

1 Elisabeth Holmes (OR Bar # 120254), *Lead Counsel*  
2 *Application for admission to D. Oregon pending*  
3 Blue River Law, P.C.  
4 P.O. Box 293  
5 Eugene, Oregon 97440  
6 Tel. (541) 870-7722  
7 No facsimile  
8 Email: [eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)

6 Daniel C. Snyder (OR Bar # 105127)  
7 Law Offices of Charles M. Tebbutt, P.C.  
8 941 Lawrence Street  
9 Eugene, Oregon 97401  
10 Tel. (541) 344-3505  
11 Fax (541) 344-3516  
12 Email: [dan@tebbuttlaw.com](mailto:dan@tebbuttlaw.com)

10 *Additional counsel listed below*

11 Attorneys for Plaintiff

12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE DISTRICT OF OREGON  
14 EUGENE DIVISION

15 CASCADIA WILDLANDS, an Oregon  
16 non-profit corporation,  
17 Plaintiff,

Case No.: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

17 vs.

(Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*)

18 Office of the Oregon State Director for  
19 USDA-APHIS Wildlife Services; ANIMAL  
20 AND PLANT HEALTH INSPECTION  
21 SERVICE-WILDLIFE SERVICES, an  
22 agency of the United States Department of  
23 Agriculture; and UNITED STATES  
24 DEPARTMENT OF AGRICULTURE, a  
25 federal department;  
Defendants.

---

**STATEMENT OF THE CASE**

- 1  
2 1. This is a civil action by Cascadia Wildlands (“Cascadia Wildlands” or “Plaintiff”) for  
3 declaratory and injunctive relief arising from the above-listed Defendants’ unlawful  
4 violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the  
5 U.S. Department of Agriculture-Animal & Plant Health Inspection Service Wildlife  
6 Services regulations promulgated thereunder, 7 C.F.R. § 370.1 *et seq.* and 7 C.F.R. § 1.1 *et*  
7 *seq.* The violations identified herein also constitute agency action unlawfully withheld or  
8 unreasonably delayed and/or are arbitrary, capricious, or otherwise not in accordance with  
9 law under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*
- 10  
11 2. This action challenges the unlawful failure of the above-named Federal Defendants, the  
12 Office of the Oregon State Director for the UNITED STATES DEPARTMENT OF  
13 AGRICULTURE-ANIMAL & PLANT HEALTH INSPECTION SERVICE WILDLIFE  
14 SERVICES; the ANIMAL AND PLANT HEALTH INSPECTION SERVICE-WILDLIFE  
15 SERVICES, an agency of the United States Department of Agriculture; and the UNITED  
16 STATES DEPARTMENT OF AGRICULTURE, a federal department (collectively herein  
17 “Defendants”), to abide by the statutory requirements of the FOIA, and applicable  
18 regulatory requirements, and further challenges the actions and omissions underlying such  
19 claims under the APA.
- 20  
21 3. Prompt access to the requested information is crucial to Cascadia Wildlands’ work  
22 safeguarding imperiled species and the habitat in which they live. Plaintiff’s April 23, 2018  
23 FOIA request sought records relating to (i) Wildlife Service’s management of predator  
24 species in the state of Oregon, (ii) sales and/or auctions of wild animal products, (iii)  
25

1 contracts for lethal control services, (iv) National Environmental Policy Act (NEPA)  
2 documents related to lethal control activities in Oregon, and (v) consultations with state or  
3 federal agencies with respect to lethal control activities in Oregon. The request includes  
4 records relating to the gray wolf, a species that in a portion of its range, including large  
5 sections of the state of Oregon, is listed as endangered under the federal Endangered  
6 Species Act, 16 U.S.C. § 1531 *et seq.*, and accompanying U.S. Fish and Wildlife Service  
7 regulations, 50 C.F.R. § 17.11(h). Cascadia Wildland's FOIA request only sought records  
8 from January 1, 2015 to the present for categories (ii) – (v), and from January 1, 2012 to  
9 the present for category (i). Cascadia Wildland's FOIA request sought a fee waiver.  
10

- 11 4. Defendants have unlawfully withheld and continue to unlawfully withhold from public  
12 disclosure of information sought by Cascadia Wildlands. Cascadia Wildlands is entitled to  
13 receive the requested information. No valid disclosure exemption applies that would  
14 prohibit disclosure of the requested documents or has been asserted.  
15
- 16 5. Defendants have failed to comply with the statutory mandates and deadlines imposed by  
17 the FOIA. In the alternative, Defendants' acts and omissions constitute agency action  
18 unlawfully withheld or unreasonably delayed and/or which are arbitrary, capricious, or  
19 otherwise not in accordance with the law under the APA, and are therefore actionable  
20 thereunder.  
21
- 22 6. Defendants have not made a timely determination on whether to comply with Cascadia  
23 Wildlands' FOIA request, nor has it timely made an adequate determination on Cascadia  
24 Wildlands' request for a fee waiver.  
25

1 7. The records requested are likely to contribute significantly to the understanding of  
2 operations or activities of the government and are not primarily in the commercial interest  
3 of the requester.

4 8. Accordingly, Cascadia Wildlands seeks declaratory relief establishing Defendants have  
5 violated FOIA and that Plaintiff is entitled to relief thereunder and under the APA.

6 9. Cascadia Wildlands also seeks injunctive relief directing Defendants to promptly conduct a  
7 reasonably adequate search for records, to promptly provide Cascadia Wildlands with  
8 responsive material, to reasonably segregate portions of non-exempt records, and to  
9 provide proper justifications for any exemptions claimed.

