

INTRODUCTION

1. Western Values Project brings this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the U.S. Department of the Interior's regulations implementing FOIA, 43 C.F.R. § 2.1 *et seq.*

2. In 2015, the Bureau of Land Management and the U.S. Forest Service finalized nearly a hundred land-use plans designed to protect the habitat of an iconic Western bird—the greater sage-grouse. *See* Dep't of the Interior, *Historic Conservation Campaign Protects Greater Sage-Grouse* (Sept. 22, 2015), available at <https://perma.cc/9NRQ-8ZYL>. The plans were developed over many years with input from numerous stakeholders, including other federal agencies and state governments. *Id.*

3. In 2017, following a change in administrations, the BLM announced its intention to amend its sage-grouse plans. Notice of Intent, 82 Fed. Reg. 47,248 (Oct. 11, 2017). In an effort to understand why administration officials wanted to amend the plans and what the proposed amendments might entail, Western Values Project requested documents from the BLM, the Interior Department, and the U.S. Fish and Wildlife Service through a series of Freedom of Information Act requests. Each of these requests, which were submitted between February and April of last year, sought materials related to the sage-grouse and the BLM's process for amending its sage-grouse plans.

4. Although the statutory deadlines for responding to Western Values Project's FOIA requests passed long ago, the defendant agencies have not yet

informed the Project of their determinations regarding each of the requests. The agencies' failure to provide the requested documents directly impacts the Project's ability to provide effective oversight and to disseminate full, accurate, and current information to the public regarding a matter of significant public concern. This Court should accordingly order the agencies to promptly comply with the Freedom of Information Act's requirements.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

6. Plaintiff Western Values Project gives a voice to Western values in the national conversation about energy development and public-lands conservation. The Project gathers information regarding national energy policy and land use, and uses this information and related analysis to educate the public through reports, press releases, and other media. Western Values Project, a project of New Venture Fund, frequently uses FOIA requests as a tool to gather information, and it makes the material it gathers available on its public website. The Project has an interest in, and a statutory right to, the records at issue in this case, and it has been adversely affected as a result of the defendant agencies' unlawful failure to make determinations and produce the requested materials.

7. Defendant U.S. Department of the Interior is a federal agency subject to FOIA. *See* 5 U.S.C. § 552(f)(1). The Interior Department has control over some of the records Western Values Project has requested.

8. Defendant U.S. Fish and Wildlife Service is a federal agency within the Interior Department that is subject to FOIA. *See* 5 U.S.C. § 552(f)(1). The Service has control over some of the records Western Values Project has requested.

9. Defendant U.S. Bureau of Land Management is a federal agency within the Interior Department that is subject to FOIA. *See* 5 U.S.C. § 552(f)(1). BLM has control over some of the records Western Values Project has requested.

STATUTORY BACKGROUND

10. “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 242 (1978). FOIA promotes government transparency by establishing the public’s right to access federal-agency records with certain narrow exceptions. *See* 5 U.S.C. § 552(b).

11. FOIA requires federal agencies to make agency records “promptly” available to the public upon receiving a properly filed request unless the requested documents fall into one of nine exceptions specifically delineated under the statute. 5 U.S.C. §§ 552(a)(3)(A), (b)(1)-(9).

12. An agency is generally required to determine within 20 working days of receiving a request whether or not it will comply with it. 5 U.S.C.

§ 552(a)(6)(A)(i). The agency must “immediately notify” the requester of this determination, as well as the reasoning behind it and the requester’s right to appeal any adverse determinations. *Id.* If the agency fails to respond within this time limit, the requester is “deemed to have exhausted his administrative remedies” and can immediately file a complaint in federal court. *Id.* § 552(a)(6)(C)(i).

13. In “unusual circumstances” an agency can extend its response time by up to 10 working days. 5 U.S.C. § 552(a)(6)(B)(i). If an agency wishes to claim an extension due to unusual circumstances, it must notify the requester in writing and state both the cause of the delay and the date by which the agency expects to have a determination ready. *Id.*; 43 C.F.R. § 2.19(a).

