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14
15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 BASIN AND RANGE WATCH,

18 Plaintiff,

19 v.

20 BUREAU OF LAND MANAGEMENT and
21 U.S. DEPARTMENT OF THE INTERIOR,

22 Defendants.
23

CASE NO.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Freedom of Information Act
Administrative Procedure Act

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INTRODUCTION

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2 1. This action is premised upon, and consequent to, violations of both the Freedom
3 of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, or, in the alternative, the Administrative
4 Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.* It challenges the unlawful failure of the
5 Defendants, federal agencies Bureau of Land Management (“BLM”) and United States
6 Department of the Interior (“Interior”), to respond to Basin and Range Watch’s FOIA requests
7 within the time and in the manner required by FOIA. The BLM has unnecessarily, unreasonably,
8 and unlawfully withheld records responsive to one of Plaintiff Basin and Range Watch’s
9 requests, and Interior has unreasonably and unlawfully failed to resolve Basin and Range
10 Watch’s administrative appeal within the time required by FOIA.

11 2. The purpose of the FOIA is “to establish a general philosophy of full agency
12 disclosure unless information is exempted under clearly delineated statutory language.” S. Rep.
13 No. 813, 89th Cong., 1st Sess., 3 (1965). The FOIA therefore requires federal agencies to
14 disclose records to any person upon request unless the information falls within one of nine
15 narrow disclosure exemptions listed in the Act. *See* 5 U.S.C. § 552(a)(3)(A), (b). Except in
16 unusual circumstances, federal agencies generally must determine within twenty business days
17 whether requested records are exempt from withholding and, if they are not, the agency must
18 promptly disclose the records to the requester. 5 U.S.C. § 552(a)(6)(A)(i); *id.* §§ (a)(3)(A),
19 (a)(6)(C)(i). When appeals are filed, they also must be resolved within twenty business days. *Id.*
20 § 552(a)(6)(C)(ii).

21 3. Basin and Range Watch sent two FOIA requests to the BLM on February 26,
22 2015, requesting 1) a copy of a video recording (the “Video Request”) and 2) other documents
23 related to the testing and operation (the “Document Request”) of the Crescent Dunes Solar
24 Energy Project (the “Project”). The Project, also known as the Tonopah Solar Energy Project,
25 located north of Tonopah in Nye County, Nevada, will produce energy by concentrating the light
26 of the sun with 17,500 mirrors aimed at a 540-foot tall solar power tower containing molten salt,
27 which in turn is used to produce steam and electricity. The Project began commercial operation
28 during the third week of February 2016.

1 4. The Video Request—to which BLM assigned tracking number BLM-2015-
2 00391—sought a video showing approximately 115 birds flying into the concentrated solar
3 beams and incinerating in the intense reflected heat, all on a single day: January 14, 2015. The
4 video shows birds flying into the reflected halo of light, being burned, and literally turning to
5 smoke as they fly through the concentrated solar rays. The video’s narrators laugh as they watch
6 the birds go “poof.” After many follow-up emails and letters from Basin and Range Watch’s
7 representatives, the BLM eventually complied with the Video Request and produced the video
8 on or about October 30, 2015. It is available for public viewing at
9 <http://www.basinandrangewatch.org/Crescent-Dunes-Solar-Flux.html>.

10 5. The Document Request—to which BLM assigned tracking number BLM-2015-
11 00401—requested documents related to mortality, mitigation and monitoring for the Project,
12 including plans for avian monitoring and mitigation. The Document Request is attached to this
13 Complaint as Exhibit 1, Appeal Exhibit A.¹ In particular, Basin and Range Watch sought any
14 communications regarding the January 14, 2015 mass incineration of birds documented in the
15 above video, and any proposed mitigation to avoid such atrocities in the future.

16 6. BLM initially responded to the Document Request, granting a fee waiver and
17 indicating it expected to complete processing of the request by March 31, 2015. That response is
18 attached to this Complaint as Exhibit 1, Appeal Exhibit B. However, BLM did not complete
19 processing of the Document Request within the time required by law. After months of delay,
20 including several follow up letters from Basin and Range Watch to the BLM Nevada State
21 Director, on November 18, 2015, BLM finally produced 257 pages of documents responsive to
22 the Document Request. However, BLM withheld 3 pages in full and 15 pages in part, claiming
23 that they were exempt from disclosure under FOIA Exemption 4. That response is attached to
24 this Complaint as Exhibit 1, Appeal Exhibit E.

25 7. Basin and Range Watch timely administratively appealed BLM’s decision to
26 withhold documents on December 17, 2015 to Interior’s FOIA Appeals Officer. Exhibit 1.

27 ¹ Exhibit 1 is Basin and Range Watch’s complete appeal of the partial denial of its FOIA request
28 BLM-2015-00401, including ten “Appeal Exhibits” designated A through J.