10 10. Cascadia Wildlands also seeks an award of its reasonable attorneys' fees, costs, and other  
11 expenses incurred in bringing this action. 5 U.S.C. § 552(a)(4)(E).

12  
13 **JURISDICTION AND VENUE**

14 11. Jurisdiction is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) of the FOIA which  
15 grants jurisdiction to “the district court of the United States in the district in which the  
16 complainant resides, or has his principal place of business[.]”

17 12. Plaintiff Cascadia Wildlands both resides and maintains its principal place of business in  
18 Eugene, Lane County, in the District of Oregon.

19 13. The Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because this  
20 action arises pursuant to FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §  
21 2201 *et seq.*

22 14. The challenged agency action is final and subject to judicial review pursuant to 5 U.S.C. §  
23 552(a)(6)(C)(i).  
24  
25

- 1 15. The requested declaratory and injunctive relief is authorized and appropriate pursuant to by  
2 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. § 552(a)(4)(B).
- 3 16. This action reflects an actual, present, and justiciable controversy between the Plaintiff and  
4 the Defendants. Plaintiff's interests will be adversely affected and irreparably injured if  
5 Defendant continues to violate FOIA as alleged herein.
- 6 17. The requested relief would redress the actual, concrete injuries to Plaintiff caused by the  
7 Defendants' failure to comply with duties mandated by FOIA and its associated  
8 regulations.
- 9 18. Defendants have not made a determination on whether to comply with Plaintiff's FOIA  
10 request, has not responded to Plaintiff's FOIA request with any responsive documents, or  
11 responded to Plaintiff's request for status reports. Plaintiff has therefore constructively  
12 exhausted its remedies under the FOIA. 5 U.S.C. § 552(a)(6)(A), (C).
- 13 19. Venue properly vests in this Court pursuant to 5 U.S.C § 552(a)(4)(B), which provides  
14 venue for FOIA cases in the district in which the plaintiff resides or has its principal place  
15 of business or in the district in which the agency records are situated.
- 16 20. Cascadia Wildlands maintains its principal office within this judicial district, in Eugene,  
17 Lane County, Oregon. Additionally, Cascadia Wildlands has members that work and/or  
18 reside within this judicial district.
- 19 21. Defendant Oregon Wildlife Service's office for the Oregon State Director is located at  
20 6135 Northeast 80<sup>th</sup> Street, Suite A-8, Portland, Oregon.
- 21 22. The requested documents are primarily located within the judicial district of Oregon.
- 22  
23  
24  
25

1 23. A substantial part of the events or omissions giving rise to this legal claim occurred in Lane  
2 County, Oregon thus assignment to the Eugene Division is proper pursuant to LR 3-2.

3 **PARTIES**

4 24. Plaintiff CASCADIA WILDLANDS is an Oregon non-profit corporation with  
5 approximately 10,000 members and supporters throughout the United States. Cascadia  
6 Wildlands educates, agitates, and inspires a movement to protect and restore Cascadia's  
7 wild ecosystems. Cascadia Wildlands envisions vast old-growth forests, rivers full of  
8 salmon, wolves howling in the backcountry, and vibrant communities sustained by the  
9 unique landscapes of the Cascadia Bioregion.  
10

11 25. As outlined above, on April 23, 2018, Cascadia Wildlands submitted a FOIA request to  
12 Defendants, seeking five (5) categories of records relating to Defendants' management of  
13 wildlife control activities on predator species within Oregon, and requesting a fee waiver.  
14

15 26. Cascadia Wildlands brings this action on its own behalf and on behalf of its adversely  
16 affected members. Cascadia Wildlands and its members are injured and adversely affected  
17 by Defendants' failure to make a determination on its FOIA request. Cascadia Wildlands  
18 and its members are injured and adversely affected by Defendants' failure to release the  
19 requested documents.

20 27. The relief sought by Cascadia Wildlands would redress the injuries suffered by Cascadia  
21 Wildlands and its members, as well as provide valuable and necessary information that will  
22 allow Cascadia Wildlands, its members, and the general public, to engage with Defendants  
23 on a fully-informed basis. The requested relief would require Defendants to make a  
24  
25

1 determination on and respond to Cascadia Wildlands' FOIA requests. The requested relief  
2 would require Defendants to promptly release the requested documents and information.

3 28. Defendant Office of the Oregon State Director for U.S. Department of Agriculture-Animal  
4 and Plant Health Inspection Service ("USDA-APHIS") Wildlife Services ("Oregon  
5 Wildlife Services") is the federal official with responsibility for Wildlife Services'  
6 officials' actions and inactions challenged in this complaint. Mr. David E. Williams is the  
7 Oregon State Director.

8  
9 29. Defendant ANIMAL AND PLANT HEALTH INSPECTION SERVICE-WILDLIFE  
10 SERVICES ("Wildlife Services") is a division of the United States Department of  
11 Agriculture's Animal and Plant Health Inspection Service ("APHIS"). Wildlife Services is  
12 a federal agency that is responsible for applying and implementing the federal laws and  
13 regulations challenged in this complaint. Defendant Wildlife Services receives federal  
14 funding to undertake predator management activities in Oregon, including lethal and  
15 nonlethal activities, and accordingly has records responsive to Plaintiff's FOIA request.

16  
17 30. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE ("USDA") is a  
18 department of the United States government. The USDA has supervisory and managerial  
19 responsibility over APHIS. The USDA has supervisory and managerial responsibility over  
20 Wildlife Services. The USDA is responsible for applying and implementing the federal  
21 laws and regulations challenged in this complaint.

