

1 SUNIL BECTOR (California Bar. No. 275127)
2 SIERRA CLUB ENVIRONMENTAL LAW PROGRAM
85 Second Street, 2nd Floor
3 San Francisco, CA 94105
(415) 977-5759
4 (415) 977-5793 (facsimile)
5 sunil.bector@sierraclub.org

6 DOUG HAYES (Colorado Bar No. 39216)
7 SIERRA CLUB ENVIRONMENTAL LAW PROGRAM
1650 38th Street, Suite 102W
8 Boulder, CO 80301
(303) 449-5595
9 (303) 449-6520 (facsimile)
doug.hayes@sierraclub.org
10 (application for admission *pro hac vice* pending)

11 *Attorneys for Plaintiff Sierra Club*

12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 **SIERRA CLUB**

16 Plaintiff,

17 vs.

18 **UNITED STATES ARMY CORPS OF**
19 **ENGINEERS; Lieutenant General Thomas P.**
20 **Bostick**, in his official capacity as Commanding
21 General and Chief of Engineers of the U.S. Army
Corps of Engineers,

22 Defendants.

Case No. 3:14-cv-00538

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Freedom of Information Act
Administrative Procedure Act

23
24 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

25 **INTRODUCTION**

26
27 1. This case challenges the U.S. Army Corps of Engineers' (the "Corps") failure to
28 provide critical information to the public regarding the Corps' evaluation of TransCanada's

1 proposed Keystone XL tar sands pipeline pursuant to the Freedom of Information Act
2 (“FOIA”), 5 U.S.C. § 552.

3 2. If fully built, the proposed pipeline would transport at least 830,000 barrels per
4 day of tar sands crude oil from Alberta, Canada, crossing the U.S.-Canadian border in
5 Montana, heading south through South Dakota, and connecting to the existing Keystone
6 pipeline system in Nebraska.

7
8 3. The Keystone XL pipeline requires authorization by the Corps under Section 404
9 of the Clean Water Act (the “CWA”) due to hundreds, if not thousands, of waterways that
10 must be dredged and/or filled along the pipeline route. TransCanada, the project proponent,
11 has submitted preconstruction notifications (“PCNs”) to the Corps, which contain detailed
12 maps and tables describing the pipeline’s path in relation to communities and sensitive water
13 resources, its route across each water crossing, the size and type of wetlands and streams
14 affected, the method of construction, and additional information about the type and amount
15 of wetlands and forested areas that will be lost as a result of pipeline construction.

16
17 4. TransCanada’s PCNs may also indicate whether Keystone XL may proceed under
18 Nationwide Permit 12, a nationwide 404 permit authorizing utility projects that would result
19 in less than 1/2-acre of loss of waters of the United States.

20
21 5. Plaintiff Sierra Club has thrice requested the PCNs that TransCanada submitted to
22 the Corps. Sierra Club has members that live near, recreate, and/or otherwise use areas that
23 will be affected by the Keystone XL pipeline, and the PCNs are crucial for a full
24 understanding of the pipeline’s impacts and areas threatened by a tar sands oil spill.

25
26 6. The Corps denied Sierra Club’s FOIA request by claiming the “deliberative
27 process” privilege contained in FOIA’s Exemption 5. The “deliberative process” privilege,
28

1 however, does not apply to documents submitted to the Corps by private parties, such as the
2 PCNs that TransCanada submitted to the Corps.

3 7. Sierra Club appealed the Corps' decision, and the Corps has failed to rule on the
4 appeal within the statutory time period.

5 8. The Corps, as well as the U.S. Department of State and other federal agencies, is
6 evaluating the Keystone XL pipeline and is expected to issue a decision within the next
7 several months.