1 Despite receiving four additional follow-up letters from Basin and Range Watch’s representative
2 requesting information on the status of the administrative appeal, Interior has never confirmed in
3 writing the date it received the administrative appeal, never provided a tracking number for the
4 administrative appeal, never provided an estimate of the date that it would complete processing
5 of the administrative appeal, and has not resolved the administrative appeal within the time
6 required by the FOIA. Basin and Range Watch’s letters to Interior are attached to this Complaint
7 as Exhibit 2. This lawsuit to obtain the requested records is filed on the first anniversary of Basin
8 and Range Watch’s original Document Request, which, under the statutory timelines of FOIA,
9 should have been completed eleven months ago.

10 8. BLM and Interior are unlawfully withholding public disclosure of information
11 sought by Basin and Range Watch. BLM never provided Basin and Range Watch with an
12 estimated completion date for the Document Request after the initially-promised completion
13 date—March 31, 2015—had passed. Interior has never provided a tracking number or an
14 estimated completion date for its processing of Basin and Range Watch’s administrative appeal.
15 BLM and Interior have repeatedly violated the statutory mandates and deadlines imposed by
16 FOIA through their failure to provide final determinations resolving Basin and Range Watch’s
17 FOIA request within the time and in the manner required by law. BLM and Interior’s conduct
18 represents a pattern, practice, or policy of FOIA violations. BLM and Interior also have
19 unlawfully withheld documents responsive to Basin and Range Watch’s FOIA request by
20 applying FOIA’s disclosure exemptions in an overly broad manner not supported by the Act’s
21 clear language. Accordingly, Basin and Range Watch seeks declaratory relief establishing that
22 Defendants BLM and Interior have violated the FOIA and APA. Basin and Range Watch also
23 seeks injunctive relief directing BLM and Interior to promptly provide the requested material.

24 9. Basin and Range Watch acknowledges the realities of the agencies’ workloads
25 and has been patient and been willing to give BLM and Interior additional time to complete the
26 processing of the Document Request and the administrative appeal, repeatedly offering Basin
27 and Range Watch’s assistance in expediting the processing of the Document Request and the
28 administrative appeal. However, BLM and Interior have repeatedly missed the statutory

1 deadlines, and the Interior FOIA Appeals Officer's failure to even provide a tracking number or
2 any response to repeated requests for the status of the administrative appeal offers no indication
3 that Interior would ever actually process the administrative appeal or provide the requested
4 information. Basin and Range Watch is now filing suit because the withheld information
5 prejudices Basin and Range Watch's ability to monitor, comment on, and disseminate to the
6 public information regarding the effects of the Project on birds that inhabit the area near the
7 Project. Without these disclosures, BLM and the Project developer are effectively managing the
8 Project's right-of-way over public lands in secret.

9 **JURISDICTION, VENUE, AND BASIS FOR RELIEF**

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

13 11. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which
14 provides venue for FOIA cases in this district because Basin and Range Watch resides and has its
15 principal place of business within this judicial district. Assignment is proper in this district for
16 the same reasons. Assignment to the southern division of this district is proper because Basin and
17 Range Watch maintains its principal place of business in this division, the BLM office to which
18 Basin and Range Watch sent its FOIA requests is located in this division, and the Project which
19 is the subject of the FOIA requests is located in this division.

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

21 13. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. §
22 552(a)(4)(B).

23 **PARTIES**

24 14. Plaintiff BASIN AND RANGE WATCH is a Nevada non-profit corporation and
25 community organization comprising numerous volunteers, naturalists, artists and writers who
26 live in or enjoy the deserts of Nevada and California, who work to stop the destruction of the
27 Mojave and Great Basin Deserts. Basin and Range Watch's goal is to identify the problems of
28 energy sprawl and find solutions that will preserve our natural ecosystems and open spaces.

1 Basin and Range Watch relies on FOIA to achieve its mission of informing the public of the
2 issues surrounding large-scale renewable energy development and to comment on the activities
3 of BLM in managing the unprecedented rush in recent years to install industrial-scale energy
4 projects in the fragile deserts.

5 15. Defendant BUREAU OF LAND MANAGEMENT (“BLM”) is an agency or
6 instrumentality of the United States, within the Department of Interior, and is charged with
7 managing the public lands and resources of the Project area and surrounding area in accordance
8 and compliance with federal laws and regulations. BLM is the lead agency that released the
9 Project’s Final Environmental Impact Statement and that administers the Project’s right-of-way.

