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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14 ENVIRONMENTAL DEFENSE CENTER,
15 a California non-profit corporation,

16 Plaintiff,

17 vs.

18 BUREAU OF SAFETY AND
19 ENVIRONMENTAL ENFORCEMENT;
20 and U.S. DEPARTMENT OF THE
21 INTERIOR,

22 Defendants.

Civil Case No. 2:15-cv-9436

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

25 **(Freedom of Information Act, 5 U.S.C.**
26 **§ 552)**

1 **JURISDICTION AND VENUE**

2 1. This Court has jurisdiction over Plaintiff’s claims pursuant to 5 U.S.C.
3 § 552(a)(4)(B) of the Freedom of Information Act (“FOIA”).

4 2. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and
5 28 U.S.C. § 1331 because Plaintiff’s principal place of business is in Santa Barbara
6 County, located in the Central District of California. In addition, Plaintiff has
7 members and staff who work or reside within this judicial district. Finally,
8 Plaintiff’s FOIA request at issue in this suit concerns oil pipeline infrastructure
9 located in federal, Outer Continental Shelf (“OCS”) waters located off the Ventura
10 and Santa Barbara coastlines.

11 **INTRODUCTION**

12 3. In this action under FOIA, 5 U.S.C. § 552, Plaintiff alleges that the
13 Bureau of Safety and Environmental Enforcement (“BSEE”), an agency within the
14 U.S. Department of the Interior (“DOI”), is improperly withholding agency records
15 responsive to plaintiff’s request for information concerning oil pipelines located in
16 federal, OCS waters off the Ventura and Santa Barbara coastlines.

17 **PARTIES**

18 4. Plaintiff Environmental Defense Center (“EDC”) is a California
19 public benefit, non-profit corporation, with offices in Santa Barbara and Ventura
20 Counties. Founded in response to the 1969 Santa Barbara oil spill, EDC has
21 approximately 3,000 members and protects and enhances the local environment
22 through education, advocacy, and legal action on behalf of itself and other non-
23 profit, environmental organizations. Since its founding more than thirty years ago,
24 EDC has worked to protect the Santa Barbara Channel, other local coastal waters,
25 the Channel Islands, and the terrestrial coastal and non-coastal environments of
26 Santa Barbara and Ventura Counties from the risks and impacts of oil exploration,
27 production, development, and transportation. The majority of EDC members live
28 within communities in Santa Barbara and Ventura Counties that are at risk from or

1 are otherwise impacted by oil exploration, production, development, and
2 transportation, including the oil pipeline infrastructure at issue in this case. The
3 information that Plaintiff EDC seeks to obtain from Defendants through the FOIA
4 requests at issue in this suit furthers Plaintiff's mission as a non-profit
5 environmental law firm. Through Plaintiff's dissemination of the requested
6 information to its members and the public at large, the requested information is
7 likely to contribute significantly to the public's understanding of activities,
8 policies, and decision-making processes of defendants as they relate to defendants'
9 oversight of oil pipeline infrastructure located in OCS waters off the Santa Barbara
10 and Ventura coastlines.

11 5. The interests of Plaintiff EDC and its members are harmed by
12 Defendants' failure to comply with FOIA. Defendants' failure to comply with
13 FOIA and improper withholding of agency records responsive to the FOIA
14 requests prevents Plaintiff from obtaining, analyzing, synthesizing, and
15 disseminating the requested information to further its organizational mission, the
16 interest of its members, and the public interest. These injuries would be redressed
17 by a favorable decision granting plaintiff its requested relief of releasing the
18 requested documents.

19 6. Defendant BSEE is one of two agencies charged with managing
20 offshore natural resources in federal waters, including regulation of oil and gas
21 exploration, development, and production on the OCS. 30 C.F.R. § 250.101
22 (2011). BSEE is an agency of DOI. BSEE is responsible for ensuring that oil and
23 gas activities on the OCS, including the operation and maintenance of pipelines,
24 are carried out in a manner that provides for safety and protection of the
25 environment, among other considerations. 43 U.S.C. § 1337(p)(4).

26 7. Defendant DOI is a cabinet-level agency in the executive branch, and
27 is responsible for managing the resources under its jurisdiction in accordance with
28 all applicable laws and regulations.

