant's failure to disclose the requested records to Plaintiff is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i), 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).

97. Declare that Defendant's failure to timely make a determination on Plaintiff's FOIA Request and FOIA Appeal is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i) and (ii), or in the alternative, is an 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).

98. Declare that Defendant's failure to provide Plaintiff with an estimated date of completion of a determination on their FOIA Request is unlawful under FOIA, 5 U.S.C. § 552(a)(7)(B)(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).

99. Declare that Defendant's failure to undertake a search that is reasonably calculated to locate all records that are responsive to Plaintiff's FOIA Request, as alleged above, is unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), 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).

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

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

DATED: November 17, 2015

Respectfully submitted,

/s/ Margaret E. Townsend

Margaret E. Townsend (OR Bar No. 144463)

Pro hac vice admission pending

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/s/ Amy R. Atwood

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