10 16. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR (“Interior”) is an agency or instrumentality of the United States, charged with managing the public lands and
11 resources of the Project area and surrounding area. Interior processes administrative appeals of
12 denials or withholding of information under FOIA by BLM and other sub-agencies of the
13 Department.
14

15 **STATUTORY BACKGROUND**

16 17. The FOIA imposes strict and rigorous deadlines on federal agencies. The Act
17 requires a federal agency that receives a FOIA request to determine whether the requested
18 records are exempt from disclosure under 5 U.S.C. § 552(b) and to communicate that
19 determination to the requester within twenty business days. 5 U.S.C. § 552(a)(6)(A)(i). If the
20 agency determines the requested records are exempt from public disclosure, the agency must also
21 communicate to the requester that they have a right to appeal that determination. *Id.* If the agency
22 determines the records are not exempt from public disclosure, the agency is required to make the
23 requested records “promptly available” to the requester. 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(C)(i).

24 18. Congress has set forth the circumstances in which federal agencies may obtain
25 more time to make the determination required by 5 U.S.C. § 552(a)(6)(A)(i). In two very limited
26 circumstances, the agency may toll the twenty business-day deadline for making that
27 determination. 5 U.S.C. § 552(a)(6)(A)(ii)(I) (providing for up to a ten-day tolling period to
28 allow an agency to seek information from a requester). Additionally, the agency may extend the

1 twenty business-day deadline for making that determination for an additional ten business days
2 by providing a written notice to the requester that sets forth the “unusual circumstances” that
3 justify the deadline extension and the date on which the agency expects to make the
4 determination. 5 U.S.C. § 552(a)(6)–(B)(ii). The statute includes a specific definition of the term
5 “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(iii). And when the agency notifies a requester
6 of unusual circumstances and the need for additional time, the agency’s written notification
7 “shall provide the person an opportunity to limit the scope of the request so that it may be
8 processed within that time limit or an opportunity to arrange with the agency an alternative time
9 frame for processing the request or a modified request.” 5 U.S.C. § 552(a)(6)(B)(ii). Moreover,
10 an agency asserting that unusual circumstances prevent its compliance with FOIA’s deadlines
11 “shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes
12 between the requester and the agency.” *Id.*

13 19. Unless an agency subject to the FOIA establishes a different timeline for
14 disclosing responsive records by providing sufficient written notice of unusual circumstances,
15 the FOIA’s mandate to make public records “promptly available” to a requester requires federal
16 agencies to provide responsive records to a requester within or shortly after the twenty-day
17 timeframe set forth in 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires that an agency process any
18 administrative appeal from a denial or withholding of a FOIA request within twenty business
19 days. *Id.* § 552(a)(6)(A)(ii).

20 20. FOIA also requires that an agency provide a tracking number for any request or
21 administrative appeal that will take more than ten business days to process and a telephone line
22 or Internet service that provides information about the status of the request, including an
23 estimated date on which the agency will complete action on the request. 5 U.S.C. § 552(a)(7).

24 21. A U.S. District Court has jurisdiction “to enjoin the agency from withholding
25 agency records and to order the production of any agency records improperly withheld from the
26 complainant.” 5 U.S.C. § 552(a)(4)(B). If the government can show that “exceptional
27 circumstances” exist and that the agency is exercising due diligence in responding to the request,
28 the court may retain jurisdiction and allow the agency additional time to complete its review of

1 the records. 5 U.S.C. § 552(a)(6)(C)(i). Notably, the term “exceptional circumstances” does *not*
2 include a delay that results from a predictable agency workload of FOIA requests, unless the
3 agency demonstrates reasonable progress in reducing its backlog of pending requests. 5 U.S.C. §
4 552(a)(6)(C)(ii).

5 22. Agency action under the FOIA is also subject to judicial review under the APA.
6 *Or. Natural Desert Ass’n v. Gutierrez*, 409 F. Supp. 2d 1237, 1248 (D. Or. 2006) (finding that
7 violation of the FOIA’s decision deadline constitutes APA violation for an agency action that is
8 not in accordance with the law), *affirmed in part, reversed on other grounds sub. nom. Or.*
9 *Natural Desert Ass’n v. Locke*, 572 F.3d 610 (9th Cir. 2009). Under the judicial review
10 provisions of the APA, district courts are authorized to compel agency action unlawfully
11 withheld or unreasonably delayed. 5 U.S.C. § 706(1). District courts must also set aside any
12 agency action found to be arbitrary, capricious, an abuse of discretion, not in accordance with
13 law, or made without observation of required procedures. *Id.* § 706(2).

14 STATEMENT OF FACTS

15 The FOIA Video Request (No. BLM-2015-00391)

16 23. On February 26, 2015, Basin and Range Watch sent a FOIA request to BLM,
17 requesting a video of an incident that occurred on January 14, 2015, in which approximately 115
18 birds were burned to death by the halo—or solar flux—from the Project’s reflecting mirrors (the
19 Video Request).

20 24. By a letter dated March 5, 2015, BLM assigned tracking number BLM-2015-
21 00391 to the Video Request, granted a fee waiver to Basin and Range Watch, and indicated that
22 BLM was in the process of consulting with the Project’s developer regarding potential
23 proprietary information. BLM did not indicate the date of receipt of the Video Request or the
24 estimated completion date.