1 **LEGAL BACKGROUND**

2 **A. Freedom of Information Act**

3 8. The FOIA, 5 U.S.C. § 552, as amended, requires agencies of the
4 federal government to search for, and make available, responsive records to any
5 FOIA request that reasonably describes the records sought. Under FOIA, “search”
6 means to “review, manually or by automated means, agency records for the
7 purpose of locating those records which are responsive to a request.” 5 U.S.C. §
8 552(a)(3)(D). The agency must conduct a search reasonably calculated to uncover
9 all relevant documents. *Weisberg v. Dep’t of Justice*, 705 F. 2d 1344, 1351 (D.C.
10 Cir. 1983).

11 9. Once an agency receives a proper FOIA request, the agency shall
12 “determine within 20 days (excepting Saturdays, Sundays, and legal public
13 holidays) after the receipt of any such request whether to comply with such request
14 and shall immediately notify the person making such request of such determination
15 and the reasons thereof, and of the right of such person to appeal to the head of the
16 agency any adverse determination.” 5 U.S.C. § 552(a)(6)(A)(i). In “unusual
17 circumstances,” an agency may extend the time limit for its determination to 30
18 working days by written notice to the requester. *Id.* § 552(a)(6)(B)(i).

19 10. The FOIA carries a presumption of openness and disclosure, and
20 allows agencies to withhold responsive information only if one or more of nine
21 specific and limited statutory exemptions apply to a responsive record. If
22 exemptions are claimed, FOIA further requires that the agency ensure that all
23 “reasonably segregable” portions of a responsive record be provided after deletion
24 of the portions that are exempt. 5 U.S.C. § 552(b).

25 11. When denying the release of requested records or portions of records
26 under one of FOIA’s nine statutory exemptions, agencies are required to identify
27 the exemption or exemptions being relied upon, and to provide an explanation of
28

1 the manner in which the exemption or exemptions apply to each record withheld.
2 5 U.S.C. § 552(a)(6)(F).

3 12. The FOIA directs federal agencies to provide a waiver of fees
4 normally charged for copying costs and staff time when the requester
5 demonstrates: 1) that the disclosure of the information is in the public interest
6 because it is likely to contribute significantly to public understanding of the
7 operations or activities of government; and 2) the disclosure of the information is
8 not primarily in the commercial interest of the requester. 5 U.S.C. §
9 552(a)(4)(A)(iii).

10 13. When an agency denies a FOIA request in whole or in part, or
11 otherwise makes an adverse determination related to the request, the agency must
12 inform the requester of the reasons for the denial, the name and title of each person
13 responsible for the denial, and the requester's right to appeal the denial. 5 U.S.C. §
14 552(a)(6)(A)(i). An agency's "no records" response constitutes an "adverse
15 determination" and therefore requires notification of appeal rights.

16 14. In 2007, Congress passed the OPEN Government Act of 2007 to
17 amend specified provisions of FOIA, in large part to once again attempt to address
18 and curb agencies' delay in processing FOIA requests. *See* S. Rep. No. 110-59,
19 110th Cong., 1st Sess. (Apr. 30, 2007), at p. 3 (amendments intended to "address[]
20 the growing backlog of FOIA requests and restore [] meaningful deadlines for
21 agency action, by ensuring that the 20-day statutory clock runs immediately upon
22 an agency's receipt of a request and by imposing consequences on federal agencies
23 for missing the deadline."); *see id.* ("The major delays encountered by FOIA
24 requestors" were "[c]hief among the problems with FOIA" that Congress sought to
25 remedy in passing the 2007 amendments."). Under the 2007 amendments, "[a]n
26 agency shall not assess search fees . . . if the agency fails to comply with any time
27 limit" of FOIA. § 552(a)(4)(A)(vii).

1 15. DOI's FOIA regulations are contained at 43 C.F.R., Subtitle A, Part 2
2 (§§ 2.1-2.70).

3 16. Under FOIA, exhaustion of administrative remedies is not required if
4 the agency fails to comply with applicable time limits, including a failure to make
5 a "determination" regarding the request within the relevant statutory time period. 5
6 U.S.C. § 552(a)(6)(C)(i).

7 **B. BSEE's Oil Pipeline Oversight**

8 17. Under the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C.
9 § 1331 *et seq.*, DOI and BSEE must require offshore oil and gas operators to use
10 the best available and safest technologies that are economically feasible where
11 failure of the equipment would have a significant effect on safety, health, or the
12 environment. 43 U.S.C. § 1347(b).

