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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

SIERRA CLUB,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR; and OFFICE OF
SURFACE MINING RECLAMATION
AND ENFORCEMENT,

Defendants.

Case No. 19-cv-8288

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. This suit has been brought by the Sierra Club, the nation’s oldest grassroots
3 environmental organization, in its quest for information necessary to its mission to protect
4 the environment including endangered species.

5 2. Enacted to protect critically imperiled species from extinction, the
6 Endangered Species Act of 1973 (“ESA”) requires federal agencies to consult with the
7 U.S. Fish and Wildlife Service (“FWS”) and or the National Oceanic and Atmospheric
8 Administration Fisheries Service to ensure their actions are not likely to jeopardize the
9 continued existence of any listed species or result in the destruction or adverse
10 modification of designated critical habitat of such species.

11 3. Surface mining is a highly destructive act that destroys native habitat and has
12 a particularly strong impact on aquatic life when byproducts are dumped in waterways,
13 creating harmful pollution that can have devastating impacts downstream. The Office of
14 Surface Mining Reclamation and Enforcement (“OSMRE”) is the branch of the United
15 States Department of the Interior entrusted with the implementation and enforcement of
16 the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”), which established
17 environmental standards that mines must follow while operating in order to minimize
18 environmental impact. OSMRE and FWS are required to engage in interagency
19 coordination and cooperation to ensure that proposed, threatened, and endangered species
20 and proposed and designated critical habitat under the ESA are adequately protected for all
21 surface coal mining, reclamation operations, and coal exploration conducted under the
22 SMCRA. Further to that end, OSMRE has historically worked with FWS to create
23 programmatic biological opinions which consider the effects of regulated entities’ actions
24 on species protected by ESA.

25 4. Until recently, OSMRE satisfied these ESA obligations by operating under a
26 programmatic biological opinion that had been in place since 1996 (“the 1996 Biological
27 Opinion”). FWS has acknowledged that the process for ESA compliance set forth in the
28 1996 Biological Opinion failed to ensure that species are protected from the adverse

1 effects of surface coal mining. Towards the end of President Obama’s Administration,
2 FWS implemented a new 2016 Biological Opinion and OSMRE issued regulations called
3 the Stream Protection Rule which invalidated the 1996 Biological Opinion and included
4 improvements in the protection of water supplies, water quality, streams, fish and other
5 wildlife.

6 5. In early February 2017, Congress voted to use the Congressional Review Act
7 to pass a resolution of disapproval to revoke the Stream Protection Rule. President Trump
8 signed H.J. Res. 38 on February 16, 2017, overturning the Stream Protection Rule. This
9 left the status of regulations implementing the SMCRA unclear.

10 6. The SMCRA allows individual states to achieve primary regulatory
11 responsibility, often referred to as primacy, to implement the SMCRA in that particular
12 state. The Interstate Mining Compact Commission (“IMCC”) is a multi-state
13 governmental organization that works with the federal government and industry groups to
14 recommend policy changes and assist individual states in carrying out their regulatory
15 functions under SMCRA. In this time of uncertainty, OSMRE and IMCC’s positions,
16 recommendations, and actions regarding the ESA are of great public interest and
17 importance.

18 7. As a strong supporter and proponent of clean energy sources and the
19 protection of endangered species, the Sierra Club sought to further its long-standing
20 interest in government accountability and transparency by filing a FOIA request with
21 OSMRE on April 10, 2019 for certain documents showing: (1) correspondence between
22 OSMRE and FWS regarding programmatic consultation under the ESA; and
23 (2) correspondence between OSMRE and IMCC regarding or pertaining to the ESA.
24 Sierra Club requested that OSMRE waive processing and copying fees pursuant to 5
25 U.S.C. § 552(a)(4)(A) on the grounds that the public will be the primary beneficiary of the
26 requested information.

27 8. Defendant OSMRE violated the Freedom of Information Act (“FOIA” or the
28 “Act”), 5 U.S.C. § 552, by failing to timely provide estimated dates of completion, formal

1 determinations, and produce responsive documents in its possession following a lawful
2 request by Sierra Club.