25 25. By letter dated March 26, 2015, BLM advised Basin and Range Watch that it was
26 taking a 10 business day extension of its decision deadline, citing 43 C.F.R. § 2.19, and that the
27 processing of the Video Request would be completed by April 9, 2015.

28

1 26. The FOIA requires an agency to issue a final determination resolving a FOIA
2 request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i).

3 27. BLM failed to issue a final determination within twenty business days from
4 receipt of Basin and Range Watch’s February 26, 2015 Video Request (BLM-2015-00391) as
5 required by 5 U.S.C. § 552(a)(6)(A)(i), or within thirty business days from receipt of the Video
6 Request if BLM had properly invoked “unusual circumstances” and extended the processing
7 time by ten business days as authorized by 5 U.S.C. § 552(a)(6)(B)(i).

8 28. BLM failed to provide a written notice to the Basin and Range Watch asserting
9 that “unusual circumstances” prevented it from compliance with FOIA’s decision deadline and
10 providing the date on which the BLM expected to make the determination. 5 U.S.C. §
11 552(a)(6)(B)(ii)

12 29. At the very latest, based on the February 26, 2015 date of Basin and Range
13 Watch’s Video Request, and even including a ten-business day extension, the deadline for
14 issuing a final determination of Basin and Range Watch’s Video Request (BLM-2015-00391)
15 elapsed on April 9, 2015.

16 30. Between April 10, 2015 and October 26, 2015, Basin and Range Watch and its
17 counsel corresponded with the BLM’s Nevada State Records Administrator and State Office
18 Director. In the course of this correspondence, Basin and Range Watch repeatedly requested an
19 estimated completion date for the Video Request and the accompanying Document Request,
20 described below. Exhibit 1, Appeal Exhibits C, D.

21 31. Despite repeated follow-up requests from Basin and Range Watch, BLM did not
22 provide an estimated date by which the Video Request would be completed.

23 32. On or about October 30, 2015, BLM finally produced the requested video
24 showing birds being incinerated in the Project’s solar flux. It is available for public viewing at
25 <http://www.basinandrangewatch.org/Crescent-Dunes-Solar-Flux.html>.

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The FOIA Document Request (No. BLM-2015-00401)

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2 33. Also on February 26, 2015, Basin and Range Watch submitted a separate FOIA
3 request seeking documents related to the January 14, 2015 bird-incineration incident (the
4 “Document Request”), specifically requesting:

5 Any documents including internal BLM communications with Solar Reserve on
6 the avian mortality, mitigation and monitoring for the Crescent Dunes Solar
7 Project. This includes notes of telephone conversations, emails and any related
8 documents that talk about the problems and plans for avian monitoring and
9 mitigation for this project. We are particularly interested in any exchanges over
10 the January 14th incident where 130 birds were killed in 6 hours in the solar flux.
11 Any emails about mitigation plans that involve different configurations of the
12 heliostats would be of interest. We would be interested in all exchanges about
13 mortality, monitoring, mitigation and other incidents. This would involve the
14 heliostat fields, the solar flux incidents, the evaporation ponds, transmission line
15 and anything else.

16 Exhibit 1, Appeal Exhibit A, at 1.

17 34. Basin and Range Watch wishes to illuminate BLM’s oversight of the Project, how
18 the agency is ensuring that the Project developer appropriately mitigates potential harm or death
19 to birds, and how BLM is discharging its legal and regulatory obligations related to industrial-
20 scale energy projects on federal public lands. Basin and Range Watch maintains an internet web
21 site (www.basinandrangewatch.org) where it disseminates information to the public regarding
22 such projects. Although the Project began commercial operation during the third week of
23 February, 2016, BLM retains the authority to regulate the Project under the terms of the Project’s
24 right-of-way to operate on public lands managed by BLM. Accordingly, Basin and Range Watch
25 and other members of the public can continue to urge BLM to require modifications to the
26 Project to protect birds from harm and death due to the operation of the Project. To allow
27 informed comments to the agency, Basin and Range Watch sought the requested documents
28 related to the January 14, 2015 bird-incineration incident.

35. By a letter dated March 11, 2015, BLM assigned tracking number BLM-2015-
00391 to the Document Request, indicated that BLM had received the request on March 3, 2015,
granted a fee waiver to Basin and Range Watch, and indicated that BLM estimated completing
the request by March 31, 2015. Exhibit 1, Appeal Exhibit B.

1 36. The FOIA requires an agency to issue a final determination resolving a FOIA
2 request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i).

3 37. BLM failed to issue a final determination within twenty business days from
4 receipt of Basin and Range Watch’s February 26, 2015 Document Request (BLM-2015-00401)
5 as required by 5 U.S.C. § 552(a)(6)(A)(i).