13 18. BSEE oversees the safety of OCS pipelines through regulation and an
14 inspection program. BSEE OCS oil and gas regulations are generally located at 30
15 C.F.R. part 250. The agency's OCS pipeline regulations are located at 30 C.F.R.
16 part 250, subpart J (pipelines and pipeline rights-of-way) (§§ 250.1000-250.1019).
17 The subpart J regulations address definitions and general requirements for
18 installation, testing, and repair of pipelines; requirements for safety equipment,
19 inspection, and decommissioning; and requirements for right-of-way applications,
20 assignments, and relinquishment. In general, the regulations require that
21 "[p]ipelines and associated valves, flanges, and fittings shall be designed, installed,
22 operated, maintained, and abandoned to provide safe and pollution-free
23 transportation of fluids in a manner which does not unduly interfere with other uses
24 in the [OCS]." 30 C.F.R. § 250.1000(a)(2011).

25 19. BSEE OCS pipeline regulations mandate design requirements for
26 pipelines, including internal design pressures for steel pipe, pipeline valve
27 minimum design requirements, and external protective coating specifications. 30
28 C.F.R. § 250.1002(a)-(d)(2011). In addition to specific standards, OCS

1 “[p]ipelines shall be designed and maintained to mitigate any reasonably
2 anticipated detrimental effects of water currents, storm or ice scouring, soft
3 bottoms, mud slides, earthquakes, subfreezing temperatures, and other
4 environmental factors.” 30 C.F.R. § 250.1002(f)(2011).

5 20. BSEE OCS pipeline regulations further mandate installation, testing,
6 and repair requirements for pipelines, including burial depth, pressure testing, and
7 clamp repair standards. 30 C.F.R. § 250.1003(a)-(c)(2011).

8 21. BSEE OCS pipeline regulations rely upon pipeline lessees or right-of-
9 way holders to conduct self-inspections. Specifically, “[p]ipeline routes shall be
10 inspected at time intervals and methods prescribed by the [BSEE] Regional
11 Supervisor for indication of pipeline leakage.” 30 C.F.R. § 250.1005(a)(2011).
12 The “results of these inspections shall be retained for at least 2 years and be made
13 available to the Regional Supervisor upon request.” *Id.* Other specified pipelines
14 must be inspected annually. *Id.* § 250.1005(b)(2011).

15 22. BSEE OCS pipeline regulations further rely upon mandated self-
16 reporting by pipeline lessees or right-of-way holders to ensure that the safety,
17 health, and environmental requirements of the regulatory program are being met.
18 Among other triggering factors, the lessee or right-of-way shall submit a report to
19 the BSEE Regional Supervisor within specified time periods after completion of
20 any pipeline construction, taking a pipeline out of service, conducting a pipeline
21 repair, or observing an environmental factor impact that requires remediation. 30
22 C.F.R. § 250.1008(a)-(g)(2011). In addition, results of pipe-to-electrolyte potential
23 measurements must be submitted to the Regional Supervisor on an annual basis.
24 30 C.F.R. § 250.1008(h).

FACTUAL BACKGROUND

A. Rising Domestic Oil Production Has Strained Transportation Infrastructure, including Pipelines

23. U.S. production of oil and gas resources has increased in recent years, driven by advancements in horizontal drilling techniques and well stimulation methods including hydraulic fracturing and acid well stimulation. These advancements have allowed production of previously inaccessible oil and gas resources, particularly from shale and tight sandstone geologic formations. From 2007 to 2012, annual production from these formations increased more than sixfold for oil and fivefold for gas.

24. The rapid expansion of domestic oil and gas production has in turn created challenges with respect to the manner in which these oil and gas resources are transported to processing and refining facilities, industrial users, and individual consumers. Options for the transportation of oil and gas including rail, highways (trucks), waterways (barges), and pipeline.

25. Today, most oil and nearly all natural gas continue to be transported by pipeline. Nearly half a million miles of high-volume pipeline transport natural gas, oil, and other hazardous liquids across the United States. Approximately 170,000 miles carry hazardous liquids, including more than 75% of the nation's crude oil and 60% of its refined petroleum products. This network includes nearly 200 individual interstate crude oil and liquid fuel pipelines, which comprise approximately 80% of total pipeline mileage and transported volume.

26. According to the Energy Information Administration ("EIA"), U.S. refinery receipts to domestic crude oil by pipeline increased almost 25 percent between 2008 and 2012, from 1.6 billion barrels to nearly 2 billion barrels. In March 2014, the U.S. Government Accountability Office found that the majority of the crude oil pipeline infrastructure system was constructed several decades ago, in the 1950s, 1960s, and 1970s.

