

1 MARTIN D. BERN (SBN 153203)  
martin.bern@mto.com  
2 ELLEN MEDLIN RICHMOND (SBN 277266)  
ellen.richmond@mto.com  
3 **MUNGER, TOLLES & OLSON LLP**  
560 Mission St., 27th Floor  
4 San Francisco, CA 94705  
Telephone: 415-512-4000  
5 Fax: 415-512-4077

6 ELENA SAXONHOUSE (SBN 235139)  
elena.saxonhouse@sierraclub.org  
7 **SIERRA CLUB ENVIRONMENTAL LAW PROGRAM**  
2101 Webster Street, Suite 1300  
8 Oakland, CA 94612  
Telephone: (415) 977-5765  
9 Fax: (510) 208-3140

10 **Attorneys for Plaintiff Sierra Club**

11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION

14  
15 SIERRA CLUB, ) Civil No.  
16 Plaintiff, )  
17 v. ) **COMPLAINT FOR**  
 ) **DECLARATORY AND**  
 ) **INJUNCTIVE RELIEF**  
18 UNITED STATES DEPARTMENT OF )  
INTERIOR, )  
19 Defendant. )  
20 \_\_\_\_\_ )

21  
22  
23  
24  
25  
26  
27  
28

1 Plaintiff Sierra Club, through counsel, alleges as follows:

2 **INTRODUCTION**

3 1. Defendant U.S. Department of Interior (“DOI”) violated the Freedom of  
4 Information Act (“FOIA”), 5 U.S.C. § 552, by failing to produce documents in its possession  
5 following lawful requests by Sierra Club.

6 2. Sierra Club, the nation’s oldest grassroots environmental organization and a strong  
7 supporter and proponent of clean energy sources, sought to further its long-standing interest in  
8 government accountability and transparency by filing FOIA requests with DOI on September 22,  
9 2017 for documents showing communications between DOI officials and external parties.

10 3. FOIA required DOI to make determinations on Sierra Club’s requests on or about  
11 October 23, 2017, and to produce responsive documents shortly thereafter. DOI ignored the  
12 deadlines required by FOIA and still has not made determinations on Sierra Club’s request, nor  
13 produced any documents, as FOIA required it to do. In doing so, DOI has violated the law.

14 4. Sierra Club brings this lawsuit to hold DOI accountable, and to respectfully request  
15 that the Court order DOI to produce the external communications requested.

16 5. In the first year of DOI Secretary Ryan Zinke’s tenure, the agency has  
17 recommended slashing the size of national monuments, opening vast swaths of the coastline to  
18 drilling, and cutting protections for endangered species to make way for private development on  
19 public lands. These activities are of significant public interest and concern, making timely  
20 disclosure imperative here. Because key DOI staff involved in agency decisionmaking appear to  
21 have strong industry ties, it is critical that the public be able to understand how the agency was  
22 influenced in these matters.

23 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

24 6. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and  
25 28 U.S.C. § 1331.

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

28

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

3 **PARTIES**

4 9. Plaintiff Sierra Club is incorporated in the State of California as a Nonprofit Public  
5 Benefit Corporation with headquarters in Oakland, California. Sierra Club is the nation’s oldest  
6 environmental grassroots organization and has more than 828,000 members nationwide. Sierra  
7 Club is dedicated to protecting and preserving the natural and human environment, and its purpose  
8 is to explore, enjoy, and protect the wild places of the earth; to practice and promote the  
9 responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to  
10 protect and restore the quality of the natural and human environments. Sierra Club is a leading  
11 non-governmental organization seeking to educate and mobilize the public on issues related to our  
12 public lands. In support of those efforts and to further Sierra Club’s long-standing interest in  
13 government accountability and transparency, Sierra Club submitted to DOI the FOIA requests at  
14 issue in this case.

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

19 11. Defendant DOI is an agency of the executive branch of the United States  
20 government within the meaning of 5 U.S.C. § 551(1). It has in its possession and control the  
21 records sought by Sierra Club and is therefore subject to FOIA under 5 U.S.C. § 552(f).