8 9. Without other recourse, Sierra Club now files this complaint to compel the Corps
9 to disclose immediately all documents responsive to Sierra Club's FOIA request.
10

11 **JURISDICTION AND VENUE**

12 10. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) ("FOIA"); 28
13 U.S.C. § 1331 (questions of federal law); 5 U.S.C. §§ 701-06 ("APA"), and 28 U.S.C. §§
14 2201-2202 (power to issue declaratory judgments in cases of actual controversy, and to issue
15 further relief based on such judgments).
16

17 11. Venue is proper in this judicial district and in this Court pursuant to 28 U.S.C.
18 §1391(e)(1)(C) and 5 U.S.C. § 552(a)(4)(B) because Defendant U.S. Army Corps of
19 Engineers is an agency of the United States, and Plaintiff Sierra Club is headquartered,
20 conducts its principal business, and resides in San Francisco, CA.
21

22 12. Intradistrict Assignment. Pursuant to Civil Local Rule 3-2(c), assignment to the
23 San Francisco Division is appropriate because Plaintiff Sierra Club is incorporated in
24 California and resides and maintains its headquarters in San Francisco County.
25
26
27
28

PARTIES

Plaintiff

1
2
3 13. Plaintiff Sierra Club, dedicated to the protection and preservation of the
4 environment, is the nation’s oldest grassroots organization. Since its founding in 1892, Sierra
5 Club has pursued its mission to enjoy, explore, and protect the planet.
6

7 14. Plaintiff Sierra Club has over 600,000 members nationwide, including over 2,000
8 members in Montana, over 900 members in South Dakota, and over 2,000 members in
9 Nebraska. Many of these members live in communities adjacent to the pipeline and/or own
10 property that would be directly and/or indirectly affected by the construction and operation of
11 the pipeline.
12

13 15. One of Sierra Club’s main national initiatives, the Beyond Oil Campaign, tackles
14 the pressing problems of global warming, air pollution, water pollution, and our national
15 dependence on non-renewable energy sources such as oil. A central goal of this initiative is
16 decreasing the destructive impact of tar sands extraction and refining, educating the public on
17 foreign and domestic tar sands projects, and ensuring that government decisions relating to
18 energy development and infrastructure projects are carried out in a transparent manner.
19

20 16. Plaintiff Sierra Club is also concerned with the grave environmental and public
21 safety impacts of oil pipeline spills, and works to improve pipeline safety, hold pipeline
22 operators accountable for oil spills, and ensure that the risks of oil spills are fully analyzed
23 before pipelines are built.
24

Defendant

25
26 17. Defendant United States Army Corps of Engineers (the “Corps”) is the federal
27 agency charged with administering permits under Section 404 of the CWA for discharge of
28

1 dredged or fill material into waters of the United States. The Corps is headquartered in
2 Washington, D.C.

3 **STATUTORY AND REGULATORY BACKGROUND**

4 **The Freedom of Information Act**

5
6 18. The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.*, is designed to
7 provide the public with the information it needs to engage meaningfully with government
8 decision making. It sets a basic policy of full agency disclosure.

9
10 19. President Obama has ordered that FOIA “be administered with a clear
11 presumption: In the face of doubt, openness prevails.” Mem. for the Heads of Exec. Dep’ts &
12 Agencies, 74 Fed. Reg. 4,683 (Jan. 21, 2009). The President ordered that all agencies “should
13 take affirmative steps to make information public.” *Id.*

14
15 20. The Corps’ FOIA regulations state that “[t]he public has a right to information
16 concerning the activities of its Government. Army policy is to conduct its activities in an
17 open manner and provide the public with a maximum amount of accurate and timely
18 information concerning its activities, consistent always with the legitimate public and private
19 interests of the American people.” 32 C.F.R. § 518.6(a).

20
21 21. FOIA requires records to be made “promptly available” upon request. 5 U.S.C. §
22 552(a)(3)(A)(ii). FOIA requires agencies to process requests with due diligence at all times.
Id. at § 552(a)(6)(D)(iii).

23
24 22. The Corps is required to respond to FOIA requests within twenty working days.
25 *Id.* at § 552(a)(6)(A); 32 C.F.R. § 518.8(d)(2)(vi).

26
27 23. FOIA contains nine categories of documents that agencies are not required to
28 release to the public. 5 U.S.C. § 552(b). If an agency claims that requested documents fall

1 under one of the exemptions, FOIA allows requestors to appeal that decision to the agency.
2 *Id. at* § 552(a)(6)(A). The Corps must make “a determination with respect to any appeal
3 within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the
4 receipt of such appeal.” *Id. at* § 552(a)(6)(A)(ii); see also 32 C.F.R. § 518.8(d)(2)(vi).

5
6 24. The twenty day period within which the Corps must make a determination on an
7 appeal “shall commence on the date on which the request is first received by the appropriate
8 component of the agency, but in any event not later than ten days after the request is first
9 received by any component of the agency that is designated in the agency's regulations under
10 this section to receive requests under this section.” 5 U.S.C. § 552(a)(6)(A)(ii).

