

STATE OF NORTH DAKOTA
COUNTY OF FOSTER

DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

New Venture Fund, d/b/a/ Western Values Project,)	
)	
Plaintiff,)	Civil No.:
)	
v.)	COMPLAINT
)	
Garrison Diversion Conservancy District,)	
)	
Defendant.)	

I. INTRODUCTION

1. This is an action under N.D.C.C. § 44-04-17.1 *et seq.* against the Garrison Diversion Conservancy District for failure to respond to multiple open records requests made by Plaintiff New Venture Fund, d/b/a/ Western Values Project.

II. PARTIES

2. Plaintiff New Venture Fund, d/b/a/ Western Values Project (“Western Values Project”) is a tax-exempt 501(c)(3) not-for-profit organization, with its principal place of business located at 1201 Connecticut Ave N.W., Suite 300, Washington, D.C. 20036. New Venture Fund is a registered foreign corporation in North Dakota and serves as Western Values Project’s fiscal sponsor. Western Values Project’s mission is to give a voice to Western values in the national conversation about resource development and public lands conservation.

3. Defendant Garrison Diversion Conservancy District (“the District”) is a governmental agency, body politic and corporate governed by N.D.C.C. ch. 61-24. The District is headquartered at 401 Highway 281 NE, in Carrington, North Dakota. The District consists of the

area encompassing Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, McHenry, McKenzie, McLean, Nelson, Pierce, Ramsey, Ransom, Renville, Richland, Sargent, Sheridan, Steele, Stutsman, Traill, Ward, Wells, and Williams counties. N.D.C.C. § 61-24-02. The District’s board of directors has among its enumerated powers and duties the power “[t]o sue and be sued in the name of the district.” N.D.C.C. § 61-24-08.

III. FACTUAL BACKGROUND

4. On August 13, 2018, Western Values Project submitted four separate open records requests to the District pursuant to North Dakota open records laws, N.D.C.C. § 44-04-18. True and correct copies of all four requests are attached hereto as Exhibits A–D.

5. Specifically, Western Values Project requested “access to and a copy of the retainer agreement between the Garrison Diversion Conservancy District and David Bernhardt of the law firm Brownstein Hyatt Farber Schreck.” The request also provided a url address to the minutes of the District meeting in which said retainer agreement was referenced. *See* Exhibit A attached hereto.

6. Western Values Project also requested “access to and copies of all correspondence, including but not limited to SMS and MMS texts, letters, emails, and faxes, between Management Staff and Board of Directors of the Garrison Diversion Conservancy District and the law firm Brownstein Hyatt Farber Schreck (BHFS) since January 1, 2016.” *See* Exhibit B attached hereto. Western Values Project further clarified that said correspondence should include correspondence with “David Bernhardt, either in his capacity as a BHFS attorney or with the US Department of the Interior; Luke Johnson; William McGrath; Emily Sullivan; [and] Any other person with an email address ending in “@bhfs.com.” *Id.*

7. In addition, Western Values Project requested “access to and copies of all correspondence, including but not limited to letters, texts, emails, and faxes, between the management and board of the Garrison Diversion Conservancy District and Rep. Kevin Cramer's office in September 1, 2017 to November 31, 2017.” Exhibit C attached hereto. Western Values Project also specifically requested that the District’s response to this request include communications relating to a meeting that occurred between Representative Cramer, District officials, and then-Secretary of the Interior Ryan Zinke, as well as correspondence from certain members of Cramer’s staff. *Id.*

8. Finally, Western Values Project asked the District to provide “access to and copies of all correspondence, including but not limited to letters, texts, emails, and faxes, between Management Staff and Board of Directors of the Garrison Diversion Conservancy District and [a list of specific] individuals, since January 1, 2016.” Exhibit D attached hereto.

9. Where applicable, all of the requests clearly defined “correspondence,” and all requested a fee waiver due to the significant public and media interest in the records, as well as the public-interest oriented purpose of the Western Values Project. *See Exhibits A–D.*

IV. LEGAL BACKGROUND

10. N.D.C.C. § 44-04-18(1) states: “Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours.”

11. The definition of “Public entity” in N.D.C.C. § 44-04-17.1(13) includes “Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency

or institution, to exercise public authority or perform a governmental function.” N.D.C.C. § 44-04-17.1(13)(a).

12. The District is a “public entity” subject to North Dakota’s open records laws.

13. N.D.C.C. § 44-04-18(2) specifically provides:

Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. An initial request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may require written clarification of the request to determine what records are being requested, but may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records.

N.D.C.C. § 44-04-18(2).

