

IN THE UNITED STATES DISTRICT COURT
for the
DISTRICT OF COLORADO

WESTERN ENERGY ALLIANCE, a Colorado, non-profit organization,

Plaintiff

v.

BUREAU OF LAND MANAGEMENT, a federal agency within the United States
Department of the Interior,

Defendant.

Case No. _____

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COMPLAINT

COMES NOW, Plaintiff, WESTERN ENERGY ALLIANCE (“Western Energy”), by and through its attorneys, Holsinger Law, LLC and for its Complaint against the BUREAU OF LAND MANAGEMENT (“BLM”) alleges as follows:

I. INTRODUCTION

1. Pursuant to the Freedom of Information Act, codified at 5 U.S.C. § 552 (as amended) (“FOIA”), Western Energy requested specific information from the BLM in a letter dated May 2, 2013 (“FOIA Request”). As of the date of this Complaint, the BLM has failed to adhere to FOIA’s requirements with respect to the FOIA Request.

2. This Complaint seeks, inter alia, an Order of the Court declaring that the BLM violated and continues to violate FOIA by failing to make a determination with respect to the FOIA Request, enjoining the BLM from illegally withholding information responsive to the Request, and compelling the BLM to release such information forthwith.

II. PARTIES

3. The Plaintiff, Western Energy, is a non-profit, regional trade organization formed under the laws of the State of Colorado. Western Energy’s headquarters are located at 410 17th Street, #700, Denver, Colorado 80202.

4. Western Energy represents more than 400 companies engaged in all aspects of environmentally responsible exploration and production of oil and

natural gas in the West. Western Energy brings this action on behalf of itself and its adversely affected members.

5. Many of Western Energy's members operate on federal lands and are therefore substantially and materially impacted by agency decisions relating to the use and regulation of such land.

6. Western Energy will make the information obtained from its FOIA Request available to its members and the general public and does not seek this information for commercial use.

7. The Defendant, the BLM, is a federal agency within the U.S. Department of the Interior. As a federal agency, the BLM is responsible for responding to FOIA requests submitted to it.

8. The FOIA Request was properly directed to the BLM because the BLM had (and has) possession and control over the information sought in the FOIA Request.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question).

10. Venue in this Court is proper under 5 U.S.C. § 552(a)(4)(B) as Western Energy's principal place of business is in Colorado.

11. Western Energy's administrative remedies have been constructively exhausted due to the BLM's failure to respond to the FOIA Request within the statutorily prescribed time period. 5 U.S.C. § 552(a)(6)(C).

12. Western Energy has standing to bring this case because it is injured by the BLM's failure to adhere to the requirements of FOIA with respect to its FOIA Request; the BLM caused Western Energy's injury because it is responsible for failing to adhere to FOIA; and the relief requested herein can redress Western Energy's injury.

IV. GENERAL ALLEGATIONS

13. On May 2, 2013, Western Energy properly submitted its FOIA Request to the BLM. A copy of Western Energy's FOIA Request is attached hereto as EXHIBIT A.

14. The FOIA Request was submitted on behalf of Western Energy by Ms. Kathleen Sgamma, Vice President of Government and Public Affairs for Western Energy.

15. The FOIA Request sought information regarding how peer review was conducted on a report entitled "A Report on National Greater Sage-Grouse Measures" produced by the Sage-Grouse National Technical Team, dated December 21, 2011 ("NTT Report").

16. The NTT Report is a highly influential report synthesizing extensive research on sage-grouse conservation assembled by a team of experts that was, and

is, heavily relied upon by federal agencies in their decision-making with respect to the sage-grouse.

17. The BLM relies heavily on the NTT report in implementing land use amendments to incorporate new management prescriptions on approximately 47 million acres of sage-grouse habitat in ten western states.

18. Accordingly, Western Energy has an interest in how the NTT report was created, including how peer review was conducted, and will use such information to inform its members and the general public about the management of public lands.

19. The information requested by Western Energy in its FOIA Request has never been made available to the public.

20. On May 6, 2013, the BLM acknowledged that it received the FOIA Request (“Notice of Receipt”). A copy of the BLM’s Notice of Receipt is attached hereto as EXHIBIT B.

21. Within the Notice of Receipt, the BLM indicated that it required additional information in order to process the FOIA Request; specifically, the BLM requested that Western Energy identify “the timeframe for which [it is] seeking records.” Notice of Receipt, 2.

22. On May 22, 2013, Western Energy timely responded to the BLM’s request by clarifying that it was seeking records between the dates of “January 10,

23. On July 30, 2013, when the BLM failed to timely and meaningfully respond, Western Energy submitted a request to the BLM pursuant to the Data Quality Act, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153-154 (2000) (“DQA”) (“DQA Request”). A copy of the DQA Request is attached hereto as EXHIBIT D.