11
12 25. A person submitting a FOIA request “shall be deemed to have exhausted his
13 administrative remedies with respect to such request if the agency fails to comply with the
14 applicable time limit provisions” contained in FOIA. *Id. at* § 552(a)(6)(c)(i).

15 **The Administrative Procedure Act**

16 26. The Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, provides for
17 judicial review of agency actions such as those at issue here. A reviewing court shall hold
18 unlawful and set aside any agency actions found to be arbitrary, capricious, an abuse of
19 discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

20 **The Clean Water Act**

21
22 27. The CWA was enacted by Congress in 1972 to “restore and maintain the
23 chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To
24 achieve this goal, § 404 of the CWA prohibits the discharge of any pollutant, including
25 dredged spoil or other fill material, into navigable waters unless authorized by a permit. 33
26 U.S.C. § 1344.
27
28

1 28. Section 404 of the CWA gives the Corps primary responsibility for permitting
2 construction activities that involve dredge and fill of U.S. waters. *Id.* The Corps oversees the
3 § 404 permit process and must comply with guidelines promulgated by the U.S.
4 Environmental Protection Agency (“EPA”), which are incorporated into the Corps’ own
5 regulations. *Id.* at § 1344(b)(1); 33 C.F.R. §§ 320.4(b)(4), 325.2(a)(6). The guidelines
6 provide that no discharge of dredged or fill material shall be permitted for an individual
7 project: (1) if there is a practicable alternative to the proposed discharge; (2) if the discharge
8 causes or contributes to violations of applicable state water quality standards; (3) if the
9 discharge will cause or contribute to significant degradation of the environment; and (4)
10 unless all appropriate steps have been taken to minimize potential adverse impacts. 40 C.F.R.
11 § 230.10.

12
13
14 29. Public participation plays an important role in CWA permitting decisions. The
15 CWA provides in its general policy section that “[p]ublic participation in the development . .
16 . of any . . . program established by the Administrator. . . under this chapter shall be provided
17 for, encouraged, and assisted by the Administrator . . .” 33 U.S.C. § 1251(e). The Corps is
18 required to provide “notice and opportunity for public hearings” before issuing § 404
19 permits. 33 U.S.C. § 1344(a).

20
21 30. An alternative to the individual permit process is the nationwide permit (“NWP”)
22 program. Section 404(e) allows the Corps to, “after notice and opportunity for public hearing,
23 issue general permits on a State, regional, or nationwide basis for any category of activities
24 involving discharges of dredged or fill material if the Secretary determines that the activities
25 in such category are similar in nature, will cause only minimal adverse environmental effects
26
27
28

1 when performed separately, and will have only minimal cumulative adverse effect on the
2 environment.” 33 U.S.C. § 1344(e)(1).

3 31. Projects authorized by NWPs do not need individual § 404 permits and ordinarily
4 do not undergo the more comprehensive and transparent site-specific environmental and
5 public interest review that individual § 404 permits require. 33 C.F.R. § 323.3(a).

6 32. The Corps issued NWPs for fifty-two categories of activities on February 21,
7 2012. 77 Fed. Reg. 10,184 (Feb. 21, 2012). One of those is Nationwide Permit 12 (“NWP
8 12”), which authorizes “[a]ctivities required for the construction, maintenance, repair, and
9 removal of utility lines and associated facilities [including oil pipelines] in waters of the
10 United States, provided the activity does not result in the loss of greater than 1/2-acre of
11 waters of the United States for each single and complete project.” *Id.* at 10,271.

12 33. NWP 12 allows linear utility projects to use NWP 12 separately for each
13 individual water crossing. There is no limit to the number of times a single linear utility line
14 can use NWP 12, nor is there a limit to the number of acres of U.S. waters that can be lost as
15 a result of the utility project.

16 34. NWP 12 requires a permittee to submit a preconstruction notification (“PCN”) to
17 the Corps district engineer before commencing the activity if the project meets any one of
18 seven criterion. *Id.* at 10,272. For example, a PCN is required if the activity involves
19 mechanized land clearing in a forested wetland, or if the activity would result in the loss of
20 greater than 1/10-acre of waters of the United States. *Id.* (NWP 12 also incorporates the PCN
21 requirements contained in general condition 31). If none of the seven criteria are met, a
22 project proponent may commence with the activity under NWP 12 without notifying the
23 Corps or the public.