6 38. BLM failed to provide a written notice to the Basin and Range Watch asserting
7 that “unusual circumstances” prevented it from compliance with FOIA’s decision deadline and
8 providing the date on which the BLM expected to make the determination. 5 U.S.C. §
9 552(a)(6)(B)(ii).

10 39. At the very latest, based on the March 3, 2015 date that BLM received Basin and
11 Range Watch’s Document Request, the deadline for issuing a final determination of Basin and
12 Range Watch’s Document Request (BLM-2015-00401) elapsed on March 31, 2015.

13 40. Between April 10, 2015 and October 26, 2015, Basin and Range Watch and its
14 counsel corresponded with the BLM’s Nevada State Records Administrator and State Office
15 Director. In the course of this correspondence, Basin and Range Watch repeatedly requested an
16 estimated completion date for the Document Request and the accompanying Video Request,
17 described above. Exhibit 1, Appeal Exhibits C, D.

18 41. Despite repeated requests, BLM did not provide an estimated date by which the
19 Document Request would be completed after the initial March 31, 2015 date passed.

20 42. By letter on November 18, 2015, BLM finally produced 257 pages of documents
21 responsive to the Document Request. Exhibit 1, Appeal Exhibit E.

22 43. BLM’s November 18, 2015 letter also withheld 3 pages in full and 15 pages in
23 part, claiming that they were exempt from disclosure under FOIA’s Exemption 4. *Id.*

24 44. None of FOIA’s nine exemptions to mandatory disclosure apply to the
25 information currently being withheld by Interior that is responsive to Basin and Range Watch’s
26 FOIA Document Request.

27 45. On December 17, 2015, Basin and Range Watch timely filed an administrative
28 appeal with the Interior FOIA Appeals Officer, by e-mail to FOIA.Appeals@sol.doi.gov.

1 46. On December 24, 2015, counsel for Basin and Range Watch contacted the Interior
2 FOIA Appeals Officer by telephone and confirmed that the administrative appeal had been
3 received.

4 47. On January 7, 2016, counsel for Basin and Range Watch emailed a letter to the
5 Interior FOIA Appeals Officer, requesting a tracking number and the estimated date by which
6 the administrative appeal would be processed. Exhibit 2 at 1.

7 48. On January 22, 2016, counsel for Basin and Range Watch emailed a second letter
8 to the Interior FOIA Appeals Officer, requesting a tracking number and the estimated date by
9 which the administrative appeal would be processed, and advising Interior that the twenty days
10 allowed under 5 U.S.C. 552(a)(6)(A)(ii) for providing a determination with respect to the
11 administrative appeal had expired. Exhibit 2 at 2.

12 49. On February 5, 2016, counsel for Basin and Range Watch emailed a third letter to
13 the Interior FOIA Appeals Officer, requesting a tracking number and the estimated date by
14 which the administrative appeal would be processed, and advising Interior that the twenty days
15 allowed under 5 U.S.C. § 552(a)(6)(A)(ii) for providing a determination with respect to the
16 administrative appeal had expired. Exhibit 2 at 3.

17 50. On February 19, 2016, counsel for Basin and Range Watch emailed a fourth letter
18 to the Interior FOIA Appeals Officer, requesting a tracking number and the estimated date by
19 which the administrative appeal would be processed, and advising Interior that the twenty days
20 allowed under 5 U.S.C. § 552(a)(6)(A)(ii) for providing a determination with respect to the
21 administrative appeal had expired. Exhibit 2 at 4.

22 51. Basin and Range Watch and its counsel received no acknowledgment of receipt
23 and no response from the Interior FOIA Appeals Office to the four letters requesting the tracking
24 number and estimated completion date for processing the administrative appeal and, after twenty
25 business days, advising Interior that the statutory deadline for processing the administrative
26 appeal had passed.

27 52. The FOIA requires an agency to issue a final determination resolving an
28 administrative appeal within twenty business days. 5 U.S.C. § 552(a)(6)(A)(ii).

1 53. Interior failed to make a final determination within 20 business days from receipt
2 of Basin and Range Watch's December 17, 2015, FOIA administrative appeal as required by 5
3 U.S.C. § 552(a)(6)(A)(ii).

4 54. Interior failed to provide a written notice to Basin and Range Watch asserting that
5 "unusual circumstances" prevented it from compliance with FOIA's administrative appeal
6 decision deadline and providing the date on which the Agency expected to make the
7 determination. 5 U.S.C. § 552(a)(6)(B)(ii).

8 55. Based on Interior's confirmed receipt of the administrative appeal on December
9 17, 2015, the deadline for issuing a final determination of Basin and Range Watch's
10 administrative appeal related to its FOIA Document Request (BLM-2015-00401) elapsed on
11 January 19, 2016 (taking into account the Christmas Day, New Year's Day, and Martin Luther
12 King Jr. Day holidays).

13 56. As of the date this action was filed, the deadline for Interior to issue a final
14 determination on Basin and Range Watch's pending FOIA administrative appeal has passed.