22 **STATUTORY FRAMEWORK**

23 12. FOIA requires that federal agencies promptly release, upon request by a member of  
24 the public, documents and records within the possession of the agency, unless a statutory  
25 exemption applies. 5 U.S.C. § 552(a)-(b).

26 13. Within twenty business days of an agency’s receipt of a FOIA request, the  
27 agency must “determine . . . whether to comply” with the request. 5 U.S.C. §  
28 552(a)(6)(A)(i). The agency must “immediately notify” the requester of “such

1 determination and the reasons therefor.” *Id.* If an agency determines that it will comply  
2 with the request, it must “promptly” release responsive, non-exempt records to the  
3 requester. 5 U.S.C. § 552(a)(6)(C)(i).

4 14. If the agency fails to comply with the statutory time limits, the requester is deemed  
5 to have exhausted her administrative remedies. *Id.* District courts may enjoin an agency from  
6 withholding agency records and “order the production of any agency records improperly  
7 withheld.” 5 U.S.C. § 552(a)(4)(B).

8 **STATEMENT OF FACTS**

9 Industry Influence at the Department of the Interior

10  
11 15. In recent months, the public has watched closely as DOI has elevated private  
12 industry interests at the expense of protections for public lands. In the first year of Ryan Zinke’s  
13 tenure as Secretary of the Interior, Secretary Zinke and his staff have taken numerous actions that  
14 privilege private development over public lands and public health. For example, DOI (i) opened  
15 nearly all of the U.S. coastline to offshore drilling; (ii) delayed the implementation of a rule  
16 designed to curb the release of methane, a potent greenhouse gas; (iii) overturned a moratorium on  
17 new leases for coal mining on federal land; (iii) recommended dramatic reductions in the size of  
18 national monuments such as Bears Ears and Grand Staircase-Escalante in Utah; and (iv) proposed  
19 an overhaul of a comprehensive plan to protect the greater sage grouse so that much of the bird’s  
20 habitat will be open to resource extraction.

21 16. Public attention has also focused on DOI in light of the recent resignation of the  
22 majority of the members of the National Parks Service advisory panel, who cited concerns over  
23 the direction of policymaking at DOI. DOI’s motivations in making policy decisions are, in short,  
24 of intense public interest.

25 17. The links between industry and DOI’s current staff are well documented. As a  
26 congressional representative, Secretary Zinke was a champion of the leasing of public lands for  
27 mineral extraction. In his current role, he appears to be interacting with fossil fuel interests in the  
28 course of his official duties; as just one example, his twelve-thousand-dollar charter flight on a

1 plane owned by oil and gas executives is now the subject of an investigation by DOI's inspector  
2 general.

3 18. Deputy Secretary of the Interior David Bernhardt previously worked at DOI under  
4 George W. Bush; while he was there, connections between DOI and industry were widely  
5 reported. After his previous DOI tenure, Deputy Secretary Bernhardt worked as a lobbyist on  
6 behalf of fossil fuel energy and mining companies.

7 19. Associate Deputy Secretary of the Interior James Cason also previously served at  
8 DOI under the Reagan and George W. Bush administrations. His positions outside government  
9 have been with industry trade groups and energy interests. He is now reported to be heading a  
10 task force that will cut back regulatory protections for public lands and the environment, and is  
11 reported to be leading an effort to reassign dozens of top career officials, including scientists  
12 working on climate change issues, in DOI.

13 20. Principal Deputy Assistant Secretary for Policy, Management and Budget Scott  
14 Cameron also worked as a lobbyist on behalf of fossil fuel interests in the years prior to joining  
15 DOI.

16 21. Assistant Secretary for Policy, Management, and Budget nominee Susan Combs  
17 also has a history of industry connections, having held positions, among others, at the Texas  
18 Public Policy Foundation, which has received funding from the oil and gas industry.

19 22. Acting Deputy Director of the Bureau of Land Management Kathleen Benedetto  
20 co-founded the Women's Mining Coalition, which promotes the mining industry. She has made  
21 public statements in support of weakening environmental regulations, including statements  
22 discounting the need to protect endangered species and treating extinction as a natural process.