3 9. OSMRE missed the 20-day statutory deadline to make a determination
4 regarding the request (5 U.S.C. § 552 (a)(6)(A)(i)), and the 10-day extension deadline for
5 unusual circumstances (5 U.S.C. § 552 (a)(6)(B)(i)). On May 24, 2019, the Sierra Club
6 informed OSMRE that it had missed the statutory deadlines and inquired as to the status of
7 OSMRE’s response. On May 29, 2019, OSMRE responded with a message stating: “We
8 apologize for the delay [...]. We are still processing your request.” After repeated
9 inquiries by Sierra Club regarding the status, OSMRE responded on October 7, 2019—
10 nearly six months after receiving Sierra Club’s FOIA request—stating that it was still
11 processing the request but that OSMRE “expect[s] that we will dispatch our response to
12 you by October 31, 2019.” Having not received any response by that date, Sierra Club
13 sent written follow-up inquiries on November 1 and 15, 2019. OSMRE did not respond.
14 To date, OSMRE has yet to make any response, estimate dates of completion, make any
15 determinations, or produce any documents.

16 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

17 10. This Court has jurisdiction over this matter pursuant to 5 U.S.C.
18 § 552(a)(4)(B) and 28 U.S.C. § 1331.

19 11. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) because Plaintiff
20 Sierra Club has its principal place of business in Oakland, California.

21 12. For the same reason, intradistrict assignment is proper in the Oakland
22 Division. *See* N.D. Cal. L.R. 3-2.

23 **PARTIES**

24 13. Plaintiff Sierra Club was founded in 1892 and is the nation’s oldest
25 grassroots environmental organization. Plaintiff Sierra Club is incorporated in the State of
26 California as a Nonprofit Public Benefit Corporation with its headquarters in Oakland,
27 California. Sierra Club is a nonprofit, membership organization with more than 779,000
28 members nationwide. Sierra Club is dedicated to protecting and preserving the natural and

1 human environment, and its purpose is to explore, enjoy, and protect the wild places of the
2 earth; to practice and promote the responsible use of the earth's ecosystems and resources;
3 and to educate and enlist humanity to protect and restore the quality of the natural and
4 human environments. Sierra Club is a leading non-governmental organization seeking to
5 educate and mobilize the public on issues of climate change, fossil fuel energy, and clean
6 energy. It conducts multiple public campaigns around these issues, including its Beyond
7 Coal Campaign and Dirty Fuels Campaign. In support of those efforts and to further Sierra
8 Club's long-standing interest in government accountability and transparency, Sierra Club
9 submitted to OSMRE the FOIA request at issue in this case.

10 14. Sierra Club routinely uses FOIA to obtain information from federal agencies,
11 which Sierra Club's legal and policy experts analyze in order to inform their members and
12 the public about public health and environmental issues. Sierra Club regularly conveys
13 important information to its members and the public through publications and press
14 releases, as well as by publicly releasing information and documents obtained through
15 FOIA requests.

16 15. Plaintiff Sierra Club brings this action on its own behalf and on behalf of its
17 members. Plaintiff and its members have been and continue to be injured by Defendant's
18 failure to provide requested records within the timeframes mandated by the FOIA. The
19 requested relief will redress these injuries.

20 16. Defendant Department of Interior ("DOI") is an independent agency of the
21 United States government within the meaning of 5 U.S.C. § 551(1). It has in its possession
22 and control the records sought by Sierra Club, and as such, is subject to FOIA pursuant to
23 5 U.S.C. § 552(f). On information and belief, the Department is also a required party
24 pursuant to Federal Rule of Civil Procedure 19(a)(1) because in its absence the Court
25 cannot accord complete relief from OSMRE alone.

26 17. Defendant Office of Surface Mining Reclamation and Enforcement
27 ("OSMRE") is a bureau of the DOI. OSMRE is responsible for implementing and
28 enforcing the Surface Mining Control and Reclamation Act. 30 U.S.C. § 1211(b)-(c).