15 57. As of the date this action was filed, Interior has not provided a final determination
16 on Basin and Range Watch's appeal related to its FOIA Document Request (BLM-2015-00401).

17 58. As of the date this action was filed, Interior has refused to provide Basin and
18 Range Watch with a final determination on the administrative appeal related to its FOIA
19 Document Request (BLM-2015-00401).

20 59. As of the date this action was filed, Interior did not intend to provide Basin and
21 Range Watch with a final determination on the administrative appeal related to its FOIA
22 Document Request (BLM-2015-00401).

23 60. None of FOIA's nine exemptions to mandatory disclosure apply to the
24 information currently being withheld by Interior that is responsive to Basin and Range Watch's
25 FOIA Document Request.

26 61. The filing of this action was necessary to compel Interior to make the
27 determination required by 5 U.S.C. § 552(a)(6)(A)(ii) for the administrative appeal of BLM's
28 decision to withhold documents in the FOIA Document Request (BLM-2015-00401). Any claim

1 to the contrary is not credible because BLM and Interior have missed every other deadline for
2 processing Basin and Range Watch's Document Request and administrative appeal and Interior
3 has refused to acknowledge, much less respond to, four letters requesting the status of the
4 administrative appeal.

5 62. As of the date this action was filed, Interior has not informed Basin and Range
6 Watch of the tracking number or estimated completion date for the administrative appeal related
7 to its FOIA Document Request (BLM-2015-00401).

8 63. As of the date this action was filed, Interior has refused to provide Basin and
9 Range Watch with the tracking number or estimated completion date for the administrative
10 appeal related to its FOIA Document Request (BLM-2015-00401).

11 64. As of the date this action was filed, Interior did not intend to provide Basin and
12 Range Watch with the tracking number or estimated completion date for the administrative
13 appeal related to its FOIA Document Request (BLM-2015-00401).

14 65. The filing of this action was necessary to compel Interior to provide the tracking
15 number and estimated completion date required by 5 U.S.C. §§ 552(a)(7)(A) and (B)(ii) for the
16 administrative appeal of BLM's decision to withhold documents. Any claim to the contrary is
17 not credible because BLM and Interior have missed every other deadline for processing Basin
18 and Range Watch's Document Request and administrative appeal, and Interior has refused to
19 acknowledge, much less respond to, four letters requesting the status of the administrative
20 appeal, including the tracking number and estimated completion date.

21 66. Basin and Range Watch has fully exhausted all administrative remedies required
22 by FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

23 67. Basin and Range Watch has been required to expend costs and to obtain the
24 services of attorneys to prosecute this action.

25 68. Basin and Range Watch's claims presented herein are not insubstantial within the
26 meaning of 5 U.S.C. § 552(a)(4)(E)(ii)(II).

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FIRST CLAIM FOR RELIEF

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:
CONSTRUCTIVE DENIAL/UNLAWFUL WITHHOLDING**

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4 69. Basin and Range Watch re-alleges and incorporates by reference all preceding
5 paragraphs.

6 70. Basin and Range Watch has a statutory right to the records it seeks, and there is
7 no legal basis for Defendants BLM and Interior to assert that any of FOIA's nine disclosure
8 exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).

9 71. Defendants BLM and Interior violated Basin and Range Watch's rights in this
10 regard by failing to comply with FOIA's decision deadlines and thus constructively withholding
11 information responsive to Basin and Range Watch's FOIA request.

12 72. Based on the nature of Basin and Range Watch's professional activities and
13 organizational mission, it will undoubtedly continue to employ FOIA's provisions in information
14 requests to Defendants BLM and Interior in the foreseeable future.

15 73. Basin and Range Watch's professional activities and organizational mission will
16 be adversely affected if Defendants BLM and Interior are allowed to continue violating FOIA's
17 disclosure provisions as they have in this case.

18 74. Unless enjoined and made subject to a declaration of Basin and Range Watch's
19 legal rights by this Court, Defendants BLM and Interior will continue to violate the rights of
20 Basin and Range Watch to receive public records under the FOIA.

21 75. Basin and Range Watch is entitled to reasonable costs of litigation, including
22 attorneys' fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

SECOND CLAIM FOR RELIEF

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:
UNLAWFUL APPLICATION OF DISCLOSURE EXEMPTIONS**

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25 76. Basin and Range Watch re-alleges and incorporates by reference all preceding
26 paragraphs.

1 77. Basin and Range Watch has a statutory right to the records it seeks, and there is
2 no legal basis for Defendants BLM and Interior to assert that any of FOIA's nine disclosure
3 exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).

4 78. Defendants BLM and Interior violated Basin and Range Watch's rights in this
5 regard by unlawfully withholding information responsive to Basin and Range Watch's FOIA
6 Document Request (BLM-2015-00401), based on the improper and overly broad application of
7 FOIA's exemptions to mandatory information disclosure.