23 Sierra Club Requests for DOI External Communications

24 23. Because of the widespread concern that DOI decisionmaking is unduly influenced  
25 by industry representatives motivated by private interests rather than the best interests of the  
26 public, Sierra Club—a strong supporter of public lands and the transition from fossil fuels to clean  
27 energy—submitted FOIA requests to DOI on September 22, 2017, requesting the following, for  
28

1 the period January 23, 2017 through the date of the agency's search for responsive records, for a  
2 defined set of DOI Personnel:

- 3 1. All emails, text messages, faxes, voice mails, and other form of communications from, or  
4 to, the DOI Personnel with any person outside of DOI, as well as any phone logs or other  
5 indices which memorialize communications with such persons.
- 6 2. All calendars, whether electronic or in paper format, of the DOI Personnel for the above  
7 listed time period.
- 8 3. All sign-in sheets or other records memorializing attendance at any meetings with the DOI  
9 Personnel for the above-listed time period at which a person outside of DOI was in  
10 attendance.
- 11 4. All emails, faxes, voicemails, text messages or other forms of communication that have  
12 been deleted that fit the above specifications and have been deleted, but remain recoverable  
13 in any way.

14 *See Exhibits A and B.*

15 24. The DOI Personnel covered by the September 22 requests are Secretary of the  
16 Interior Ryan Zinke, Deputy Secretary of the Interior David Bernhardt, Associate Deputy  
17 Secretary of the Interior James Cason, Principal Deputy Assistant Secretary for Policy,  
18 Management and Budget Scott Cameron, Assistant Secretary for Policy, Management, and Budget  
19 nominee Susan Combs, and Acting Deputy Director of the Bureau of Land Management Kathleen  
20 Benedetto.

21 25. The September 22 requests were grouped according to the internal divisions within  
22 DOI, each of which has a different FOIA officer. The requests for Zinke, Bernhardt, Cason,  
23 Cameron, and Combs were grouped together and sent to the same FOIA officer (*see Exhibit A*),  
24 while the request for Benedetto (*Exhibit B*) went to a different FOIA officer.

25 26. The September 22 requests set forth certain definitions and exclusions. They  
26 defined the term "person outside of DOI" to mean "any person who is **not** an employee within the  
27 DOI," and stated: "We are **not** seeking communications to or from persons employed elsewhere  
28 within the Executive or Legislative Branches of the United States; persons employed by the  
executive branch of any state (*i.e.*, state agencies); or persons who have an executed contract to

1 provide consulting or other services to DOI. You may also specifically exclude from processing  
2 and release any records that are publicly available (*e.g.*, through regulations.gov).

3 27. The requests also excluded any materials provided in response to certain of Sierra  
4 Club's prior FOIA requests.

5 28. Sierra Club submitted the September 22 requests as part of its ongoing national  
6 effort to protect our public lands and promote the transition from fossil fuels to clean energy  
7 sources.

8 29. FOIA required DOI to make a final determination upon Sierra Club's request  
9 within twenty working days of the request, which was on or about October 23, 2017, and to  
10 produce documents responsive to the request immediately thereafter. *See* 5 U.S.C. §  
11 552(a)(6)(A)(i).

12 30. DOI provided an initial acknowledgment of Sierra Club's September 22 FOIA  
13 requests on October 6 (Zinke, Bernhardt, Cason, Cameron, Combs), and December 14  
14 (Benedetto), and assigned the requests tracking numbers OS-2017-01308 and 2018-00292,  
15 respectively.

16 31. In its October 6 acknowledgment as to Zinke, Bernhardt, Cason, Cameron, and  
17 Combs, DOI stated that it was considering the request and that Sierra Club could "expect to hear  
18 from us promptly regarding the outcome of this search." Counsel for Sierra Club followed up by  
19 email on November 28, 2017, asking for a status update. Sierra Club has received no response,  
20 and DOI has yet to produce any responsive documents.

