

Erin Hogan-Freemole, OSB # 212850
Crag Law Center
3141 E. Burnside St.
Portland, Oregon 97214
971-417-6851
erin@crag.org

David A. Bahr OSB # 901990
Bahr Law Offices, P.C.
1035 ½ Monroe Street
Eugene, OR 97402
(541) 556-6439
davebahr@mindspring.com

Plaintiff's Counsel

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

GREATER HELLS CANYON COUNCIL, a
non-profit Oregon Corporation,

Plaintiffs

UNITED STATES DEPARTMENT OF AGRICULTURE, an Executive Department of the United States of America; and **UNITED STATES FOREST SERVICE**, an Administrative Agency of the United States Department of Agriculture,

Defendants

Case No.:

COMPLAINT

**Freedom of Information Act
(5 U.S.C. § 552)**

INTRODUCTION

1. In this action, brought pursuant to the Freedom of Information Act (“FOIA” or “the Act”), 5 U.S.C. § 552, or, in the alternative, the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, the Greater Hells Canyon Council (“the Council”) challenges the unlawful acts and omissions of the U.S. Forest Service (“Forest Service” or “the Agency”) and the U.S.

COMPL. FOR DECLARATORY & INJUNCTIVE RELIEF - 1

Department of Agriculture (“USDA”) (collectively, “Defendants”) in relation to the Council’s FOIA requests filed in 2015 and 2021.

2. As background to this Complaint, the “Forest Management Direction for Large Diameter Trees in Eastern Oregon and Southeastern Washington” (“Eastside Screens” or “Screens”) is a set of rules adopted by the Forest Service which barred logging large, old trees on six National Forests throughout eastern Oregon and Washington. The Screens generally proscribed the cutting and removal of trees measuring over 21 inches in diameter at breast height (“the 21-inch rule”). As part of its work to monitor, protect, and advocate for public lands in this area, the Council has long had an interest in the proper and lawful application of the Eastside Screens.

3. In 2015, the Council submitted a FOIA request for agency documents pertaining to the Forest Service’s implementation of, and any potential amendments to, the Eastside Screens.

4. Despite numerous inquiries from the Council, the Forest Service did not complete its response to this request for nearly six years—until April of 2021—and it withheld or redacted many of the requested documents without legally adequate explanation.

5. In July 2021, the Council timely appealed the Forest Service’s unlawful response to its 2015 request, but as of this complaint’s filing date, the agency has not made a final decision nor even substantively responded to the Council’s appeal as required by FOIA.

6. In January 2021, the Forest Service released the “Forest Plans Amendment to Forest Management Direction for Large Diameter Trees in Eastern Oregon and Southeastern Washington” (“Screens Amendment”), amending the Eastside Screens and revoking the 21-inch rule.

7. Shortly after the Screens Amendment’s release, the Council submitted two FOIA requests for Forest Service records related to the preparation and completion of the Screens Amendment Environmental Assessment (“EA”) and Decision Notice (“DN”)/Finding of No Significant Impact (“FONSI”).

8. The Council’s 2021 FOIA requests explained that it wished to publicly illuminate and understand the basis for and potential impacts of the Screens Amendment, which removed the Forest Service’s longstanding prohibition on logging large trees across more than 7 million acres of national forestlands on 6 national forests.

9. Out of over 39,000 pages of responsive records the Forest Service says it reviewed, it partially or fully redacted 226 pages and entirely withheld 22,870 pages (approximately 60% of the total pages reviewed) plus 2.47 gigabytes of raw data, shape files and data files, releasing in full only 15,874 pages (only 40% of the total pages reviewed) of records.

10. The Council timely appealed the Forest Service’s response to its 2021 requests, but as of this complaint’s filing date, the agency has neither made a final decision nor substantively responded to the Council’s appeal as required by FOIA.

11. The Defendants’ unlawful withholding of responsive records and failure to timely respond to the Council’s FOIA requests and administrative appeals violate FOIA or, in the alternative, the APA.

12. The Defendants’ failure to disclose the requested documents or respond to the Council’s appeal causes concrete and ongoing injuries to the Council, as it relies on such public records in its ongoing public outreach, education, and government “watchdog” efforts.

13. The Council seeks injunctive relief requiring the disclosure of all non-exempt portions of the requested documents and a judicial declaration that the Defendants violated FOIA or, in the alternative, the APA.

14. Should the Council prevail, it will seek an award of reasonable attorneys' fees and litigation costs pursuant to FOIA, 5 U.S.C. § 552(a)(4)(E), the Equal Access to Justice Act, 28 U.S.C. §§ 2412 *et seq.*, or other applicable authorities.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA and the APA.

16. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) which provides venue for FOIA cases in this District because the agency records in question are located in this district. Further, the Forest Service office responding to the Council's FOIA's requests is in this judicial district. For these reasons, venue is also proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and (e) because a significant portion of the events, and the people and records to which they pertain, are located in Oregon and defendants are federal agencies. Assignment in this judicial division is proper for the same reasons.

17. Declaratory relief is appropriate under 28 U.S.C. § 2201.

18. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

19. Plaintiff GREATER HELLS CANYON COUNCIL is a regional nonprofit organization based in La Grande, Oregon with approximately 1,000 members. For over 50 years, the Council's mission has been to connect, protect, and restore the wild lands, waters, native species

and habitats of the greater Hells Canyon region, ensuring a legacy of healthy ecosystems for future generations. The Council organizes groundtruthing events, monitoring programs, and volunteer opportunities in the forests which will be affected by the Screens Amendment.

20. To achieve its goals, the Council often requests information regarding federal programs and activities through FOIA. The Council uses this information to inform the public of federal actions impacting the Greater Hells Canyon area by presenting the material to its members and supporters, as well as members of other conservation organizations, through its newsletter, social media, blog, and email alerts; participating in other public forums, such as local government hearings; and encouraging its members and supporters to participate in federal decisionmaking.

21. The Council uses information obtained through FOIA requests to ensure that timber sales and other management actions on public lands comply with federal laws including the National Forest Management Act (“NFMA”), 16 U.S.C. §§ 1600–1614, the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4370h, and the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531–1544.

22. The Council and its staff, members, and supporters have been actively involved in commenting on, objecting to, and in some instances, litigating Forest Service projects throughout the areas which will be affected by the Screens Amendment, for which the Council provided detailed comments.

23. The Defendants’ continuing failure to properly disclose the requested records or respond to the Council’s appeal harms the Council’s ability to obtain and use public information in its ongoing public outreach, environmental education, and government “watchdog” efforts.

24. The Council and its staff, members, and supporters are thus directly injured by the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.