14. The Interior Department’s FOIA regulations have established “processing tracks to distinguish simple requests from more complex ones on the basis of the estimated number of workdays needed to process the request.” 43 C.F.R. § 2.15(a). The Department’s multi-track process, however, does not alter FOIA’s statutory deadlines for Interior agencies to determine whether to comply with records requests. *Id.* § 2.15(f).

FACTUAL BACKGROUND

15. An iconic western species, the greater sage-grouse is best known for its striking plumage and unique courtship displays. *See* U.S. Fish and Wildlife Serv., Twelve-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered, 75 Fed. Reg. 13,910, 13,912-16 (Mar. 23, 2010) (“2010 Finding”). The sage-grouse is also considered an “umbrella

species,” as many other species depend on areas within its habitat and benefit from conservation efforts that are directed primarily at the sage-grouse. *See* Dep’t of the Interior, *Historic Conservation Campaign Protects Greater Sage-Grouse* (Sept. 22, 2015), *available at* <https://perma.cc/9NRQ-8ZYL>.

16. As the greater sage-grouse requires large areas of contiguous sagebrush habitat, and as individual birds return to the same mating and nesting sites for years, the species is highly vulnerable to habitat loss and fragmentation. 2010 Finding at 13,927-28. At present, the species occupies just over half of its historic range throughout the western United States and Canada. *Id.* at 13,917. The species’ predicament inspired one of the largest collaborative conservation efforts in U.S. history. *See* Dep’t of the Interior, *Historic Conservation Campaign Protects Greater Sage-Grouse* (Sept. 22, 2015), *available at* <https://perma.cc/9NRQ-8ZYL>; U.S. Fish and Wildlife Serv., Greater Sage-Grouse—Status Review (last updated Dec. 20, 2016), *available at* <https://perma.cc/QW5E-Y26B>.

17. In 2010, the U.S. Fish and Wildlife Service concluded that the greater sage-grouse met the criteria for listing under the Endangered Species Act. 2010 Finding at 13,910. The agency also determined that a formal listing was precluded at the time by higher-priority work. *Id.* The Service’s warranted-but-precluded finding identified a lack of regulatory mechanisms and the loss and fragmentation of habitat as the primary threats to the species. *Id.* at 13,986-88.

18. To mitigate threats to the sage-grouse and avoid an ESA listing, numerous federal and state agencies worked together in developing and

implementing a system of collaborative conservation plans. Dep't of the Interior Sage-Grouse Review Team, Report in Response to Secretarial Order 3353 (Aug. 4, 2017), at 3, *available at* <https://perma.cc/WR4C-VB2J>. As part of the effort, the BLM and the Forest Service announced that they would revise 98 land-use plans currently in place within the sage-grouse's range. *Id.* The Interior Department also initiated a withdrawal of approximately ten million acres of sage-grouse habitat from further mineral exploration and mining. BLM, Notice of Proposed Withdrawal, 80 Fed. Reg. 57,635 (Sept. 24, 2015).

19. When the U.S. Fish and Wildlife Service revisited the question after the sage-grouse plans were adopted, it determined that listing the greater sage-grouse as threatened or endangered was no longer warranted. Twelve-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. 59,857 (Oct. 2, 2015) ("2015 Finding"). It based this decision on its finding that "the primary threats to greater sage-grouse ha[d] been ameliorated by conservation efforts implemented by Federal, State, and private landowners" under the 2015 plans. *Id.* at 59,858. The Service concluded that the decision was "not the end of [its] commitment to sage-grouse conservation" and that continued monitoring and conservation efforts would be required. *Id.* at 59,941-42. The agency committed to conducting a five-year status review with its federal and state partners. *Id.*

20. In 2017, a new Secretary of the Interior, Ryan Zinke, signed Secretarial Order 3353, which initiated a review of the 2015 plans for the purpose of

identifying “provisions that may require modification or rescission, as appropriate, in order to give appropriate weight to the value of energy and other development of public lands[.]” Secretarial Order 3353 (June 7, 2017), § 4(b)(iv). The resulting report recommended changes that would weaken the protections of the sage-grouse plans. *See* Dep’t of the Interior Sage-Grouse Review Team, Report in Response to Secretarial Order 3353 (Aug. 4, 2017), at 2, *available at* <https://perma.cc/WR4C-VB2J>.