1 **FACTUAL BACKGROUND**

2 **The Proposed Keystone XL Pipeline**

3 35. In 2008, TransCanada Keystone Pipeline, LP (“TransCanada”) first applied for a
4 Presidential Permit for its proposed Keystone XL pipeline project (“Keystone XL”). The
5 Department of State (“DOS”) reviews applications for Presidential Permits pursuant to
6 Executive Order 13337 based on whether a project “would serve the national interest.” The
7 originally proposed Keystone XL was designed to transport 830,000 barrels per day of tar
8 sands crude oil from Alberta to the Texas Gulf Coast.
9

10 36. The original Keystone XL application was denied by DOS in 2012 after which
11 TransCanada divided the project into two separate parts and reapplied for a Presidential
12 Permit for the northern segment on May 4, 2012. Thus, as proposed, the current iteration of
13 the Keystone XL pipeline would transport 830,000 barrels of oil per day between Alberta and
14 Steele City, Nebraska where it would connect with the existing Keystone pipeline system.
15

16 37. The DOS is currently engaged in the process of evaluating the impacts of the
17 proposed Keystone XL pipeline under NEPA, and the Corps is participating in that NEPA
18 process as a coordinating agency.
19

20 38. The Corps’ District Office in Omaha, Nebraska, is responsible for evaluating the
21 Keystone XL pipeline.

22 39. TransCanada has submitted draft and/or final PCNs for Keystone XL to the
23 Corps’ Omaha District Office, seeking verification of the pipeline under NWP 12.
24

25 40. The PCNs contain important and detailed information about the pipeline,
26 including the pipeline route and the waterways and forested areas that would be affected. The
27
28

1 Corps has refused to share this information with Sierra Club or otherwise make it available to
2 the public.

3 **Sierra Club's Freedom of Information Act Requests**

4 41. On March 18, 2013, Sierra Club submitted a FOIA request to the Corps seeking
5 documents that would provide a better understanding of the environmental impacts of the
6 proposed Keystone XL pipeline. Specifically, Sierra Club requested the following:
7

8 All PCNs and preliminary PCNs submitted by TransCanada for the Keystone XL
9 Pipeline as proposed by TransCanada's Presidential Permit application, submitted to
10 the U.S. Department of State¹ on May 4, 2012, including any PCNs submitted after
11 the date of this request.
12

13 42. Sierra Club requested these records in order to determine whether NWP 12
14 applies to the proposed Keystone XL pipeline, and to understand Keystone XL's potential
15 impacts to waterways.

16 43. On April 10, 2013, the Corps notified Sierra Club that two preliminary PCNs, one
17 for South Dakota and one for Nebraska, had been withheld under FOIA Exemption 5, which
18 provides for withholding the release of "inter-agency or intra-agency memorandums or
19 letters which would not be available by law to a party other than an agency in litigation with
20 the agency." 5 U.S.C. § 552(b)(5). Specifically, the Corps stated that the requested
21 documents were withheld under the deliberative process privilege of Exemption 5.
22

23 44. On June 7, 2013, Sierra Club submitted an appeal of Defendant's decision,
24 arguing that the deliberative process privilege of Exemption 5 only applies to inter-agency or
25

26
27 ¹ The Sierra Club's FOIA request mentioned the Department of State because, at the time, it was
28 unclear whether TransCanada had submitted the PCNs to the Department of State (as the lead
agency) or the Corps. However, the Corps' response of April 10, 2013 makes clear that the
Corps had received the PCNs and that there was no confusion as to Sierra Club's FOIA request.

1 intra-agency deliberative documents, but does not apply to documents such as PCNs that
2 were prepared by an outside party and submitted to an agency, as is the case here.

3 45. Sierra Club has not received a response from Defendant regarding either its
4 receipt of Plaintiff's appeal or a decision on the merits of the appeal.

5 46. On December 23, 2013, Sierra Club submitted a letter to Defendant reinforcing its
6 request for documents and its appeal. Again, Defendant never responded to this letter.