8 79. Based on the nature of Basin and Range Watch's professional activities and
9 organizational mission, it will undoubtedly continue to employ FOIA's provisions in information
10 requests to Defendants BLM and Interior in the foreseeable future.

11 80. Basin and Range Watch's professional activities and organizational mission will
12 be adversely affected if Defendants BLM and Interior are allowed to continue violating FOIA's
13 disclosure provisions as they have in this case.

14 81. Unless enjoined and made subject to a declaration of Basin and Range Watch's
15 legal rights by this Court, Defendants BLM and Interior will continue to violate the rights of
16 Basin and Range Watch to receive public records under the FOIA.

17 82. Basin and Range Watch is entitled to reasonable costs of litigation, including
18 attorneys' fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

19 **THIRD CLAIM FOR RELIEF**

20 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:
21 DECISION DEADLINE VIOLATIONS**

22 83. Basin and Range Watch re-alleges and incorporates by reference all preceding
23 paragraphs.

24 84. Basin and Range Watch has a statutory right to have Defendants BLM and
25 Interior process its FOIA requests in a manner which complies with FOIA. Basin and Range
26 Watch's rights in this regard were violated when the Defendants BLM and Interior unlawfully
27 delayed their responses to its information requests and administrative appeals beyond the
28 determination deadlines imposed by the FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i), (ii).

1 85. Defendants BLM and Interior are unlawfully withholding public disclosure of
2 information sought by Basin and Range Watch, information to which it is entitled and for which
3 no valid disclosure exemption applies.

4 86. Based on the nature of Basin and Range Watch's professional activities and
5 organizational mission, it will undoubtedly continue to employ FOIA's provisions in information
6 requests to Defendants BLM and Interior in the foreseeable future.

7 87. Basin and Range Watch's professional activities and organizational mission will
8 be adversely affected if Defendants BLM and Interior are allowed to continue violating FOIA's
9 decision deadlines as they have in this case.

10 88. Unless enjoined and made subject to a declaration of Basin and Range Watch's
11 legal rights by this Court, Defendants BLM and Interior will continue to violate the rights of
12 Basin and Range Watch to receive public records under the FOIA.

13 89. Basin and Range Watch is entitled to reasonable costs of litigation, including
14 attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

15 **FOURTH CLAIM FOR RELIEF**

16 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**
17 **FAILURE TO COMPLY WITH 5 U.S.C. §§ 552(a)(7)(A) and (B)(ii)**
18 **BY ENGAGING IN A PATTERN OR PRACTICE OF UNLAWFUL CONDUCT**

19 90. Basin and Range Watch re-alleges and incorporates by reference all preceding
20 paragraphs.

21 91. Pursuant to 5 U.S.C. § 552(a)(7)(A), "Each agency shall ... establish a system to
22 assign an individualized tracking number for each request received that will take longer than ten
23 days to process and provide to each person making a request the tracking number assigned to the
24 request."

25 92. Pursuant to 5 U.S.C. § 552(a)(7)(B)(ii), "Each agency shall . . . establish a phone
26 line or Internet service that provides information about the status of a request to the person
27 making the request . . . including . . . an estimated date on which the agency will complete action
28 on the request."

1 93. Basin and Range Watch asked Interior numerous times for the tracking number
2 for its appeal of the FOIA Document Request (BLM-2015-00401). In so doing, Basin and Range
3 Watch invoked 5 U.S.C. § 552(a)(7)(A).

4 94. Basin and Range Watch asked BLM and Interior numerous times for the
5 estimated date of completion for its pending FOIA requests and administrative appeal. In so
6 doing, Basin and Range Watch invoked 5 U.S.C. § 552(a)(7)(B)(ii).

7 95. Defendant Interior has repeatedly failed to provide a tracking number for Basin
8 and Range Watch's administrative appeal at issue in this case.

9 96. Defendants BLM and Interior have repeatedly failed to provide an estimated date
10 of completion for Basin and Range Watch's FOIA requests and administrative appeal at issue in
11 this case.

12 97. Upon information and belief, BLM and Interior's failure to provide specific
13 estimated dates of completion for Basin and Range Watch's FOIA requests and administrative
14 appeal, and Interior's failure to provide a tracking number or acknowledge requests for a
15 tracking number or estimated date of completion of processing appeals, represent an ongoing
16 policy, practice, or standard operating procedure ("SOP").

17 98. A policy, practice, or SOP of refusing to provide a tracking number or estimated
18 dates of completion to requesters is in violation of FOIA. Such a practice constitutes outrageous
19 conduct for purposes of the broad equitable powers provided by FOIA to the Court. Such a
20 policy is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

21 99. Based on the nature of Basin and Range Watch's professional activities and
22 organizational mission, it will undoubtedly continue to employ FOIA's provisions in information
23 requests to Defendants BLM and Interior in the foreseeable future.