22  
23 31. Defendants are "agencies" under the FOIA and subject to the FOIA. 5 U.S.C. § 552(f).

24 32. Defendants are responsible for promptly responding to all FOIA requests, including the  
25 underlying request at issue here for records that are "records" under the FOIA, and within

1 Defendants' possession or control. Id. In this capacity, Defendants are responsible for  
2 implementing and complying with federal laws and regulations, including those implicated  
3 by this action.

4 33. Defendants have failed to make a timely or complete determination on Plaintiff's FOIA  
5 request.

6 34. Defendants have not produced any records responsive to the request.

### 7 **FACTUAL BACKGROUND**

8  
9 35. Pursuant to 7 U.S.C. § 8351-8354 (effective October 23, 2018) (formerly 7 U.S.C. § 426 -  
10 § 426c), Defendant Wildlife Services is the federal agency authorized by Congress to  
11 provide federal leadership and expertise to resolve wildlife conflicts to allow people and  
12 wildlife to coexist.

13 36. Defendant Wildlife Services conducts programs, research, and other activities through its  
14 Regional and State Offices, its National Wildlife Research Center, its Field Stations, and its  
15 National Programs. Wildlife Services' programs include protecting and managing wildlife  
16 resources, protecting livestock from predators, protecting property, health, and human  
17 safety.

18  
19 37. In Oregon, Defendant Wildlife Services oversees and manages programs relating to  
20 predators, gathers data on its programs, issues permits for wild animal product sales and/or  
21 auctions, contracts with third parties for lethal control services, undertakes NEPA  
22 responsibility for predator actions, and has the duty to consult with other state and federal  
23 agencies regarding lethal control actions. The Oregon Wildlife Services office implements  
24  
25



1 Wildlife Service's activities in the State of Oregon. These actions are targeted by Cascadia  
2 Wildland's FOIA request.

3 38. On April 23, 2018, Cascadia Wildlands submitted a FOIA request to Defendants via email  
4 and U.S. certified first class mail, postage prepaid, to the Oregon State Director, Mr. David  
5 E. Williams, seeking the following five (5) categories of records relating to Defendants'  
6 wildlife management activities and operations in Oregon: (i) Defendants' management of  
7 predator species in the state of Oregon, (ii) sales and/or auctions of wild animal products,  
8 (iii) contracts for lethal control services, (iv) National Environmental Policy Act (NEPA)  
9 documents related to lethal control activities in Oregon, and (v) consultations with state or  
10 federal agencies with respect to lethal control activities in Oregon. Cascadia Wildland's  
11 FOIA request only sought records from January 1, 2015 to the present for categories (ii) –  
12 (v), and from January 1, 2012 to the present for category (i). A true and accurate copy of  
13 the FOIA request is attached hereto as Exhibit 1.

14  
15  
16 39. Cascadia Wildland's FOIA request sought a fee waiver. Exhibit 1 at 2-3.

17 40. On April 27, 2018, the Defendant Oregon Wildlife Services (Mr. David E. Williams) e-  
18 mailed the FOIA and Office of General Counsel staff for Defendant APHIS, informing  
19 them that he received Cascadia Wildlands' FOIA request via certified mail on April 25,  
20 2018. Mr. Williams wrote "I want to point out the requesting party is a current plaintiff in a  
21 lawsuit filed against the Wildlife Services program here in Oregon." A true and accurate  
22 copy of this e-mail is attached hereto as Exhibit 2 at 3.

23  
24 41. On April 30, 2018, Defendant APHIS assigned the FOIA to an internal staff member.  
25 Exhibit 2 at 2.

- 1 42. By email on April 30, 2018, Defendant Wildlife Services confirmed receipt of Cascadia  
2 Wildlands' FOIA request to Cascadia Wildlands, and requested date-range clarification for  
3 Request #4, which Cascadia Wildlands provided by email the same day. Exhibit 2 at 1-2.
- 4 43. Defendant Wildlife Services assigned the FOIA request number 2018-APHIS-03818-F.
- 5 44. On May 1, 2018, Robbie Perry, APHIS Government Information Specialist officer emailed  
6 APHIS FOIA Officer Terry Henson, both of Defendant APHIS, that the FOIA was  
7 assigned on April 30, 2018 "but I don't see it in the FX" and "I didn't request that it be  
8 placed on hold because I was hopeful that the requester would reply quickly and would  
9 provide the date range for the one line item." Exhibit 2 at 1.
- 10 45. The FOIA requires federal agencies like Defendants to provide a "determination" on a  
11 FOIA request within 20 working days. A "determination" must include the agency's  
12 decision on whether to comply with the request, its reasons therefore, and notify the  
13 requester if its rights to an administrative appeal.
- 14 46. Defendants failed to make the required determination on whether to comply with Cascadia  
15 Wildlands' FOIA request within the FOIA's 20 working day deadline.
- 16 47. Defendants failed to request an extension of time to respond to Cascadia Wildlands' FOIA  
17 request by the 20 working day deadline.
- 18 48. Defendants failed to determine whether any "unusual circumstances" applied justifying any  
19 extensions of time, and failed to notify Cascadia Wildlands of any such determination.
- 20 49. Defendants failed to indicate whether the FOIA required multitrack processing by FOIA's  
21 20 working day deadline, or offer Cascadia Wildlands the opportunity to prioritize or tailor  
22 the request to qualify for faster processing.  
23  
24  
25

1 50. Defendants have thus far failed to provide any records responsive to Cascadia Wildlands’  
2 FOIA request.