24. The DQA Request sought to rectify informational deficiencies also regarding how peer review was conducted on the NTT Report. DQA Request, 5 – 6.

25. On August 13, 2013, the BLM responded to the DQA Request indicating that “part of [Western Energy’s] request is appropriate for FOIA processing. As a courtesy, [the BLM] requested new FOIA cases accordingly....” (“Notice of FOIA Processing”). A copy of the BLM’s Notice of FOIA Processing is attached hereto as EXHIBIT E.

26. As of the date of this Complaint, Western Energy has received no further communication, written, electronic, or otherwise, from the BLM regarding its FOIA Request or its DQA Request.

27. Pursuant to FOIA, a federal agency is required to

determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) 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, and of the right of such person to appeal to the head of the agency any adverse determination.

5 U.S.C. § 552(a)(6)(C).

28. Pursuant to 5 U.S.C. § 552(a)(6)(C), the BLM's mandatory determination deadline to the FOIA Request could possibly be calculated in a number of ways:

a. If the date of submission of the FOIA Request began the twenty (20) day period, then the mandatory determination and response deadline was on or about May 30, 2013;

b. If the date of the BLM's Notice of Receipt began the twenty (20) day period, then the mandatory determination and response deadline was on or about June 3, 2013;

c. If the date of the receipt of Western Energy's Clarification Letter began the twenty (20) day period, then the mandatory determination and response deadline was on or about June 19, 2013;

d. If Western Energy's DQA Request restarted the twenty (20) day period, then the mandatory determination and response deadline was on or about August 27, 2013; or

e. If the BLM's Notice of FOIA Processing restarted the twenty (20) day period, then the mandatory determination and response deadline was on or about September 10, 2013.

29. Thus, regardless of the method used to calculate the BLM's mandatory determination and response deadline, the BLM has failed to timely make such

determination and respond to the FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C).

30. As of the date of this Complaint, the BLM has made no request for extension, assertion of unusual circumstances, or claim that that the information requested by the FOIA Request is exempt from release or subject to withholding for any other reason.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of FOIA for Failing Make Timely Determination

31. The allegations of paragraphs 1 – 30 are incorporated by references as though fully set forth herein.

32. The FOIA Request is lawful and complete.

33. The BLM has violated FOIA by failing to meet its mandatory determination and response deadline pursuant to 5 U.S.C. § 552(a)(6)(C) with respect to the FOIA Request.

34. The BLM continues to violate FOIA by failing make a determination and respond to the FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C).

35. Western Energy is entitled to an order declaring that the BLM violated and continues to violate FOIA by failing to make a determination and respond to the FOIA Request.

SECOND CLAIM FOR RELIEF

Violation of FOIA by Illegally Withholding Agency Records

36. The allegations of paragraphs 1 – 35 are incorporated by references as though fully set forth herein.

37. The BLM has violated FOIA by illegally withholding information responsive to the FOIA Request.

38. The BLM continues to violate FOIA by illegally withholding information responsive to the FOIA Request.

39. Western Energy is entitled to an order declaring that the BLM has violated FOIA by illegally withholding information responsive to the FOIA Request, enjoining the BLM from continuing to withhold such information, and compelling the BLM to release information responsive to the FOIA Request to Western Energy forthwith.

VI. PRAYER FOR RELIEF

WHEREFORE, Western Energy prays that the Court enter the following relief on behalf of Western Energy as against the BLM:

A. A declaration that Western Energy has exhausted its administrative remedies with respect to the FOIA Request based on the BLM's failure to comply with the deadlines set forth in FOIA;

B. A declaration that the BLM violated and continues to violate FOIA by failing to make a determination and respond to the FOIA Request;

C. A declaration that the BLM violated and continues to violate FOIA by illegally withholding information that is responsive to the FOIA Request;

D. An order enjoining the BLM from illegally withholding information responsive to the FOIA Request;

E. An order compelling the BLM to produce the illegally withheld information responsive to the FOIA Request to Western Energy forthwith;

F. An order granting Western Energy their costs of litigation, including reasonable attorney fees as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and

G. Such other and further relief as the Court may deem just and equitable.

Dated October 15, 2013.

Respectfully submitted,

HOLSINGER LAW, LLC

Original on file at Holsinger Law, LLC

By: /s/ Kent Holsinger

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CERTIFICATE OF SERVICE

Pursuant to D.C.COLO.LCivR 5.1(G), I hereby certify that on October 15, 2013, I electronically filed the foregoing with the Clerk of the Court via the Electronic Case Filing System; as part the initiating filing, no parties were served thereby.

HOLSINGER LAW, LLC

By: /s/ Luci Stremme

Luci Stremme, Paralegal