21 32. After sending its request related to Benedetto on September 22, 2017, Sierra Club  
22 had no response, and followed up by email on November 28. On December 14, DOI responded  
23 by email acknowledging the request, stating that it had been classified as "exceptional" and would  
24 require more than 60 days for processing. DOI did not provide any further information about  
25 whether documents would be produced, and when. Counsel for Sierra Club followed up by email  
26 on January 16, 2018, but DOI's response addressed only Sierra Club's request for a fee waiver and  
27 did not state when or whether documents would be produced. DOI has yet to make a final  
28 determination on the FOIA response or to produce any responsive documents.

1 33. DOI's failure to make a final determination in response to Sierra Club's request, or  
2 produce documents to the Sierra Club in response to its request, by the October 2017 deadline, is  
3 unlawful under FOIA.

4 34. DOI's recent activities are of significant public interest and concern, making timely  
5 disclosure imperative here. In light of the many recent DOI decisions that appear to privilege  
6 resource extraction and other narrow interests over that of the public as whole, it is critical that the  
7 public be able to understand how the agency was influenced in these matters.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF FOIA, 5 U.S.C. § 552**

10 35. Plaintiff re-alleges and incorporates by reference all the foregoing paragraphs in  
11 this Complaint as though fully set forth herein.

12 36. Upon its records requests to DOI dated September 22, 2017, Sierra Club became  
13 statutorily entitled under FOIA to receive from DOE all records responsive to its request not  
14 specifically exempted by FOIA.

15 37. At a minimum, FOIA required DOI to provide Sierra Club with a final  
16 determination upon Sierra Club's requests on or about October 23, 2017, and to produce records  
17 responsive to the requests immediately thereafter.

18 38. DOI has failed to provide Sierra Club with a final determination upon Sierra  
19 Club's requests, and is thus in violation of FOIA.

20 39. DOI has failed to produce to Sierra Club any documents responsive to Sierra  
21 Club's requests, and is thus in violation of FOIA.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Sierra Club respectfully requests that this Court enter judgment against  
24 DOI as follows:

25 1. Declaring that DOI has violated FOIA by failing to make a final determination  
26 upon Sierra Club's FOIA requests and by failing to produce non-exempt records responsive to  
27 Sierra Club's FOIA requests by the statutory deadlines;

28 2. Ordering that DOI immediately produce the requested records to Sierra Club;



1           3.       Retaining jurisdiction over this matter to rule on any assertions by DOI that certain  
2 records are exempt from disclosure;

3           4.       Ordering DOI to produce an index identifying any documents or parts thereof that  
4 it withholds and the basis for the withholdings, in the event that DOI determines that certain  
5 records are exempt from disclosure;

6           5.       Awarding Sierra Club its costs and reasonable attorneys' fees; and

7           6.       Granting such other and further relief as the Court deems just and proper.

8  
9 Dated: February 6, 2018

By:

10  
11   /s/ Ellen Medlin Richmond

12   MARTIN D. BERN (SBN 153203)  
13   martin.bern@mto.com  
14   ELLEN MEDLIN RICHMOND (SBN  
15   277266)  
16   ellen.richmond@mto.com  
17   MUNGER, TOLLES & OLSON LLP  
18   560 Mission St., 27th Floor  
19   San Francisco, CA 94705  
20   Telephone: (415) 512-4000  
21   Fax: (415) 512-4077

22   ELENA SAXONHOUSE (SBN 235139)  
23   elena.saxonhouse@sierraclub.org  
24   SIERRA CLUB ENVIRONMENTAL LAW  
25   PROGRAM  
26   2101 Webster Street, Suite 1300  
27   Oakland, CA 94612  
28   Telephone: (415) 977-5765  
   Fax: (510) 208-3140

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

Attachment to Civil Cover Sheet

Martin D. Bern, Esq.  
Ellen Medlin Richmond, Esq.  
Munger, Tolles & Olson LLP  
560 Mission Street, 27th Floor  
San Francisco, CA 94105  
Telephone: (415) 512-4000

Elena Saxonhouse  
Sierra Club Environmental Law Program  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
Telephone: (415) 977-5765