1 The DOI regulations and website direct members of the public to submit FOIA requests
2 regarding matters involving OSMRE to OSMRE. 43 C.F.R. § 2.3; 43 C.F.R. § 2.70; DOI
3 FOIA Contacts, <https://www.doi.gov/foia/contacts> (last visited Dec. 17, 2019). OSMRE
4 has in its possession and control the records sought by Sierra Club, and as such, is subject
5 to FOIA pursuant to 5 U.S.C. § 552(f).

6 STATUTORY FRAMEWORK

7 18. Enacted in 1966, the Freedom of Information Act was designed to protect
8 citizens' "right to be informed about what their government is up to." *U.S. Dep't of*
9 *Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989) (internal
10 quotations omitted). "The basic purpose of FOIA is to ensure an informed citizenry, vital
11 to the functioning of a democratic society, needed to check against corruption and to hold
12 the governors accountable to the governed." *Nat'l Labor Relations Bd. v. Robbins Tire &*
13 *Rubber Co.*, 437 U.S. 214, 242 (1978). The statute was intended "to permit access to
14 official information long shielded unnecessarily from public view and ... to create a
15 judicially enforceable public right to secure such information from possibly unwilling
16 official hands." *Env'tl. Prot. Agency v. Mink*, 410 U.S. 73, 80 (1973).

17 19. To this end, FOIA requires agencies of the federal government to release,
18 upon request, information to the public, unless one of nine specific statutory exemptions
19 applies. 5 U.S.C. § 552(b). These exemptions are narrowly construed, and the agency
20 bears the burden of establishing the applicability of each exemption as to each record for
21 which it is claimed. *See Milner v. Dep't of Navy*, 562 U.S. 562, 565 (2011); *Lahr v. Nat'l*
22 *Transp. Safety Bd.*, 569 F.3d 964, 973 (9th Cir. 2009) (noting FOIA's "strong presumption
23 in favor of disclosure" and that an agency bears the burden for demonstrating an
24 exemption properly applies).

25 20. Upon receiving a FOIA request, an agency has twenty working days to
26 respond by determining whether responsive documents exist and whether the agency will
27 release them. 5 U.S.C. § 552(a)(6)(A); 43 C.F.R. § 2.16(a). Agencies must make
28 reasonable efforts to search for records in a manner that is reasonably calculated to locate

1 all records that are responsive to the FOIA request. 5 U.S.C. § 552(a)(3)(C)–(D). An
2 agency may delay an initial determination by ten working days only if the agency can
3 demonstrate that it faces “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B); 43 C.F.R.
4 § 2.19.

5 21. If an agency withholds responsive records, in whole or in part, the burden is
6 on the agency to prove that an exemption applies and that it outweighs FOIA’s policy of
7 disclosure. *See, e.g.*, 5 U.S.C. § 552(a)(4)(B); *U.S. Dep’t of State v. Ray*, 502 U.S. 164,
8 173 (1991). Whenever an agency determines that a portion of a record should be withheld
9 under one of FOIA’s exemptions, the agency must still release to the public any portions of
10 that record that contain “reasonably segregable” non-exempt information. 5 U.S.C.
11 § 552(b).

12 22. If the agency fails to comply with the statutory time limits to respond to a
13 FOIA request or appeal, the requester is deemed to have exhausted its administrative
14 remedies and may commence litigation in district court to compel an adequate response
15 from the agency. 5 U.S.C. § 552(a)(4)(B), (a)(6)(C)(i). FOIA provides that the district
16 court shall have jurisdiction “to enjoin [an] agency from withholding agency records and
17 to order the production of any agency records improperly withheld from the complainant.”
18 5 U.S.C. § 552(a)(4)(B).