14. N.D.C.C. §§ 44-04-18(7) and (8) articulate the requirements for denials and explain when a record is deemed “denied,” respectively. Specifically, N.D.C.C. § 44-04-18(7) states: “A denial of a request for records made under this section must describe the legal authority for the denial, or a statement that a record does not exist, and must be in writing if requested.” N.D.C.C. § 44-04-18(7). N.D.C.C. § 44-04-18(8) provides: “This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed....” N.D.C.C. § 44-04-18(8).

V. CLAIM ONE: FAILURE TO PROVIDE RECORDS IN VIOLATION OF N.D.C.C. § 44-04-18

15. Western Values Project repeats and re-alleges each and every prior allegation in this Complaint.

16. As of the date of this Complaint, Western Values Project has not received any correspondence or communication from the District in response to its requests for records from the District.

17. The District is statutorily obligated to provide records in response to Western Values Project's records requests.

18. By failing to provide the requested records or any response whatsoever to Western Values Project's requests, the District is in violation of N.D.C.C. § 44-04-18.

WHEREFORE the appellant requests that this Court:

1. Issue injunctive relief requiring that the District produce the records requested by Western Values Project in its four August 13, 2018 records requests;
2. Award costs, disbursements, reasonable attorney's fees, and damages in the amount of \$1,000 pursuant to N.D.C.C § 44-04-21.2; and
3. Grant any and all other relief to which Western Values Project may be entitled.

Dated this 23rd day of April, 2019.

BRAATEN LAW FIRM

/s/ Derrick Braaten
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David Keagle (ND 08502)
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Carrington, ND 58421
701-652-3194
E-mail: duaned@gdcd.org
CC: merrim@gdcd.org

August 13, 2018

OPEN RECORDS REQUEST

Dear Records Request Officer:

Pursuant to North Dakota's open records laws, I request access to and a copy of the retainer agreement between the Garrison Diversion Conservancy District and David Bernhardt of the law firm Brownstein Hyatt Farber Schreck.

This retainer is referenced in the meeting minutes from the February 26, 2016 meeting of the Garrison Diversion Conservancy District board of directors, which was previously available to the public at the following URL:

http://www.garrisondiv.org/minutes/RRV_Minutes_2-26-16.pdf.

Fee Waiver Request

Western Values Project requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

Western Values Project requests a waiver of fees because disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of government operations and is not primarily in the commercial interest of the requester. The disclosure of the information sought under this request will document and reveal the operations of the government, including how public funds are spent and how officials conduct the public's business.

This request has significant public and media interest. David Bernhardt "is the second-highest-ranking official at the Interior Department with statutory responsibilities as the Chief Operating Officer of an agency of more than 70,000 employees and an annual budget of approximately \$12 billion."¹ Just in the past week, there have been a number of articles featuring Deputy Secretary David Bernhardt, including an op-ed by the Deputy Secretary in the *Washington Post*, a 1,500 word profile of him in *E & E News*, and a write-up of Bernhardt's California water district work from *Slate* magazine.²

This request is primarily and fundamentally for non-commercial purposes. As a project of a 501(c)(3) organization, Western Values Project does not have a commercial purpose and the release of the information requested is not in Western Values Project's financial interest. Western Values Project's mission is to give a voice to Western values in the national conversation about resource development and public lands conservation, a space too often dominated by industry lobbyists and their government allies. Western Values Project will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. Western Values Project will also make materials it gathers available on our public website <http://www.westernvaluesproject.org/>.

Accordingly, Western Values Project qualifies for a fee waiver.

Conclusion

If possible, I would prefer to receive this information electronically via e-mail at csaeger@westernvaluesproject.org.

If you have questions or need additional information, please feel free to contact Brad Hennessy, my associate who will be handling all follow-up on this request. Brad can be reached at brad@westernvaluesproject.org or at (406) 924-9491.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act.

Thank you for your assistance.

Sincerely,

Chris Saeger
Executive Director
Western Values Project

¹ <https://www.doi.gov/whoweare/depsec>

² https://www.washingtonpost.com/opinions/at-interior-were-ready-to-bring-the-endangered-species-act-up-to-date/2018/08/09/2775cd8e-9a96-11e8-b55e-5002300ef004_story.html?utm_term=.1be13ecf58e6; <https://www.eenews.net/stories/1060093769>; and <https://slate.com/news-and-politics/2018/08/california-fires-and-the-states-war-with-trump.html>



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- Rep. Kevin Cramer
- Scheduler Rachel N. Buening
- State director Lisa Beckstrom Gibbens

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- Secretary Ryan Zinke
- Gareth Rees
- Russell Newell
- Leila Getto
- Catherine Gulac
- Associate Deputy Secretary James Cason
- Assistant Deputy Secretary Todd Willens
- Special Assistant Matt Dermody
- Counselor James Voyles
- Counselor Kate Mills
- Counselor Gary Lawkowski
- Caroline Boulton
- Downey Magallanes
- Any other person with an email address ending in "@ios.doi.gov"

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