24 100. Basin and Range Watch's professional activities and organizational mission will
25 be adversely affected if Defendants BLM and Interior are allowed to continue violating FOIA's
26 requirement to provide estimated completion dates as they have in this case.

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1 appeal that are not within the scope of any of FOIA's disclosure exemptions; (2) issue timely
2 final determinations of Basin and Range Watch's FOIA request and administrative appeal; and
3 (3) provide Basin and Range Watch with the estimated completion dates of its FOIA requests
4 and administrative appeal and the tracking number of the appeal.

5 107. Basin and Range Watch has been adversely affected and aggrieved by Defendants
6 BLM and Interior's failure to comply with the mandates of FOIA. Defendants' failure and
7 refusal to: (1) provide to Basin and Range Watch documents responsive to its information
8 request and administrative appeal that are not within the scope of any of FOIA's disclosure
9 exemptions; (2) issue a timely final determination of Basin and Range Watch's FOIA requests
10 and administrative appeal; and (3) provide Basin and Range Watch with the estimated
11 completion dates of its requests and administrative appeal and the tracking number of the
12 administrative appeal, has injured Basin and Range Watch's interests in public oversight of
13 governmental operations and constitute a violation of Defendants BLM and Interior's statutory
14 duties under the APA.

15 108. Defendants BLM and Interior's failure and refusal to: provide to Basin and Range
16 Watch documents responsive to its information requests and appeals that are not within the scope
17 of any of FOIA's disclosure exemptions; (2) issue a timely final determination on Basin and
18 Range Watch's FOIA requests and administrative appeal; and (3) provide Basin and Range
19 Watch with the estimated completion dates of its requests and administrative appeal and the
20 tracking number of the administrative appeal, constitutes agency action unlawfully withheld and
21 unreasonably delayed and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

22 109. Alternatively, Defendants BLM and Interior's failure and refusal to: (1) provide to
23 Basin and Range Watch documents responsive to its information request and administrative
24 appeal that are not within the scope of any of FOIA's disclosure exemptions; (2) issue a timely
25 final determination on Basin and Range Watch's FOIA requests and administrative appeal; and
26 (3) provide Basin and Range Watch with the estimated completion dates of its requests and
27 administrative appeal and the tracking number of the appeal, is in violation of FOIA's statutory
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1 mandates and is therefore arbitrary, capricious, or an abuse of discretion and not in accordance
2 with law and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(2).

3 110. Basin and Range Watch is entitled to judicial review under the Administrative
4 Procedure Act 5 U.S.C. §§ 702, 706.

5 111. Basin and Range Watch is entitled to costs of disbursements and costs of
6 litigation, including reasonable attorney and expert witness fees, under the Equal Access to
7 Justice Act, 28 U.S.C. § 2412.

8 **PRAYER FOR RELIEF**

9 Wherefore, Basin and Range Watch respectfully requests that the Court grant the
10 following relief:

11 A. Order Defendants, in the form of injunctive relief, to promptly provide Basin and
12 Range Watch all of the information sought in this action;

13 B. Declare Defendants' failure to disclose the information requested by Basin and
14 Range Watch to be unlawful under the FOIA, 5 U.S.C. § 552(a)(3); as well as agency action
15 unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1); and/or arbitrary, capricious,
16 an abuse of discretion, and not in accordance with law, 5 U.S.C. § 706(2);

17 C. Declare Defendants' failure to make a timely determination on Basin and Range
18 Watch's FOIA requests and administrative appeal to be unlawful under the FOIA, 5 U.S.C. §
19 552(a)(6)(A)(i); as well as agency action unlawfully withheld and unreasonably delayed, 5
20 U.S.C. § 706(1); and/or arbitrary, capricious, an abuse of discretion, and not in accordance with
21 law, 5 U.S.C. § 706(2);

22 D. Declare Defendants' failure to provide Basin and Range Watch with the estimated
23 completion dates of its requests and administrative appeal to be unlawful under the FOIA, 5
24 U.S.C. § 552(a)(7)(B)(ii); as well as agency action unlawfully withheld and unreasonably
25 delayed, 5 U.S.C. § 706(1); and/or arbitrary, capricious, an abuse of discretion, and not in
26 accordance with law, 5 U.S.C. § 706(2);

27 E. Order Defendants, in the form of injunctive relief, to provide future FOIA
28 requesters with estimated completion dates as required by the FOIA, 5 U.S.C. § 552(a)(7)(B)(ii);

1 F. Award Basin and Range Watch its costs and reasonable attorney fees pursuant to
2 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412, or any other applicable law;

3 G. Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and

4 H. Grant such other and further relief as Basin and Range Watch may pray for
5 hereafter or as the Court may deem just and proper.

6 RESPECTFULLY SUBMITTED this 26th day of February 2016.

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