21. Following the Interior Department’s review, the BLM abandoned its 2015 withdrawal proposal. *See* Notice of Cancellation of Withdrawal Application and Withdrawal Proposal, 82 Fed. Reg. 47,248 (Oct. 11, 2017). The agency also issued a notice of intent to amend its land-use plans, initiating a scoping period for public comment on the potential amendments. Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation, 82 Fed. Reg. 47,248 (Oct. 11, 2017).

22. Following the scoping period, the BLM initially stated that it had received approximately 81,000 submissions from the public, the vast majority of which urged the agency either to leave the 2015 sage-grouse plans intact or to enact additional protective measures. Scoping Report, Potential Amendments to Land Use Plans Regarding Greater Sage-Grouse Conservation (Jan. 2018) (“Scoping Report”), at 1-5-1-7, *available at* <https://perma.cc/9VQS-GH6R>. After the agency’s publication of the scoping report, conservation groups notified the BLM that an estimated 100,000 comments had been omitted from the agency’s record. Scott Streater, *BLM*

Blames Missing Comments on Technology “Breakdown,” E&E News, Mar. 12, 2018, available at <https://perma.cc/BJB6-3Y2Z>. The BLM has since added “about 37,000 comments” from National Wildlife Federation members to the record. BLM, Addendum: Updates Regarding the Scoping Report Titled “Potential Amendments to Land Use Plans Regarding Greater Sage-Grouse Conservation” (Apr. 2, 2018), available at <https://perma.cc/J93U-ZJJH>. The agency attributed the misplaced comments to a technical error. *Id.*

23. Western Values Project has previously documented the role of the oil-and-gas industry in the Department of the Interior’s resource-management decisions, and it has become increasingly concerned with the integrity of the public-comment process and the transparency of the decision-making process. *See, e.g.,* Western Values Project, Report: A Year of Energy Industry Influence and Access at Interior (Mar. 28, 2018), available at <https://perma.cc/G3ER-R7K4>; Western Values Project, Report: Full Analysis of Oil and Gas Industry Communication with Interior and State Bureau of Land Mgmt. on Sage Grouse Overhaul (Feb. 19, 2018), available at <https://perma.cc/GU4Z-BENF>. Both Western Values Project and the wider public have the right to know whether their interests—not just those of industry groups—are being considered in the Interior Department’s decision-making process.

24. In an effort to gather information regarding federal officials’ contacts with industry representatives during the sage-grouse planning process, as well as the BLM’s procedures for tracking, categorizing, and analyzing public comments,

Western Values Project submitted several FOIA requests to the Department of the Interior, the BLM, and the U.S. Fish and Wildlife Service during 2018. As described below, the agencies have failed to provide the Project with determinations regarding six of its requests within the time allowed under the Freedom of Information Act.

February 5, 2018 Interior Department FOIA Request

25. On February 5, 2018, Western Values Project submitted a FOIA request to the Interior Department seeking “all records and all correspondence, including but not limited to letters, texts, emails, and faxes,” to or from a specified list of Interior officials, since June 5, 2017, “relating to DOI processes for employees, appointees, contractors, and/or vendors selected to categorize and/or analyze the public comments received in response to Secretarial Order 3353[.]” (The request is attached as Exhibit 1.)