3 51. FOIA provisions provide for legally allowable delays if certain circumstances are met;  
4 other delays outside the provisions of the FOIA are not permissible.

5 52. Cascadia Wildlands has not been informed of its FOIA request being placed on any legal  
6 “hold”.

7  
8 53. By email on August 29, 2018, Cascadia Wildlands’ representative contacted Kevin  
9 Christensen, Oregon Assistant State Director of Defendant Wildlife Services, requesting an  
10 update on the status of the FOIA request, and offered to provide clarification and/or follow  
11 up information. Mr. Christensen responded on September 4, 2018, indicated that he  
12 forwarded Cascadia Wildland’s email to “our FOIA office who is reviewing the  
13 information and to have them follow up with you. Thank you for the follow up email.” A  
14 true and accurate copy of this email is attached hereto as Exhibit 3 at 1. Mr. Christensen did  
15 not request any clarification or follow up information from Cascadia Wildlands.  
16

17 54. By email on September 12, 2018, Robbie Perry, APHIS Government Information  
18 Specialist of Defendant Wildlife Services, e-mailed Cascadia Wildlands and indicated that  
19 he was the requester’s point of contact for the FOIA request, that Defendant Wildlife  
20 Services held records responsive to the request, that the agency was currently reviewing  
21 those documents, and that Defendant Wildlife Services “will provide a partial response” by  
22 September 28, 2018. Mr. Perry also apologized for not contacting Cascadia Wildlands  
23 sooner. A true and accurate copy of this email is attached hereto as Exhibit 4 at 1.  
24  
25

- 1 55. Defendants' September 12, 2018 communication did not seek a 10 working day extension,  
2 or cite any unusual circumstances exceptions, or indicate whether the FOIA required  
3 multitrack processing.
- 4 56. Cascadia Wildlands responded by email on September 12, 2018 to acknowledge the  
5 promised partial record release date and to inquire as to when full production could be  
6 expected. No response to this email was received. Exhibit 4 at 2.
- 7  
8 57. Cascadia Wildlands did not receive any records or correspondence from Wildlife Services  
9 by September 28, 2018.
- 10 58. The September 28, 2018 deadline Defendants set for provision of a "partial" determination  
11 has long passed, and Cascadia Wildlands has been without a date certain by which to  
12 expect a final determination since September 12, 2018. Cascadia Wildlands still does not  
13 know when it should expect a final determination on its FOIA request, let alone responsive  
14 records.
- 15  
16 59. On October 2, 2018, Cascadia Wildlands emailed Defendant Wildlife Services, informing  
17 them that it anticipated but did not receive the promised September 28, 2018 partial records  
18 release, and inquiring when Cascadia Wildlands could expect delivery and the remaining  
19 production. Exhibit 4 at 3. No response was received.
- 20 60. On January 17, 2019, Cascadia Wildlands sent Defendant Wildlife Services a letter via  
21 email and United States Postal Service certified mail, return receipt requested, to remind  
22 the agency of the promised release date of September 28, 2018, to request Wildlife  
23 Services' prompt release of the requested documents, and to confirm what actions Wildlife  
24 Services would be taking to fulfill Cascadia Wildlands' records request. A true and  
25

1 accurate copy of this communication is attached hereto as Exhibit 5. No response was  
2 received.

3 61. To date, Defendants have not made a timely or adequate determination on Cascadia  
4 Wildlands' FOIA request or request for a fee waiver.

5 62. To date, Defendants have not provided any documents or information responsive to  
6 Cascadia Wildlands' FOIA request.

7 63. To date, Defendants has not provided written notice to Cascadia Wildlands that it is  
8 seeking a ten-workday extension to make a determination on Cascadia Wildlands' FOIA  
9 request pursuant to 5 U.S.C. § 552(a)(6)(B)(i).

10 64. Defendants' failures and unlawful actions have prejudiced Cascadia Wildlands' ability to  
11 timely obtain public records.

12 65. If an agency fails to provide a final determination on a FOIA request within the statutory  
13 timeframe, the requester is deemed to have constructively exhausted its administrative  
14 remedies and may immediately file suit against the agency. 5 U.S.C. § 552(a)(6)(C)(i).

15 66. Cascadia Wildlands has constructively exhausted all administrative remedies required by  
16 FOIA.

17 67. The Administrative Procedure Act (APA) provides for judicial relief of final agency action.  
18 5 U.S.C. §§ 701, 706.

19 68. Under the authority of the APA, a reviewing court must hold unlawful and set aside agency  
20 action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion,  
21 or otherwise not in accordance with law. 5 U.S.C. § 706(2).  
22  
23  
24  
25

1 69. Cascadia Wildlands has been required to expend costs and to devote organizational  
2 resources to this litigation and to obtain the services of legal counsel including attorneys,  
3 law clerks, and legal assistants to prosecute this action.

## 4 LEGAL FRAMEWORK

### 5 The Freedom of Information Act

6 70. The FOIA requires U.S. government agencies to promptly make public records available to  
7 any person if that person makes a request which (1) reasonably describes the records  
8 sought and (2) complies with any applicable agency rules for making such a request. 5  
9 U.S.C. § 552(a)(3)(A).

10 71. The FOIA requires an agency to issue a final determination on any such information  
11 request within twenty working days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i).  
12 In issuing a final determination, an agency is required to inform the requester of three  
13 things: (1) the agency's determination of whether or not to comply with the request; (2) the  
14 reasons for its decision; and (3) notice of the right of the requester to appeal to the head of  
15 the agency. 5 U.S.C. § 552(a)(6)(A)(i).