1 27. As U.S. domestic oil production has increased, so have the number of
2 pipeline accidents. According to one recent analysis, the annual number of
3 significant accidents on oil and petroleum pipelines has increased by 60 percent
4 since 2009. Nearly two thirds of the leaks in that same time period are believed to
5 have been caused by corrosion or material, welding, or equipment failures, issues
6 most commonly associated with older pipelines.

7 **B. The Plains Pipeline, LP Line 901 Pipeline Spill (Santa Barbara County)**

8 28. On May 19, 2015, the Line 901 pipeline, owned and operated by
9 Plains Pipeline, LP failed, releasing what was initially estimated to be 1,700 to
10 2,500 barrels (53,550 to 78,750 gallons) of heavy crude oil along the north side of
11 California's Pacific Coast Highway. See Pipeline and Hazardous Materials Safety
12 Administration ("PHMSA") Correction Action Order, CPR No. 5-2015-5011H
13 (May 21, 2015). Updated figures estimate that more than 3,400 barrels (142,800
14 gallons) leaked from the pipeline.

15 29. The spilled oil from the Line 901 pipeline was conveyed southward
16 down a culvert for approximately one quarter mile into the Pacific Ocean at
17 Refugio State Beach, along a larger stretch of Santa Barbara coastline known as
18 the Gaviota Coast. Petroleum globs linked to the spill, known as "tar balls," have
19 been found as far south as Crystal Cove, approximately 150 miles away in Orange
20 County. More than 100 mammals and nearly 200 birds are confirmed to have been
21 directly killed by the spill.

22 30. The Line 901 Pipeline was constructed from 1987-1990.

23 31. The Line 901 Pipeline is a 24-inch diameter pipeline approximately
24 10.6 miles in length that transports crude oil from storage tanks owned by
25 ExxonMobil at the Las Flores Canyon facility to the Gaviota Pump Station, owned
26 by Plains. The Las Flores Canyon facility receives and stores oil produced from
27 three offshore oil platforms located in federal OCS waters. These platforms—
28 Hondo, Harmony, and Heritage—are currently owned and operated by

1 ExxonMobil. Line 901 also transports oil produced by Platform Holly, an offshore
2 oil platform located in state waters off of University of California, Santa Barbara,
3 currently owned by Venoco, Inc., as well as oil produced from three more
4 platforms—Hidalgo, Harvest and Hermosa—operated by Freeport-McMoRan.

5 32. Following the spill, investigators located a 6-inch opening along the
6 bottom of the pipeline where it broke on May 19, 2015. The Plains Line 901
7 Pipeline spill may not have occurred if adequate safeguards were in place to
8 monitor, inspect, and maintain the line. PHMSA states in its Corrective Action
9 Order that a May 5, 2015 (two weeks before the spill) In-Line Inspection survey
10 revealed four areas with pipe anomalies “requiring immediate investigation and
11 remediation,” with metal loss ranging between 54% and 75% of the original pipe
12 wall thickness. In addition, Line 901 is also experiencing active external
13 corrosion, noted by PHMSA inspectors conducting field visits after the spill.

14 C. **The BSEE OCS Pipeline FOIA Request**

15 33. In the wake of the Plains Line 901 oil spill, Plaintiff filed the FOIA
16 request, and associated fee waiver request, at issue in this litigation in an effort to
17 obtain information regarding BSEE’s oversight of OCS pipelines that convey
18 natural gas, oil, and other hazardous liquids to and from the offshore oil platforms
19 located in OCS waters off the Santa Barbara and Ventura County coastlines. Some
20 of these platforms produce oil and gas that was being transported through Line 901
21 (after being transported through OCS pipelines to onshore processing facilities). In
22 filing these FOIA requests, Plaintiff is seeking information as part of its
23 organizational mission and members’ interests in environmental protection.
24 Specifically, Plaintiff has requested information that will shed light on BSEE’s
25 oversight (or lack of oversight) of OCS pipelines that have fortunately not yet
26 experienced accidents of such significance. This information will, in turn, inform
27 and guide future efforts by Plaintiff to identify and advocate for policies,
28 regulations, or other mechanisms that will help prevent future pipeline oil spills.