26. On March 8, 2018, the Interior Department acknowledged receipt of Western Values Project’s February 5, 2018 request. (The acknowledgement is attached as Exhibit 2.) The Department assigned the request control number OS-2018-00667 and stated that it would take a ten-workday extension pursuant to 43 C.F.R. § 2.19. The Department also noted that it had placed the request in the “Complex” track pursuant to 43 C.F.R. § 2.15. Finally, the Department stated that some of the requested materials might be in the possession of particular Interior agencies, and encouraged Western Values Project to submit FOIA requests to those agencies as well.

27. Western Values Project has not received any further correspondence from the Interior Department regarding its February 5, 2018 request, and has not received any of the requested records. According to the Department's own tracking database, the request remained "[o]pen" as of the filing of this complaint—more than fifteen months after the "[d]ue [d]ate for [a] [d]etermination[.]" (A copy of the Department's tracking page is attached as Exhibit 3.)

March 23, 2018 Interior Department FOIA Request

28. On March 23, 2018, Western Values Project submitted a FOIA request to the Interior Department requesting "copies of all correspondence, including but not limited to letters, texts, emails, and faxes," to or from a specified list of Interior Department officials, since March 4, 2018, that included one or more terms such as "grouse," "scoping," or "comments." (The request is attached as Exhibit 4.)

29. On October 24, 2018, the Interior Department acknowledged the March 23, 2018 request and assigned it control number OS-2019-00062. (The acknowledgement is attached as Exhibit 5.) The Department notified Western Values Project that it would take a ten-workday extension pursuant to 43 C.F.R. § 2.19, and that it had placed the request in the "Normal" processing track under 43 C.F.R. § 2.15.

30. Western Values Project has not received any further correspondence from the Interior Department regarding its March 23, 2018 request, and has not received any of the requested records. According to the Department's own tracking database, the request remained "[o]pen" as of the filing of this complaint—more

than a year after the “[d]ue [d]ate for [a] [d]etermination[.]” (A copy of the Department’s tracking page is attached as Exhibit 6.)

February 5, 2018 BLM FOIA Request

31. On February 5, 2018, Western Values Project submitted a FOIA request to the BLM seeking “copies of all records and all correspondence, including but not limited to letters, texts, emails, and faxes, to or from ... [a specified] list of officials since June 5, 2017, relating to DOI and/or BLM processes for employees, appointees, contractors, and/or vendors selected to categorize and/or analyze the public comments received in response to Secretarial Order 3353[.]” (The request is attached as Exhibit 7.)

32. On February 8, 2018, the BLM acknowledged receipt of the request and stated that it had been assigned control number 2018-00442. (The acknowledgement is attached as Exhibit 8.) The BLM also noted that the request had been placed in the “Complex” track.

33. On March 6, 2018, the BLM sent an email to Western Values Project stating that the Project’s February 5, 2018 request had been moved from the “Complex” track to the “Exceptional” track. (The email is attached as Exhibit 9.) According to the agency’s message, “[t]he Exceptional/Voluminous track is for requests requiring more than sixty workdays for processing.”

34. Western Values Project has not received any further correspondence from the BLM regarding its February 5, 2018 request, and has not received any of the requested records. According to the Interior Department’s tracking database,

the request remained “[o]pen” as of the filing of this complaint—more than fifteen months after the “[d]ue [d]ate for [a] [d]etermination[.]” (A copy of the Department’s tracking page is attached as Exhibit 10.)

March 13, 2018 BLM FOIA Request

35. On March 13, 2018, Western Values Project submitted a FOIA request to the BLM seeking “copies of correspondence, including but not limited to letters, texts, emails, and faxes, to or from any ... [specified] entities and/or people and any of the Bureau of Land Management officials since January 19, 2017[.]” (The request is attached as Exhibit 11.)

36. On March 13, 2018, the BLM acknowledged receipt of the request and stated that it had been assigned control number 2018-00587. (The acknowledgement is attached as Exhibit 12.) The BLM also noted that the request had been placed in the “Exceptional/Voluminous” track. According to the agency, “[e]ven though ... [it] normally process[es] requests on a first-in, first-out basis, because of the nature of ... [Western Values Project’s] request and the circumstances surrounding th[e] request, ... [the BLM] w[ould] prioritize and process ... [the] request as the records become available.”