16 72. The FOIA allows an agency to extend the twenty-day determination deadline, however, by  
17 ten working days when "unusual circumstances" exist and when the agency so notifies a  
18 requester in writing. 5 U.S.C. § 552(a)(6)(B)(i)-(iii). A notice informing a requester of the  
19 invocation of the "unusual circumstances" provision must specify the applicable "unusual  
20 circumstances." 5 U.S.C. § 552(a)(6)(B)(i)-(iii).

21 73. Permissible "unusual circumstances" are limited to (1) the need to search for and collect  
22 the requested records from field facilities or other establishments that are separate from the  
23  
24  
25

1 office processing the request; (2) the need to search for, collect, and appropriately examine  
2 a voluminous amount of separate and distinct records which are demanded in a single  
3 request; or (3) the need for consultation, which shall be conducted with all practicable  
4 speed, with another agency having a substantial interest in the determination of the request  
5 or among two or more components of the agency having substantial subject-matter interest  
6 therein. 5 U.S.C. § 552(a)(6)(B)(iii).

7  
8 74. An agency is entitled to one ten-working day extension. 5 U.S.C. § 552(a)(6)(B)(i). The  
9 written notice provided to the requester must specify the specific unusual circumstances  
10 justifying the extension and the date on which a final determination is expected to be  
11 dispatched. *Id.*

12 75. In some circumstances, the FOIA allows an agency to invoke an extension beyond ten  
13 days. To invoke a longer extension, the FOIA requires an agency to provide written  
14 notification to the requester that (1) offers the requester an opportunity to limit the scope of  
15 the request so that it may be processed within that time limit, or (2) offers the requester an  
16 opportunity to arrange with the agency an “alternative time frame” for processing the  
17 request. 5 U.S.C. § 552(a)(6)(B)(ii).

18  
19 76. As part of invoking an “alternative time frame” extension, the agency must also make  
20 available to the requester its FOIA Public Liaison, who is tasked to resolve any dispute  
21 between the requester and the agency. 5 U.S.C. § 552(a)(6)(B)(ii).

22  
23 77. Even when an “unusual circumstances” extension is made, the agency must still notify the  
24 requester of its expected date on which a final determination will be dispatched. 5 U.S.C. §  
25 552(a)(6)(B)(i).

- 1 78. “Exceptional circumstances” for failure to comply with applicable time limits “does not  
2 include a delay that results from predictable agency workload of requests under this  
3 section, unless the agency demonstrates reasonable progress in reducing its backlog of  
4 pending requests.” 5 U.S.C. § 552(a)(6)(C)(ii).
- 5 79. The FOIA permits agencies to promulgate regulations “providing for multitrack processing  
6 of requests for records based on the amount of work or time (or both) involved in  
7 processing requests.” 5 U.S.C. § 552(a)(6)(D)(i). Agency regulations “may provide a  
8 person making a request that does not qualify for the fastest multitrack processing an  
9 opportunity to limit the scope of the request in order to qualify for faster processing.” 5  
10 U.S.C. § 552(a)(6)(D)(ii).
- 11 80. Multitrack processing “shall not be considered to affect” the due diligence requirements of  
12 an agency’s duties to respond within the applicable time limits. 5 U.S.C. §  
13 552(a)(6)(D)(iii).
- 14 81. If an agency fails to provide a final determination on a FOIA request within the statutory  
15 timeframe, the requester is deemed to have exhausted its administrative remedies and may  
16 immediately file suit against the agency. 5 U.S.C. § 552(a)(6)(C)(i).
- 17 82. The FOIA also requires agencies provide “an estimated date on which the agency will  
18 complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii); *see also* 5 U.S.C. §  
19 552(a)(6)(B)(i).
- 20 83. Agencies shall make reasonable efforts to maintain their records so they are reproducible  
21 for FOIA purposes, and “shall make reasonable search efforts” for responsive records. 5  
22 U.S.C. § 552(a)(3)(B), (C). The term “search” “means to review, manually or by automated  
23  
24  
25



1 means, agency records for the purpose of locating those records which are responsive to a  
2 request.” 5 U.S.C. § 552(a)(3)(D).

3 84. In furnishing records responsive to a request under the FOIA, an agency may, for a limited  
4 set of categories of information, exclude or withhold such information from disclosure. 5  
5 U.S.C. § 552(b). However, even where proper justification exists for withholding such  
6 information, the agency must provide the remaining portions of records that are reasonably  
7 segregable from the properly withheld portions thereof. *Id.*

8  
9 85. Except in certain circumstances, when an agency produces a record in response to a FOIA  
10 request but withholds a portion thereof, the agency must indicate the volume of information  
11 withheld and the exemption under which such information has been withheld. *Id.*; 5 U.S.C.  
12 § 552(a)(6)(F).

13 86. Documents shall be furnished without any charge or at a reduced charge if disclosure of the  
14 information is in the public interest because it is likely to contribute significantly to public  
15 understanding of the operations or activities of the government and is not primarily in the  
16 commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii).

17  
18 87. An agency that withholds public records from a requestor under the FOIA bears the burden  
19 of sustaining the legality of its action. 5 U.S.C. § 552(a)(4)(B).

## 20 **FIRST CLAIM FOR RELIEF**

### 21 **Violation of the FOIA and the APA** 22 **(Constructive Denial / Failure to Make a Determination)**

23 88. Plaintiff incorporates by reference all preceding paragraphs.

