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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**CASCADIA WILDLANDS,**

Plaintiff,

vs.

**UNITED STATES FOREST SERVICE,** an  
administrative agency of the United States  
Department of Agriculture,

Defendant.

Civ. Case No. 3:15-cv-860

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

(Violation of Freedom of Information Act)

## INTRODUCTION

1. This is a civil action for declaratory and injunctive relief arising under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* It challenges the unlawful failure of the above-named Federal Defendant, UNITED STATES FOREST SERVICE (“Forest Service”), to respond to a FOIA request submitted by Plaintiff Cascadia Wildlands within 20 working days, as required pursuant to 5 U.S.C. § 552(a)(6)(A)(i).
2. Prompt access to the requested information is crucial to Cascadia Wildlands’ work safeguarding imperiled species and the habitat in which they live. Here, this includes the gray wolf, a species that in a portion of its range is listed as endangered under the federal Endangered Species Act (“ESA”).
3. The Forest Service has unlawfully withheld public disclosure of information sought by Cascadia Wildlands. Cascadia Wildlands is entitled to receive the requested information. No valid disclosure exemption applies that would prohibit disclosure of the requested documents. The Forest Service failed to comply with the statutory mandates and deadlines imposed by FOIA. Accordingly, Cascadia Wildlands seeks declaratory relief establishing the Forest Service has violated FOIA. Cascadia Wildlands also seeks injunctive relief directing the Forest Service to promptly provide Cascadia Wildlands with the requested information.
4. If it prevails, Cascadia Wildlands will seek an award of attorneys’ fees, costs, and other expenses pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

## JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises pursuant to FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

6. This action reflects an actual, present, and justiciable controversy between the Plaintiff and the Defendant. Plaintiff's interests will be adversely affected and irreparably injured if Defendant continues to violate FOIA as alleged herein.

7. The requested relief is authorized by 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. § 552(a)(4)(B).

8. The requested relief would redress the actual, concrete injuries to Plaintiff caused by the Defendant's failure to comply with duties mandated by FOIA and its associated regulations.

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

10. Plaintiff submitted a FOIA request to Defendant on March 12, 2015. Defendant has not made a determination on whether to comply with Plaintiff's FOIA request. Defendant has not responded to Plaintiff's FOIA request with any responsive documents. Defendant has not responded to Plaintiff's FOIA request. Plaintiff has therefore exhausted any and all available and required remedies.

11. Venue properly vests in this Court pursuant to 5 U.S.C § 552(a)(4)(B), which provides venue for FOIA cases in the district in which the Plaintiff resides or has its principal place of business or in the district in which the agency records are situated. The requested documents are primarily located within this judicial district. Plaintiff maintains its principal office within this judicial district. Additionally, Cascadia Wildlands has members that work and/or reside within this judicial district. A substantial part of the events giving rise to this legal claim occurred in Multnomah County, Oregon. Assignment to the Portland Division is proper pursuant to LR 3-2.

12. Declaratory relief is appropriate pursuant to 28 U.S.C. § 2201.

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

## **PARTIES**

14. Plaintiff CASCADIA WILDLANDS is an Oregon non-profit corporation with approximately 14,000 members and supporters throughout the United States. Cascadia Wildlands educates, agitates, and inspires a movement to protect and restore Cascadia's wild ecosystems. Cascadia Wildlands envisions vast old-growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia Bioregion. Cascadia Wildlands brings this action on its own behalf and on behalf of its adversely affected members. Cascadia Wildlands and its members are injured and adversely affected by the Forest Services failure to make a determination on its FOIA request. Cascadia Wildlands and its members are injured and adversely affected by the Forest Service's failure to release the requested documents.

15. The relief sought by Cascadia Wildlands would redress the injuries suffered by Cascadia Wildlands and its members, as well as provide valuable and necessary information that will allow Cascadia Wildlands, its members, and the general public, to engage with the Forest Service on a fully-informed basis. The requested relief would require the Forest Service to make a determination on and respond to Cascadia Wildlands' FOIA requests. The requested relief would require the Forest Service to promptly release the requested documents and information.

16. Defendant UNITED STATES FOREST SERVICE is an agency of the United States and is a division of the United States Department of Agriculture. The Forest Service is responsible for promptly responding to all FOIA requests, including the underlying request at issue here. In this capacity, the Forest Service is responsible for implementing and complying with federal law, including the federal laws implicated by this action. The Forest Service has failed to make a determination on or respond to the FOIA request at issue here.