19 23. FOIA and DOI regulations state that a requester is entitled to a waiver of fees
20 associated with responding to a FOIA request when the information sought “is likely to
21 contribute significantly to public understanding of the operations or activities of the
22 government and is not primarily in the commercial interest of the requester.” 5 U.S.C.
23 § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a). Further, an agency cannot assess fees against a
24 requester if it does not respond to the request within the time established by FOIA. *See* 5
25 U.S.C. § 552(a)(4)(A)(viii); 43 C.F.R. § 2.37(f).

26 24. FOIA permits the Court to “assess ... reasonable attorney fees and other
27 litigation costs reasonably incurred in any case under this section in which the complainant
28 has substantially prevailed.” 5 U.S.C. § 552(a)(4)(E)(i).

1 **STATEMENT OF FACTS**

2 25. Sierra Club submitted a FOIA request to OSMRE on April 10, 2019, a true
3 and correct copy of which is attached hereto as **Exhibit A**.

4 26. Sierra Club’s FOIA request asked OSMRE to disclose the following records:

5 All correspondence with employees, staff, contractors, consultants, or
6 representatives of the United States Fish and Wildlife Service from
7 January 1, 2017 to the present regarding programmatic consultation under
8 the Endangered Species Act.

9 All correspondence with employees, staff, contractors, consultants, or
10 representatives of the Interstate Mining Compact Commission from
11 January 1, 2017 to the present regarding or pertaining to the Endangered
12 Species Act.

13 27. On April 30, 2019 OSMRE replied to Sierra Club’s FOIA request with an
14 acknowledgment email, a true and correct copy of which is attached hereto as **Exhibit B**.
15 OSMRE assigned tracking number OSMRE -2019-00092 to the request, and stated that
16 Sierra Club’s request for a fee waiver was being considered. OSMRE’s acknowledgement
17 also stated that:

18 Please be informed that we are conducting responsive records search based
19 on the subject matter of your request. You should expect to hear from us
20 following the completion of our records search. Because we will need to
21 consult with one or more offices of the Department in order to properly
22 process your request, we are taking a 10-workday extension under 43 C.F.R.
23 § 2.19 and placing your request under the “Complex” processing track. You
24 may narrow the scope of your request to obtain quicker processing in your
25 currently assigned track or move the request into a faster track (which may
26 also have the effect of reducing the cost of processing your request).

27 28. OSMRE neither made a final determination nor produced documents within
28 the twenty workday deadline, nor did it do so within the additional ten working days it
29 granted itself.

30 29. On May 24, 2019, Sierra Club wrote to OSMRE stating that OSMRE has
31 exceeded the time to respond—including the time under the extension it provided itself—
32 and asked for an update on the status of OSMRE’s response to the FOIA request. A true
33 and correct copy of Sierra Club’s May 24, 2019 email to OSMRE is attached hereto as
34 **Exhibit C**.

35 30. On May 29, 2019, OSMRE sent an email in response stating that “[w]e are

1 still processing your request.” A true and correct copy of OSMRE’s May 29, 2019
2 response is attached hereto as **Exhibit D**.

3 31. On September 5, 2019, Sierra Club emailed OSMRE requesting an update on
4 OSMRE’s processing of Sierra Club’s FOIA request, an estimated date by which OSMRE
5 would respond to Sierra Club’s FOIA request, the reason for OSMRE’s delayed response
6 to Sierra Club’s FOIA request, an estimate of the number of documents that OSMRE had
7 that were responsive to Sierra Club’s FOIA request, and an indication of whether OSMRE
8 planned to withhold any documents responsive to Sierra Club’s FOIA request and the basis
9 for such withholding. A true and correct copy of that email is attached hereto as
10 **Exhibit E**.

11 32. Because Sierra Club had not yet received a response from OSMRE to its
12 September 5, 2019 email, on September 19, 2019, Sierra Club again emailed OSMRE to
13 reiterate the requests in its September 5, 2019 email and noting that over five months had
14 passed since Sierra Club had submitted its original FOIA request. A true and correct copy
15 of Sierra Club’s September 19, 2019 email is attached hereto as **Exhibit F**.