24 89. FOIA requires that an agency of the federal government, “upon any request ... shall make  
25 the records promptly available.” 5 U.S.C. § 552(a)(3)(A). Each agency, upon any request

1 for records, “shall determine within 20 [working days] after the receipt of any such request  
2 whether to comply with such request and shall immediately notify the person making such  
3 request of such determination and the reasons therefor.” 5 U.S.C. § 552(a)(6)(A)(i).

4 90. The requester is “deemed to have exhausted his administrative remedies with respect to  
5 such a request if the agency fails to comply with the applicable time limit provisions.” 5  
6 U.S.C. § 552(a)(6)(C)(i). Requesters may seek immediate judicial review if the agency fails  
7 to make an initial substantive determination on a request within 20 working days  
8

9 91. Defendants have failed to respond to Cascadia Wildland’s FOIA request within the  
10 statutorily prescribed 20 working-day time period. 5 U.S.C. § 552(a)(6)(A)(i).

11 92. Defendants have not offered any explanation for its failure to disclose the records  
12 requested.

13 93. Defendants have failed to properly invoke and comply with the “unusual circumstances”  
14 exception of the FOIA, and failed to comply with the alternative time for processing it  
15 proposed. U.S.C. § 552(a)(6)(B).  
16

17 94. Plaintiff has a statutory right to have Defendants process its FOIA request in a manner that  
18 complies with FOIA.

19 95. There is no reasonable basis for Defendants’ failure to issue a timely determination and to  
20 fully release all responsive, non-exempt records.

21 96. FOIA establishes that an agency’s failure to comply with the Act’s deadlines shall  
22 constitute a constructive denial of the request and that the requester’s administrative  
23 remedies shall be deemed exhausted. 5 U.S.C. § 552(a)(6)(C)(i).  
24  
25

1 97. Defendants have violated Plaintiff's rights pursuant to FOIA by unlawfully failing to make  
2 a determination on whether to comply with Plaintiff's FOIA request, respond to Plaintiff's  
3 FOIA request, or by providing documents and information responsive to Plaintiff's FOIA  
4 request.

5 98. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), "Upon any determination by an agency to comply  
6 with a request for records, the records shall be made promptly available to such person  
7 making such request."  
8

9 99. No records have been made available to Plaintiff.

10 100. Plaintiff's organizational activities will be adversely affected if Defendants are allowed to  
11 continue to violate FOIA's disclosure provisions, as it has in this case. Plaintiff's members  
12 will be adversely affected if Defendants are allowed to continue violating FOIA's  
13 disclosure provisions, as it has in this case.

14 101. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court,  
15 Defendants will continue to violate Plaintiff's rights to receive public records pursuant to  
16 FOIA.  
17

18 102. Plaintiff has fully constructively exhausted all administrative remedies required by FOIA. 5  
19 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).  
20

21 103. Plaintiff is entitled to injunctive relief to compel Defendants to provide, and comply with, a  
22 final determination.  
23

24 104. Based on the nature of Plaintiff's activities, Plaintiff will continue to employ FOIA's  
25 statutory provisions in information requests to Defendants in the foreseeable future. These

1 activities will be adversely affected if Defendants are allowed to continue to illegally fail to  
2 provide a determination as to Plaintiff's request.

3 105. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court,  
4 Defendants will continue to violate Plaintiff's rights to receive public records under the  
5 FOIA.

6 106. Plaintiff is entitled to reasonable costs of litigation, including attorney's fees, costs, and  
7 other expenses pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

8 107. Defendants' actions as described above are arbitrary, capricious, not in accordance with  
9 law, and without observance of procedures required by law, within the meaning of the  
10 APA, 5 U.S.C. § 706.

11 108. Plaintiff is entitled to its reasonable fees, costs, and expenses associated with this litigation  
12 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

13  
14 **SECOND CLAIM FOR RELIEF**

15 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**

16 **FAILURE TO COMPLY WITH, AND TO PROVIDE,**  
17 **A RENEWED ESTIMATED COMPLETION DATE**

18 109. Plaintiff incorporates by reference the preceding paragraphs.

19 110. Plaintiff has a statutory right to have Defendants process its FOIA requests in a manner that  
20 complies with the FOIA. Defendants violated Plaintiff's rights by failing to comply with its  
21 own estimated date of completion, and by failing to provide a renewed estimated date of  
22 completion. 5 U.S.C. § 552(a)(7)(B)(ii), *see also* 5 U.S.C. § 552(a)(6)(B)(i).

23 111. By email dated September 12, 2018, Defendants proposed a September 28, 2018 estimated  
24 date of completion to Plaintiff, which Plaintiff accepted on September 12, 2018.  
25

1 112. Since September 12, 2018, Defendants have not provided an updated estimated date of  
2 completion, even after Plaintiff sent follow-up communications to Defendants on October  
3 2, 2018, and on January 17, 2019, to which Defendants have not responded.

4 113. Defendants have failed to offer any justification for its inability to not meet the deadline of  
5 September 12, 2018, prior or subsequent to the passing of that deadline.

6 114. Defendants' failure to comply with or provide a renewed estimated date of completion on  
7 Plaintiff's FOIA request is unlawful under the FOIA and has prejudiced Plaintiff's ability  
8 to timely obtain public records.