## FACTS

17. On March 12, 2015, Cascadia Wildlands submitted a FOIA request to the Forest Service seeking certain documents related to forest management and wolves, as well as documents related to consultation with the U.S. Fish and Wildlife Service pursuant to Section 7 of the ESA on the same subject.

18. On April 1, 2015, the Forest Service acknowledged that it received the FOIA request on March 12, 2015. The Forest Service assigned the FOIA request FOIA Control number 2015-FS-R6-02562-F.

19. The FOIA request had a response deadline of April 9, 2015. The Forest Service failed to make a determination on whether to comply with Cascadia Wildlands' FOIA request by April 9, 2015. The Forest Service failed to request an extension of time to respond to Cascadia Wildlands' FOIA request by April 9, 2015. The Forest Service failed to respond to Cascadia Wildlands' FOIA request in any way, beyond acknowledging receipt, by April 9, 2015. The Forest Service failed to provide the requested documents to Cascadia Wildlands by April 9, 2015.

20. On April 23, 2015, counsel for Cascadia Wildlands sent the Forest Service a letter via email and United States Postal Service ("USPS") certified mail, return receipt requested, to remind the agency of the April 9, 2015 response deadline, to offer assistance to facilitate a prompt response to Cascadia Wildlands' FOIA request, and to request the Forest Service's prompt release of the requested documents. This letter also requested additional information from the Forest Service, including information on how many FOIA requests were in line to be processed ahead of Cascadia Wildlands' FOIA request.

21. On May 4, 2015, counsel for Cascadia Wildlands received an email from the Forest Service's FOIA Coordinator, Melani Gonzalez, with the subject line "Status Update FOIA 2015-FS-R6-02562-F". This email stated: "Due to the volume of FOIA requests and referrals that we have received, it has taken us longer than expected to respond to your request. We apologize for the delay." The May 4, 2015 email stated that the Forest Service had granted Cascadia Wildlands' request for a fee waiver.

22. On May 8, 2015, counsel for Cascadia Wildlands sent the Forest Service a second letter via email and USPS certified mail, return receipt requested, to remind the agency of its statutory obligations under FOIA and, in particular, its mandate to make a determination within 20 working days of receipt of the FOIA request. The letter expressed concern that the Forest Service had not provided Cascadia Wildlands with any information about an expected date for a determination, or any information responsive to the request for information in the April 23, 2015 letter. The letter offered to provide any assistance or additional information to facilitate a prompt response. The letter offered to work out a schedule for partial disclosures of responsive documents. The letter repeated its request for additional information on a projected date by which Cascadia Wildlands could expect a determination on the FOIA request, and information on the number of FOIA requests in line ahead of Cascadia Wildlands' FOIA request. The letter informed the Forest Service that it expected a reply by May 15, 2015. The letter informed the Forest Service that Cascadia Wildlands intended to pursue legal action to compel compliance with the statutory time limits of FOIA.

23. On May 11, 2015, counsel for Cascadia Wildlands received an email from the Forest Service's FOIA Coordinator, Melani Gonzalez, resending the May 4, 2015 email to counsel for Cascadia Wildlands and asking whether that email had been sent to the correct email address.

The May 11, 2015 email did not respond to any of the issues and concerns raised by Cascadia Wildlands in its April 23, 2015 or May 8, 2015 letters to the Forest Service.

24. On May 12, 2015, counsel for Cascadia Wildlands sent the Forest Service an email to acknowledge receipt of the May 11, 2015 email from the Forest Service. The email repeated Cascadia Wildlands' concerns and questions expressed in the April 23, 2015 and May 8, 2015 letters to the Forest Service. The email offered to answer any questions or provide additional information to assist in the processing of the FOIA request. The email offered to work out a schedule of partial disclosures in response to the FOIA request.

25. On May 18, 2015, counsel for Cascadia Wildlands received an email from the Forest Service's FOIA Coordinator, Melani Gonzalez. The May 18, 2015 email apologized if previous emails were unclear. The May 18, 2015 email quoted a passage from the May 4, 2015 email from the Forest Service. The May 18, 2015 email disagreed that the Forest Service had not made any determination on Cascadia Wildlands' FOIA request, and referred to the May 4, 2015 email granting Cascadia Wildlands' request for a fee waiver. The May 18, 2015 email stated that at the time Cascadia Wildlands' FOIA request was received by the Forest Service, there were twenty "open cases" in the regional office.