16 33. On October 7, 2019, OSMRE informed Sierra Club by email that “we are
17 still processing your request. We expect that we will dispatch our response to you by
18 October 31, 2019.” A true and correct copy of OSMRE’s October 7, 2019 email is
19 attached hereto as **Exhibit G**.

20 34. On November 1, 2019, Sierra Club sent an email responding to OSMRE and
21 stating that Sierra Club had not received any documents responsive to Sierra Club’s FOIA
22 request as OSMRE had previously promised to provide. Sierra Club again requested an
23 estimate of the number of documents that OSMRE would produce in response to Sierra
24 Club’s FOIA request and an indication of whether OSMRE intended to withhold any
25 documents responsive to Sierra Club’s FOIA request. A true and correct copy of Sierra
26 Club’s Nov 1, 2019 email to OSMRE is attached hereto as **Exhibit H**.

27 35. On November 15, 2019, Sierra Club sent another email to OSMRE noting
28 OSMRE’s significant and ongoing delay in responding to Sierra Club’s FOIA request.

1 Once again, Sierra Club requested an estimated date by which OSMRE would respond to
2 Sierra Club's FOIA request, and repeated the requests in Sierra Club's November 1, 2019
3 email. A true and correct copy of Sierra Club's November 15, 2019 email is attached
4 hereto as **Exhibit I**.

5 36. To date, OSMRE has not provided any estimated date of completion, made
6 any determinations as to the responsiveness or withholding of documents, nor produced
7 any documents.

8 37. OSMRE's failure to timely respond to Sierra Club's FOIA request is part of
9 a pattern or practice of unreasonable delay. On or about May 24, 2019, the Center for
10 Biological Diversity (the "Center") also submitted a FOIA request to OSMRE seeking
11 records related to consultation under the ESA. As with Sierra Club's April 10, 2019 FOIA
12 request, OSMRE has failed to provide the Center with an estimated date by which OSMRE
13 would complete processing the Center's FOIA request, a response to the Center's FOIA
14 request regarding whether any responsive documents exist and whether OSMRE would
15 withhold or produce any such documents, or any documents responsive to the Center's
16 FOIA request. The number of backlogged FOIA requests at OSMRE has grown
17 significantly over the past several years. As shown in DOI's Annual FOIA Reports at
18 Table XII.d.(2), OSMRE had 10 backlogged requests at the end of FY 2015, 21
19 backlogged requests at the end of FY 2016, 56 backlogged requests at the end of FY 2017,
20 and 82 backlogged requests at the end of FY 2018. *Available at*
21 <https://www.doi.gov/foia/DOI-FOIA-Annual-Reports> (last visited Dec. 17, 2019). Upon
22 information and belief, OSMRE's pattern and practice of delayed responses to FOIA
23 requests is harming others who filed lawful FOIA requests with OSMRE.

24 38. Prompt access to the information requested in Sierra Club's FOIA request is
25 crucial to Sierra Club because it relates to clarification of the federal government's
26 position regarding the operative Biological Opinion for ensuring ESA protections when
27 actions are taken under SMCRA. The anticipated production of documents is relevant to
28 Sierra Club's ability to engage effectively in, and provide public oversight of, OSMRE and

1 FWS's efforts to ensure that the ESA's protections are realized.

2 **FIRST CLAIM FOR RELIEF**
3 **(Violation of FOIA § 552(a)(6)(A)-(B):**
4 **Failure to Provide Estimated Dates of Completion)**

4 39. Plaintiff re-alleges and incorporates by reference all the foregoing
5 paragraphs in this Complaint as though fully set forth herein.

6 40. Sierra Club has a statutory right to have the OSMRE process requests in a
7 manner that complies with FOIA. 5 U.S.C. § 552(a)(3).