9 115. Plaintiff has constructively exhausted its administrative remedies with respect to this claim.  
10 Plaintiff is entitled to injunctive relief to compel Defendants to provide, and comply with,  
11 an estimated date of completion.  
12

13 116. Based on the nature of Plaintiff's organizational activities, Plaintiff will continue to employ  
14 FOIA's statutory provisions in information requests to Defendants in the foreseeable  
15 future. These activities will be adversely affected if Defendants are allowed to continue to  
16 fail to adhere to its own estimated date of completion, and to fail to provide renewed  
17 estimated dates of completion.  
18

19 117. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court,  
20 Defendants will continue to violate the Plaintiff's rights to receive public records under the  
21 FOIA.  
22

23 **THIRD CLAIM FOR RELIEF**  
**(in the Alternative to Counts I through II)**

24 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**

25 **FAILURE TO PROVIDE NON-EXEMPT PUBLIC RECORDS**

1  
2 118. Plaintiff incorporates by reference the preceding paragraphs.

3 119. Cascadia Wildlands has a statutory right to have Defendants process its FOIA request in a  
4 manner that complies with the FOIA.

5 120. Cascadia Wildlands' rights in this regard were violated when Defendants failed to promptly  
6 provide public, non-exempt records to Cascadia Wildlands, 5 U.S.C. § 552(a)(3)(A), §  
7 552(b), and to provide a reasonable estimate of the volume of withheld records. 5 U.S.C. §  
8 552(a)(6)(F).  
9

10 121. For Categories 1 through 5 of Cascadia Wildlands' request, Defendants have failed to  
11 release any and all responsive, non-exempt records in violation of 5 U.S.C. § 552(a)(3).

12 122. Defendants are unlawfully withholding public disclosure of information sought by  
13 Cascadia Wildlands, information to which it is entitled and for which no valid disclosure  
14 exemption applies.  
15

16 123. Defendants have failed to produce any responsive records for all of Cascadia Wildlands'  
17 five enumerated categories of requests under its FOIA request in violation of 5 U.S.C.  
18 § 552(a)(3).

19 124. Defendants have failed to make a reasonable effort to estimate the volume of requested,  
20 non-exempt records, for all categories of records which Cascadia Wildlands has been  
21 denied access.  
22

23 125. Cascadia Wildlands has constructively exhausted its administrative remedies with respect  
24 to this claim.  
25

1 126. Cascadia Wildlands is entitled to injunctive relief to compel production of all non-exempt,  
2 responsive records.

3 127. Based on the nature of Cascadia Wildlands' organizational activities, it will undoubtedly  
4 continue to employ FOIA's provisions in information requests to Defendants in the  
5 foreseeable future.

6 128. Cascadia Wildlands' organizational activities will be adversely affected if Defendants are  
7 allowed to continue violating FOIA's response deadlines as it has in this case.

8 129. Unless enjoined and made subject to a declaration of Cascadia Wildlands' legal rights by  
9 this Court, Defendants will continue to violate the rights of Cascadia Wildlands to receive  
10 public records under the FOIA.  
11

12 **FOURTH CLAIM FOR RELIEF**  
13 **(in the Alternative to Counts I through III)**

14 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

15 **UNLAWFUL WITHHOLDING OF RESPONSIVE RECORDS**  
16 **AND FAILURE TO PROVIDE REASONABLY SEGREGABLE**  
17 **PORTIONS OF RECORDS THAT ARE NOT EXEMPT**

18 130. Plaintiff incorporates by reference the preceding paragraphs.

19 131. Cascadia Wildlands has a statutory right to have Defendants process its FOIA request in a  
20 manner that complies with FOIA.

21 132. Cascadia Wildlands' rights in this regard were violated when Defendants unlawfully  
22 withheld and redacted information for which no lawful disclosure exemption applies. 5  
23 U.S.C. § 552(a)(3); 5 U.S.C. § 552(b).  
24  
25

- 1 133. Defendants also failed to reasonably segregate exempt and non-exempt records by, inter  
2 alia, its use of full-page redactions.
- 3 134. Under FOIA, Cascadia Wildlands bears a heavy burden to establish the claimed exemption  
4 applies to the records that it continues to withhold. 5 U.S.C. § 552(a)(4)(B) (“[T]he burden  
5 is on the agency to sustain its action.”). In the present case, Defendants have not met the  
6 burden necessary to justify its withholding of records under the FOIA exemptions claimed  
7 (in the productions to date, being exemptions (b)(3), (b)(5), (b)(6), and (b)(7)(F)), nor has it  
8 reasonably or with specific detail explained how the information withheld logically falls  
9 within the claimed exemption.
- 10
- 11 135. In the event the FOIA exemptions claimed reasonably apply to any of the records  
12 Defendants are currently withholding, Defendants must provide Cascadia Wildlands with  
13 any releasable and reasonably segregable non-exempt portions of those records. 5 U.S.C. §  
14 552(b).
- 15
- 16 136. Cascadia Wildlands has constructively exhausted its administrative remedies with respect  
17 to this claim.
- 18 137. Cascadia Wildlands is entitled to injunctive relief to compel production of all non-exempt,  
19 responsive records.
- 20 138. Based on the nature of Cascadia Wildlands’ organizational activities, it will undoubtedly  
21 continue to employ FOIA’s provisions in information requests to Defendants in the  
22 foreseeable future.
- 23
- 24 139. Cascadia Wildlands’ organizational activities will be adversely affected if Defendants are  
25 allowed to continue violating the statutory duties under the FOIA as it has in this case.



1 140. Unless enjoined and made subject to a declaration of Cascadia Wildlands' legal rights by  
2 this Court, Defendants will continue to violate the rights of Cascadia Wildlands to receive  
3 public records under the FOIA.