26. To date, the Forest Service has not made a determination on whether to comply with Cascadia Wildlands' FOIA request. To date, the Forest Service has not notified Cascadia Wildlands in writing of its determination on whether to comply with Cascadia Wildlands' FOIA request. To date, the Forest Service has not responded to Cascadia Wildlands' FOIA request. To date, the Forest Service has not provided any documents or information responsive to Cascadia Wildlands' FOIA request. To date, the Forest Service has not provided written notice to Cascadia Wildlands that it is seeking a ten-workday extension to make a determination on Cascadia

Wildlands' FOIA request pursuant to 5 U.S.C. § 552(a)(6)(B)(i). To date, the Forest Service has not provided written notice to Cascadia Wildlands of the approximate date upon which the agency will provide the requested records. To date, the Forest Service has not provided written notice to Cascadia Wildlands of the date by which it expects to dispatch a determination on Cascadia Wildlands' FOIA request.

27. The information sought by Cascadia Wildlands is time-sensitive in nature.
28. Cascadia Wildlands has exhausted all administrative remedies required by FOIA.
29. Cascadia Wildlands has been required to expend costs and to obtain the services of a law firm consisting of attorneys, law clerks, and legal assistants to prosecute this action.

**FIRST CLAIM FOR RELIEF**  
**Violation of FOIA**  
**(Constructive Denial / Failure to Make a Determination)**

23. Plaintiff incorporates by reference all preceding paragraphs.
30. FOIA requires that an agency of the federal government, "upon any request ... shall make the records promptly available." 5 U.S.C. § 552(a)(3)(A). Each agency, upon any request for records, "shall determine within 20 [working days] after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor." 5 U.S.C. § 552(a)(6)(A)(i).
31. U.S. Department of Agriculture regulations require that if the Forest Service is delayed in making a determination on a requester's FOIA request, it notify the requester of the reasons for the delay and the date by which it expects to dispatch a determination. 7 C.F.R. § 1.17. U.S. Department of Agriculture regulations require that if the Forest Service determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request

and the approximate date upon which the agency will provide the requested records. 7 C.F.R. § 1.7.

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

33. The Forest Service has failed to respond to Cascadia Wildland’s FOIA request within the statutorily prescribed 20 working-day time period. 5 U.S.C. § 552(a)(6)(A)(i). The Forest Service has failed to make a determination on whether to comply with Cascadia Wildlands’ FOIA request within the statutorily prescribed 20 working-day time period. 5 U.S.C. § 552(a)(6)(A)(i). The Forest Service has failed to notify Cascadia Wildlands of the date by which the Forest Service expects to dispatch a determination on Cascadia Wildlands’ FOIA request. 7 C.F.R. § 1.17. The Forest Service has failed to notify Cascadia Wildlands of the approximate date upon which the agency will provide the requested records to Cascadia Wildlands. 7 C.F.R. § 1.7.

34. Cascadia Wildlands has a statutory right to have the Forest Service process its FOIA request in a manner that complies with FOIA.

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

36. The Forest Service has violated Cascadia Wildlands rights pursuant to FOIA by unlawfully failing to make a determination on whether to comply with Cascadia Wildlands’

FOIA request, respond to Cascadia Wildlands' FOIA request, or by providing documents and information responsive to Cascadia Wildlands' FOIA request.

37. Cascadia Wildlands' organizational activities will be adversely affected if the Forest Service is allowed to continue to violate FOIA's disclosure provisions, as it has in this case. Cascadia Wildlands' members will be adversely affected if the Forest Service is allowed to continue violating FOIA's disclosure provisions, as it has in this case.

38. Unless enjoined and made subject to a declaration of Cascadia Wildlands' legal rights by this Court, the Forest Service will continue to violate Cascadia Wildlands' rights to receive public records pursuant to FOIA.

39. Cascadia Wildlands has fully exhausted all administrative remedies required by FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

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

#### **PLAINTIFF'S PRAYER FOR RELIEF**

Plaintiff respectfully requests that this Court:

1. Declare Defendant's failure to make a determination on whether to comply with Plaintiff's FOIA request to be unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i);
2. Declare Defendant's failure to produce the documents requested by Plaintiff to be unlawful under FOIA, 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i);
3. Issue an injunction requiring the Defendant to make a determination on whether to comply with Plaintiff's FOIA requests and provide Plaintiff with all responsive records sought through its FOIA request, 5 U.S.C. § 552(a)(4)(B);

4. Retain jurisdiction over this action to ensure the timely processing of Plaintiff's FOIA request and that no responsive agency records are wrongfully withheld;
5. Award Plaintiff its costs, expenses, and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E), and 28 U.S.C. § 2412; and
6. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted and dated this 20th day of May, 2015.

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