7 47. At the time of this filing, 165 business days have passed since Plaintiff's original
8 appeal. The Corps has not responded to Sierra Club's appeal and has thus missed its deadline
9 pursuant to 5 U.S.C. § 552(a)(6)(A)(ii) and 32 C.F.R. § 518.8(d)(2)(vi).
10

11
12 **CLAIMS FOR RELIEF**

13 **COUNT I**

14 **VIOLATION OF THE FREEDOM OF INFORMATION ACT—CONSTRUCTIVE
15 DENIAL/ UNLAWFUL WITHHOLDING**

16 48. Plaintiff realleges, as if fully set forth herein, each and every allegation contained
17 in the preceding paragraphs.

18 49. In response to Plaintiff's FOIA request and/or appeal, the Corps has withheld the
19 requested information, invoking FOIA's Exemption 5. 5 U.S.C. § 552(b)(5).

20 50. The provisions of FOIA's Exemption 5 do not apply to the information being
21 withheld from Plaintiff in this case and thus FOIA's Exemption 5 is inapplicable to bar the
22 information's release.

23 51. Plaintiff has a statutory right to the records it seeks, and there is no legal basis for
24 Defendant to assert that any of FOIA's nine disclosure exemptions apply. *See* 5 U.S.C. §
25 552(b)(1)-(9).
26
27
28

1 52. Plaintiff has a statutory right to have the Corps process its FOIA request and
2 appeal in a manner that complies with FOIA.

3 53. Defendant has violated Plaintiff's rights under FOIA by unlawfully withholding
4 information responsive to Plaintiff's FOIA request.

5 54. Defendant has violated Plaintiff's rights under FOIA by not providing a final
6 determination on Plaintiff's FOIA request and/or appeal within the time mandated by the
7 Act.

8 55. Based on the nature of Plaintiff's professional activities, it will undoubtedly
9 continue to employ FOIA's provisions in information requests to Defendant in the
10 foreseeable future.
11

12 56. Plaintiff's professional activities will be adversely affected if Defendant is
13 allowed to continue violating FOIA's response deadlines, as it has in this case.
14

15 57. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by
16 this Court, Defendant will continue to violate Plaintiff's right to receive public records under
17 FOIA.
18

19 58. Plaintiff is entitled to reasonable costs of litigation, including attorneys' fees and
20 costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).
21

22 **COUNT II**

23 **VIOLATION OF THE FREEDOM OF INFORMATION ACT—DECISION
24 DEADLINE VIOLATION**

25 59. Plaintiff realleges, as if fully set forth herein, each and every allegation contained
26 in the preceding paragraphs.

27 60. Plaintiff has a statutory right to have Defendant process its FOIA request and/or
28 appeal in a manner that complies with FOIA. Plaintiff's rights in this regard were violated

1 when the Defendant unlawfully delayed its final determination of its information request
2 and/or appeal beyond the determination deadlines imposed by the FOIA. 5 U.S.C. §
3 552(a)(6)(A)(ii).

4 61. Defendant is unlawfully withholding public disclosure of information sought by
5 Plaintiff—information to which Plaintiff is entitled and for which no valid disclosure
6 exemption applies.

7
8 62. Based on the nature of Plaintiff’s organizational activities, it will undoubtedly
9 continue to employ FOIA’s provisions in information requests to Defendant in the
10 foreseeable future.

11
12 63. Plaintiff’s organizational activities will be adversely affected if Defendant is
13 allowed to continue violating FOIA’s response deadline as it has in this case.

14
15 64. Unless enjoined and made subject to a declaration of Plaintiff’s legal rights by
16 this Court, Defendant will continue to violate Plaintiff’s right to receive public records under
17 FOIA.

18
19 65. Plaintiff is entitled to reasonable costs of litigation, including attorney fees
pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

20 **COUNT III**

21 **VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**

22
23 66. Plaintiff realleges, as if fully set forth herein, each and every allegation contained
24 in the preceding paragraphs.

25
26 67. Defendant has failed to act in an official capacity under color of legal authority by
27 failing to comply with the mandates of FOIA consequent to its failure and refusal to issue a
28 timely final determination on Plaintiff’s information request and/or appeal.