8 41. FOIA requires that within 20 working days upon receipt of a FOIA request,
9 an agency provide an estimated date by which it will complete action on the FOIA request.
10 5 U.S.C. § 552(a)(6)(A)-(B); *see also* 43 C.F.R. § 2.16(a). FOIA requires that an agency
11 may extend the 20 working day deadline to respond to a FOIA request by ten working days
12 due to "unusual circumstances." 5 U.S.C. § 552(a)(6)(B)(i); *see also* 43 C.F.R. §§ 2.16(a),
13 2.19(a)(2).

14 42. OSMRE did not meet its 20 working day deadline (May 9, 2019) to provide
15 an estimated date of completion. On April 30, 2019 the OSMRE notified Sierra Club that
16 OSMRE had extended the deadline to respond to Sierra Club's FOIA request by ten work
17 days (until May 22, 2019) because OSMRE claimed that it needed to consult with multiple
18 offices of the Department to process the FOIA request.

19 43. OSMRE did not timely provide, and has yet to provide, an estimated date by
20 which it would complete processing Sierra Club's April 10, 2019 FOIA request, in
21 violation of FOIA.

22 44. By failing to timely provide an estimated date of completion to Sierra Club's
23 April 10, 2019 FOIA request, OSMRE has violated FOIA's mandate to provide a complete
24 response within the timeframe required by the statute. *See* 5 U.S.C. § 552(a)(3)(A),
25 (a)(6)(A)(i), (a)(6)(B).

26 45. Sierra Club has exhausted the applicable administrative remedies. 5 U.S.C.
27 § 552(a)(4)(B), (a)(6)(C)(i).

28 46. Sierra Club is entitled to obtain the requested records immediately at no cost.

1 47. OSMRE's ongoing failure to provide Sierra Club with a final determination
2 in response to Sierra Club's April 10, 2019 FOIA request is irreparably harming the Sierra
3 Club, and will continue to irreparably harm the Sierra Club unless OSMRE is compelled to
4 comply fully with FOIA.

5 **SECOND CLAIM FOR RELIEF**
6 **(Violation of FOIA, 5 U.S.C. § 552(a)(6)(A)-(B):**
7 **Failure to Make Formal Determinations)**

8 48. Plaintiff re-alleges and incorporates by reference all the foregoing paragraphs
9 in this Complaint as though fully set forth herein.

10 49. FOIA requires that within 20 working days upon receipt of a FOIA request,
11 an agency determine whether responsive documents exist and whether it will release them.
12 5 U.S.C. § 552(a)(6)(A); *see also* 43 C.F.R. §§ 2.16-2.17, 2.19(a). FOIA requires that an
13 agency may extend the 20 working day deadline to respond to a FOIA request by ten
14 working days due to "unusual circumstances." 5 U.S.C. § 552(a)(6)(B)(i); *see also* 43
15 C.F.R. §§ 2.16(a), 2.19(a)(2).

16 50. OSMRE did not meet its 20 working day deadline (May 9, 2019) to
17 determine whether responsive documents exist and whether it will release them. On
18 April 30, 2019 the OSMRE notified Sierra Club that OSMRE had extended the deadline to
19 respond to Sierra Club's FOIA request by ten work days (until May 22, 2019) because
20 OSMRE claimed that it needed to consult with multiple offices of the Department to
21 process the FOIA request.

22 51. By failing to timely make a final determination regarding whether documents
23 responsive to Sierra Club's April 10, 2019 FOIA request exist and whether OSMRE will
24 produce those documents, OSMRE has violated FOIA's mandate to provide a complete
25 response within the timeframe required by the statute. *See* 5 U.S.C. § 552(a)(3)(A),
26 (a)(6)(A)(i), (a)(6)(B).

27 52. Sierra Club has exhausted the applicable administrative remedies. 5 U.S.C.
28 § 552(a)(4)(B), (a)(6)(C)(i).

53. Sierra Club is entitled to obtain the requested records immediately at no cost.

1 54. OSMRE's ongoing failure to provide Sierra Club with a final determination
2 in response to Sierra Club's April 10, 2019 FOIA request is harming the Sierra Club, and
3 will continue to harm the Sierra Club unless OSMRE is compelled to comply fully with
4 FOIA.