37. Western Values Project has not received any further correspondence from the BLM regarding its March 13, 2018 request, and has not received any of the requested records. According to the Interior Department’s tracking database, the request remained “[o]pen” as of the filing of this complaint—more than a year after

the “[d]ue [d]ate for [a] [d]etermination[.]” (A copy of the Department’s tracking page is attached as Exhibit 13.)

April 2, 2018 BLM FOIA Request

38. On April 2, 2018, Western Values Project submitted a FOIA request to the BLM seeking “copies of all contracts the Bureau of Land Management ... awarded to Environmental and Planning Management Solutions, Inc. ... to review and process public comments received by BLM following the publication of the ‘Notice of Intent to Amend the Greater Sage-Grouse Resource Management Plan Revisions and Amendment(s).’” (The request is attached as Exhibit 14.)

39. On April 3, 2018, the BLM acknowledged receipt of Western Values Project’s request, stating (incorrectly) that it had been “dated March 30, 2018[.]” (The acknowledgement is attached as Exhibit 15.) The BLM noted that the request had been assigned control number 2018-00683. The agency also said that the request had been placed in the “Complex” track.

40. On April 4, 2018, Western Values Project sent an email to the BLM asking for clarification regarding the BLM’s classification of the request as “Complex.” (The email is attached as Exhibit 16.)

41. Western Values Project has not received any further correspondence from the BLM regarding its April 2, 2018 request, and has not received any of the requested records. According to the Interior Department’s tracking database, the request remained “[o]pen” as of the filing of this complaint—more than a year after

the “[d]ue [d]ate for [a] [d]etermination[.]” (A copy of the Department’s tracking page is attached as Exhibit 17.)

April 6, 2018 FWS FOIA Request

42. On April 6, 2018, Western Values Project submitted a FOIA request to FWS seeking “copies of correspondence, including but not limited to letters, texts, emails, and faxes, to ... [Principal Deputy Director] Gregory Sheehan, since June 5, 2017, relating to DOI, BLM and/or USFWS processes for employees, appointees, contractors, and/or vendors selected to categorize and/or analyze the public comments received in response to Secretarial Order 3353[.]” (The request is attached as Exhibit 18.)

43. On April 10, 2018, the Service sent Western Values Project an email that acknowledged receipt of the request and stated that the request had been assigned FOIA number FWS-2018-00651. (The email is attached as Exhibit 19.) On May 3, 2018, the agency provided the Project with a formal acknowledgment letter regarding the request. (The acknowledgment is attached as Exhibit 20.) The letter stated that the request had been placed in the “Complex” track and that the Service would take a ten-workday extension pursuant to 43 C.F.R. § 2.19. The agency also told Western Values Project that it expected to “dispatch a determination” regarding the request by May 3, 2018.

44. Western Values Project has not received any other correspondence from the Service regarding its April 6, 2018 request, and has not received any of the requested records. According to the Interior Department’s tracking database, the

request remained “[o]pen” as of the filing of this complaint—more than a year after the “[d]ue [d]ate for [a] [d]etermination[.]” (A copy of the Department’s tracking page is attached as Exhibit 21.)

CLAIMS FOR RELIEF

Count One: Violation of FOIA February 5, 2018 Interior Department FOIA Request

45. Plaintiff incorporates by reference the allegations set forth in all of the preceding paragraphs of this complaint.

46. By failing to make a determination and to produce records in response to plaintiff’s February 5, 2018 Interior Department FOIA request, the Department of the Interior is in violation of the mandatory time limits established under FOIA and the agency’s own FOIA regulations. *See* 5 U.S.C. §§ 552(a)(6)(A), 552(a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19.