1 68. Defendant has unlawfully withheld agency action by failing to comply with the
2 mandates of FOIA consequent to its failure and refusal to: (1) provide to Plaintiff documents
3 responsive to its information request and/or appeal that are not within the scope of any of
4 FOIA's disclosure exemptions, and (2) issue a timely final determination on Plaintiff's
5 administrative request and/or appeal.
6

7 69. Plaintiff has been adversely affected and aggrieved by Defendant's failure to
8 comply with the mandates of FOIA. Defendant's failure and refusal to: (1) provide to
9 Plaintiff documents responsive to its information request and/or appeal that are not within the
10 scope of any of FOIA's disclosure exemptions, and (2) issue a timely final determination on
11 Plaintiff's administrative request and/or appeal, has injured Plaintiff's interests in public
12 oversight of governmental operations and constitutes a violation of Defendant's statutory
13 duties under the APA.
14

15 70. Plaintiff has suffered a legal wrong as a result of Defendant's failure to comply
16 with the mandates of FOIA. Defendant's failure and refusal to: (1) provide to Plaintiff
17 documents responsive to its information request and/or appeal that are not within the scope of
18 any of FOIA's disclosure exemptions, and (2) issue a timely final determination on Plaintiff's
19 administrative request and/or appeal, has injured Plaintiff's interests in public oversight of
20 governmental operations and constitutes a violation of Defendant's statutory duties under the
21 APA.
22

23 71. Defendant's failure and refusal to: (1) provide to Plaintiff documents responsive
24 to its information request and/or appeal that are not within the scope of any of FOIA's
25 disclosure exemptions, and (2) issue a timely final determination on Plaintiff's administrative
26 request and/or appeal, has injured Plaintiff's interests in public oversight of governmental
27
28

1 operations and constitutes a violation of Defendant’s statutory duties under the APA,
2 constitutes agency action unlawfully withheld and unreasonably delayed, and is therefore
3 actionable pursuant to the APA, 5 U.S.C. § 706(1).

4 72. Alternatively, Defendant’s failure and refusal to: (1) provide to Plaintiff
5 documents responsive to its information request and/or appeal that are not within the scope of
6 any of FOIA’s disclosure exemptions, and (2) issue a timely final determination on Plaintiff’s
7 administrative request and/or appeal, has injured Plaintiff’s interests in public oversight of
8 governmental operations and constitutes a violation of Defendant’s statutory duties under the
9 APA, is in violation of FOIA’s statutory mandates and is therefore arbitrary, capricious, or an
10 abuse of discretion and not in accordance with law, and is therefore actionable pursuant to
11 the APA, 5 U.S.C. § 706(2).

12 73. Plaintiff is entitled to judicial review under the Administrative Procedure Act, 5
13 U.S.C. §§ 702, 706.

14
15
16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests this Court to find for Plaintiff and to enter a
19 judgment:

20 a. Declare Defendant’s failure to disclose the documents requested by Plaintiff to
21 be unlawful under FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), as well as agency action
22 unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary,
23 capricious, an abuse of discretion, and not in accordance with law, 5 U.S.C. § 706(2);

24 b. Declare Defendant’s failure to timely make a determination on Plaintiff’s
25 information request and appeal to be unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(ii),
26 as well as agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. §
27
28

1 706(1), and/or arbitrary, capricious, an abuse of discretion, and not in accordance with
2 law, 5 U.S.C. § 706(2);

3 c. Issuing preliminary and permanent injunctions ordering the Corps to provide
4 immediately all records responsive to Sierra Club's FOIA requests;

5 d. Awarding Sierra Club its reasonable attorney fees and costs in this action pursuant
6 to 5 U.S.C. § 552(a)(4)(E)(i);

7 e. Providing for any other such relief as the Court deems just and appropriate.
8

9
10 Dated: February 5, 2014

11 Respectfully submitted:

12
13 /s/ Sunil Bector
14 SUNIL BECTOR (California Bar. No. 275127)
15 SIERRA CLUB
16 85 Second Street, 2nd Floor
17 San Francisco, CA 94105
18 (415) 977-5759
19 (415) 977-5793 (facsimile)

20 DOUG HAYES (Colorado Bar No. 39216)
21 SIERRA CLUB
22 1650 38th Street, Suite 102W
23 Boulder, Colorado 80301
24 (303) 449-5595
25 (303) 449-6520 (facsimile)
26 (application for admission *pro hac vice* pending)

27 *Attorneys for Plaintiff Sierra Club*
28