5 **THIRD CLAIM FOR RELIEF**
6 **(Violation of FOIA, 5 U.S.C. § 552(a)(3)(A):**
7 **Failure to Provide Responsive Documents)**

8 55. Plaintiff re-alleges and incorporates by reference all the foregoing paragraphs
9 in this Complaint as though fully set forth herein.

10 56. Upon its FOIA request to OSMRE, Sierra Club became statutorily entitled
11 under FOIA to promptly receive from OSMRE all records responsive to its request. 5
12 U.S.C § 552(a)(6)(A)(i); *see also* 43 C.F.R. §§ 2.21(a), 2.22.

13 57. Although it has been over eight months since Sierra Club submitted its FOIA
14 request, OSMRE has not yet provided Sierra Club with any documents in response to
15 Sierra Club's FOIA request. OSMRE has therefore violated FOIA by failing to timely
16 produce documents responsive to Sierra Club's April 10, 2019 FOIA request. OSMRE has
17 offered no explanation for its failure to promptly provide any responsive documents.

18 58. Sierra Club has exhausted the applicable administrative remedies. 5 U.S.C.
19 § 552(a)(4)(B), (a)(6)(C)(i).

20 59. Sierra Club is entitled to obtain the requested records immediately at no cost.

21 60. OSMRE's ongoing failure to produce any documents responsive to Sierra
22 Club's FOIA request is harming the Sierra Club, and will continue to harm the Sierra Club
23 unless OSMRE is compelled to comply fully with FOIA.

24 **FOURTH CLAIM FOR RELIEF**
25 **(Violation of FOIA, 5 U.S.C. §§ 552(a)(6)(A), 552(a)(3)(A):**
26 **OSMRE's Pattern and Practice is to Violate FOIA)**

27 61. Plaintiff re-alleges and incorporates by reference all the foregoing paragraphs
28 in this Complaint as though fully set forth herein.

62. Upon information and belief, OSMRE has a pattern and practice of violating
FOIA's procedural requirements in connection with the processing of FOIA requests.

1 Specifically, it is OSMRE’s pattern and practice to refrain from responding to FOIA
2 requests within the required timelines established by FOIA and to refrain from promptly
3 providing estimated completion dates, making formal determinations, and producing
4 documents responsive to FOIA requests as required by FOIA.

5 63. Plaintiff is being harmed by OSMRE’s unlawful pattern and practice and
6 will continue to be harmed unless OSMRE is compelled to comply with FOIA’s
7 procedural requirements to respond to FOIA requests and to make records “promptly
8 available.” *See* 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(i).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Sierra Club respectfully requests that this Court enter judgment
11 against DOI and OSMRE as follows:

- 12 1. Declare that OSMRE has violated FOIA by failing to provide estimated
13 dates of completion upon Sierra Club’s FOIA Request;
- 14 2. Declare that OSMRE has violated FOIA by failing to make a timely formal
15 determination upon Sierra Club’s FOIA Request;
- 16 3. Declare that OSMRE has violated FOIA by failing to produce records
17 responsive to Sierra Club’s FOIA Request by the statutory deadlines;
- 18 4. Declare that OSMRE’s pattern and practice is to fail to adhere to FOIA’s
19 requirements;
- 20 5. Order that OSMRE conduct an adequate search for any and all records
21 responsive to Sierra Club’s request and demonstrate that it diligently searched for and
22 identified responsive documents;
- 23 6. Order that OSMRE immediately produce to Sierra Club the records
24 requested in Sierra Club’s April 10, 2019 FOIA request;
- 25 7. Award Sierra Club its litigation costs and reasonable attorneys’ fees in this
26 action; and

27 ///

28 ///

1 8. Grant such other and further relief as the Court deems just and proper.

2 DATED: December 19, 2019

Respectfully submitted,

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ROSEN BIEN GALVAN & GRUNFELD LLP

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By: /s/ Van Swearingen

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Van Swearingen

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Attorneys for Plaintiff SIERRA CLUB

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