Count Two: Violation of FOIA March 23, 2018 Interior Department FOIA Request

47. Plaintiff incorporates by reference the allegations set forth in all of the preceding paragraphs of this complaint.

48. By failing to make a determination and to produce records in response to plaintiff’s March 23, 2018 Interior Department FOIA request, the Department of the Interior is in violation of the mandatory time limits established under FOIA and the agency’s own FOIA regulations. *See* 5 U.S.C. §§ 552(a)(6)(A), 552(a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19.

**Count Three: Violation of FOIA
February 5, 2018 BLM FOIA Request**

49. Plaintiff incorporates by reference the allegations set forth in all of the preceding paragraphs of this complaint.

50. By failing to make a determination and to produce records in response to plaintiff's February 5, 2018 BLM FOIA request, the Bureau of Land Management is in violation of the mandatory time limits established under FOIA and the Interior Department's FOIA regulations. *See* 5 U.S.C. §§ 552(a)(6)(A), 552(a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19.

**Count Four: Violation of FOIA
March 13, 2018 BLM FOIA Request**

51. Plaintiff incorporates by reference the allegations set forth in all of the preceding paragraphs of this complaint.

52. By failing to make a determination and to produce records in response to plaintiff's March 13, 2018 BLM FOIA request, the Bureau of Land Management is in violation of the mandatory time limits established under FOIA and the Interior Department's FOIA regulations. *See* 5 U.S.C. §§ 552(a)(6)(A), 552(a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19.

**Count Five: Violation of FOIA
April 2, 2018 BLM FOIA Request**

53. Plaintiff incorporates by reference the allegations set forth in all of the preceding paragraphs of this complaint.

54. By failing to make a determination and to produce records in response to plaintiff's April 2, 2018 BLM FOIA request, the Bureau of Land Management is

in violation of the mandatory time limits established under FOIA and the Interior Department's FOIA regulations. *See* 5 U.S.C. §§ 552(a)(6)(A), 552(a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19.

**Count Six: Violation of FOIA
April 6, 2018 FWS FOIA Request**

55. Plaintiff incorporates by reference the allegations set forth in all of the preceding paragraphs of this complaint.

56. By failing to make a determination and to produce records in response to plaintiff's April 6, 2018 FWS FOIA request, the U.S. Fish and Wildlife Service is in violation of the mandatory time limits established under FOIA and the Interior Department's FOIA regulations. *See* 5 U.S.C. §§ 552(a)(6)(A), 552(a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19.

REQUESTS FOR RELIEF

Plaintiff respectfully requests that this Court:

1. Declare that the Interior Department is in violation of FOIA and its own FOIA regulations with respect to its ongoing failure to determine whether to comply with Western Values Project's February 2018 and March 2018 FOIA requests;

2. Declare that the BLM is in violation of FOIA and the Interior Department's FOIA regulations with respect to its ongoing failure to determine whether to comply with Western Values Project's February 2018, March 2018, and April 2018 FOIA requests;

3. Declare that the U.S. Fish and Wildlife Service is in violation of FOIA and the Interior Department's FOIA regulations with respect to its ongoing failure to determine whether to comply with Western Values Project's April 2018 FOIA request;

4. Order the Interior Department, the U.S. Fish and Wildlife Service, and the BLM to make determinations immediately regarding each of the FOIA requests addressed in this complaint;

5. Order the Interior Department, the U.S. Fish and Wildlife Service, and the BLM to immediately process all of the FOIA requests addressed in this complaint and to promptly produce, by a specific date, all nonexempt records that are responsive to the requests;

6. Award the plaintiff its reasonable costs and attorneys' fees in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

7. Grant any further relief the Court may deem just and proper.

Respectfully submitted this 17th day of June, 2019.

/s/ Sean M. Helle

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* This complaint was prepared with the assistance of Hunter Bohannon, Bobby DeMarco, Erin Hogan-Freemole, Shelby Krantz, and Cynthia Sanchez, who were students in the University of Colorado Law School's Getches-Green Natural Resources and Environmental Law Clinic.