4 **FIFTH CLAIM FOR RELIEF**  
5 **(in the Alternative to Counts I through IV)**

6 **VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT**

7 141. Plaintiff incorporates by reference the preceding paragraphs.

8 142. Defendants have failed to act in an official capacity under color of legal authority by  
9 violating the requirements of the FOIA. In particular, Defendants are: failing to provide a  
10 timely final determination; and failing to comply with, and provide, a renewed estimated  
11 completion date. As a result, Defendants continues to unlawfully withhold documents from  
12 public disclosure and/or unlawfully delay the disclosure thereof.

13 143. Defendants have unlawfully withheld and/or delayed agency action by failing to comply  
14 with the mandates of FOIA consequent to their following actions and omissions: failing to  
15 provide a timely final determination; and failing to comply with, and provide, a renewed  
16 estimated completion date.

17 144. Plaintiff has been adversely affected and aggrieved by Defendants' failure to comply with  
18 the mandates of FOIA. Defendants' failure and refusal to issue a timely final determination  
19 on the information requested has injured Plaintiff's interests in public oversight of  
20 governmental operations and constitute a violation of Defendants' APA statutory duties.

21 145. Plaintiff has suffered a legal wrong as a result of Defendants' failure to comply with the  
22 mandates of FOIA. Defendants' failure and refusal to issue a timely final determination on  
23 Plaintiff's information request has injured Plaintiff's interests in public oversight of  
24  
25

1 governmental operations and constitute a violation of Defendants' statutory and regulatory  
2 duties under the FOIA and the APA.

3 146. Defendants' failures and refusal to provide a timely final determination; and to comply  
4 with, and provide, a renewed estimated completion date constitutes agency action  
5 unlawfully withheld or unreasonably delayed and is therefore actionable pursuant to the  
6 APA. 5 U.S.C. § 706(1).

7  
8 147. Alternatively, Defendants' failures and refusal to provide a timely final determination; and  
9 to comply with, and provide, a renewed estimated completion date are each arbitrary,  
10 capricious, an abuse of discretion or otherwise not in accordance with law and are therefore  
11 actionable pursuant to the APA. 5 U.S.C. § 706(2).

12 148. Plaintiff is entitled to judicial review under the APA. 5 U.S.C. §§ 702, 706.

13 149. Plaintiff is entitled to costs of disbursements and costs of litigation, including reasonable  
14 attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. § 2412.

15  
16 **PLAINTIFF'S PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment in favor of Plaintiff  
18 and issue the following relief:

19 150. Order Defendants to promptly provide Plaintiff all the information sought in this action and  
20 to immediately disclose the requested records in unredacted format unless an exemption is  
21 properly claimed and properly applies; and if so applied, to produce reasonably segregable,  
22 non-exempt portions of the responsive records.

23  
24 151. Declare Defendants' failure to make a timely and adequate determination as unlawful  
25 under the FOIA, 5 U.S.C. § 552(a)(6)(A)(i), as well as agency action unlawfully withheld

1 and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of  
2 discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

3 152. Declare Defendants' failure to provide an estimated completion date to be unlawful under  
4 the FOIA, 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(C)(i), as well as agency action unlawfully  
5 withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an  
6 abuse of discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

7  
8 153. Declare Defendants' failure to provide Plaintiff with non-exempt records as unlawful under  
9 the FOIA, as well as agency action unlawfully withheld and unreasonably delayed, 5  
10 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not in  
11 accordance with law, 5 U.S.C. § 706(2).

12 154. Declare Defendants' unlawful withholding of responsive records from Plaintiff to be  
13 unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably  
14 delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or  
15 otherwise not in accordance with law, 5 U.S.C. § 706(2).

16  
17 155. Declare Defendants' failure to disclose the reasonably segregable information in records  
18 requested by Plaintiff to be unlawful under the FOIA, as well as agency action unlawfully  
19 withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an  
20 abuse of discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

21 156. Issue an injunction requiring the Defendants to make a determination on whether to comply  
22 with Plaintiff's FOIA requests and provide Plaintiff with all responsive records sought  
23 through its FOIA request, 5 U.S.C. § 552(a)(4)(B);  
24  
25

- 1 157. Retain jurisdiction over this action to ensure the timely processing of Plaintiff's FOIA  
2 request and that no responsive agency records are wrongfully withheld;
- 3 158. Award Plaintiff its costs, expenses, and reasonable attorneys' fees associated with this  
4 litigation pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and
- 5 159. Grant Plaintiff such additional and further relief as the Court deems just and appropriate.

6 Respectfully submitted this 25th day of April, 2019.

7 s/ Elisabeth A. Holmes

8 Elisabeth A. Holmes (OSB # 120254), *Lead Counsel*

9 *Application for admission to D. Oregon pending*  
Blue River Law, P.C.

10 P.O. Box 293

Eugene, Oregon 97440

11 Tel. (541) 870-7722 (No facsimile)

Email: eli.blueriverlaw@gmail.com

12 s/ Daniel C. Snyder

13 Daniel C. Snyder (OR Bar # 105127)

14 Law Offices of Charles M. Tebbutt, P.C.

941 Lawrence Street

15 Eugene, Oregon 97401

16 Tel. (541) 344-3505

17 Fax (541) 344-3516

Email: dan@tebbuttlaw.com

18 s/ Nicholas Cady

19 Nicholas Cady (OSB #

113463) Cascadia Wildlands

20 P.O. Box 10455

Eugene, Oregon 97440

21 Tel. (541) 434-1463

22 Fax: (541) 434-6494

Email: nick@cascwild.org

23 Attorneys for Plaintiff