1 34. On July 20, 2015, Plaintiff EDC submitted a FOIA request to BSEE
2 Pacific Region for the following records (for the time period January 1, 2005 to the
3 present) relevant to the offshore oil platforms located off California's coast:

- 4 1) All internal and external OCS pipeline
5 inspection reports;
- 6 2) All internal and external memoranda or
7 emails concerning pipeline inspections;
- 8 3) All letters, orders, emails, or other
9 correspondence to OCS operators pertaining
10 to pipelines;
- 11 4) All incidents of noncompliance and/or
12 notices of violations for failure to submit
13 pipeline inspection reports or comply with
14 agency (BSEE or MMS) orders on
15 pipelines; and
- 16 5) All Pacific OCS Region Status of Pipelines
17 reports

18 35. On July 21, 2015, BSEE sent a letter to Plaintiff EDC acknowledging
19 receipt of the July 20, 2015 FOIA request and assigning the request with control
20 number #BSEE-2015-00235. The acknowledgment letter also stated that BSEE
21 was categorizing EDC's FOIA request as "exceptional/voluminous," due to "the
22 need for consultation with multiple offices." BSEE's July 21 acknowledgment
23 letter did not provide a time estimate for response and providing of responsive
24 documents, other than stating it will require more than 60 workdays. BSEE's July
25 21 acknowledgment letter does not expressly invoke FOIA's "unusual
26 circumstances" provision, 49 C.F.R. § 7.34(a)(1), to extend the time limit for
27 response by 10 workdays. BSEE's July 21 acknowledgment letter did not provide
28 Plaintiff with appeal rights due to the delay in response.

 36. On August 5, 2015, BSEE sent a letter to Plaintiff EDC granting
EDC's fee waiver request for FOIA #BSEE-2015-00235.

1 37. On August 10, 2015, BSEE requested for EDC to narrow the temporal
2 scope of its request. On August 11, 2015, EDC wrote to BSEE amending its FOIA
3 request to the time period 2011-present rather than 2005-present. EDC made this
4 amendment in response to BSEE's request. The amendment was made in good
5 faith, based on the understanding that BSEE would in turn quickly provide the
6 records based on the shorter time period at issue in the request.

7 38. BSEE has not sent further correspondence since EDC's August 11,
8 2015, email narrowing the scope of its request. More than four months have
9 elapsed since the FOIA request was received by BSEE. BSEE has not provided
10 Plaintiff with a determination regarding the FOIA request, a determination on the
11 fee waiver request, or with a notice of appeal rights concerning its late response.

12 **CLAIMS FOR RELIEF**

13 **First Claim for Relief** 14 **(Failure to Make Determination on FOIA Request and Fee Waiver Request)**

15 39. Plaintiff re-alleges and incorporates, as if fully set forth herein, each
16 and every allegation in the preceding paragraphs of this Complaint.

17 40. FOIA provides that any person may obtain access to the records of
18 federal agencies provided the statute's disclosure exemptions do not apply. 5
19 U.S.C. § 552. Plaintiff has a statutory right to the records sought.

20 41. Once an agency receives a proper FOIA request, the agency shall
21 "determine within 20 days (excepting Saturdays, Sundays, and legal public
22 holidays) after the receipt of any such request whether to comply with such request
23 and shall immediately notify the person making such request of such determination
24 and the reasons thereof, and of the right of such person to appeal to the head of the
25 agency any adverse determination." 5 U.S.C. § 552(a)(6)(A)(i). In "unusual
26 circumstances," an agency may extend the time limit for its determination to 30
27 working days by written notice to the requester. *Id.* § 552(a)(6)(B)(i).
28

1 42. Under 2007 FOIA amendments, “[a]n agency shall not assess search
2 fees . . . if the agency fails to comply with any time limit” of FOIA. §
3 552(a)(4)(A)(vii).

4 43. More than four months have passed since Plaintiff submitted the OCS
5 Pipeline FOIA to BSEE. Defendants have not provided a determination on
6 Plaintiff’s FOIA request within the time period required by FOIA. Defendants’
7 improper withholding of agency records violates FOIA and is subject to judicial
8 review under 5 U.S.C. § 552(a)(4)(B).

9 44. Defendants have failed to make a determination as to whether to
10 comply with OCS Pipeline FOIA within the relevant statutory time period.
11 Defendants’ failure to make such determination constitutes constructive exhaustion
12 of plaintiff’s administrative remedies 5 U.S.C. § 552(a)(6)(A)(i).

13 45. Plaintiff’s organizational activities will be adversely affected if
14 Defendants are allowed to continue violating FOIA’s disclosure provisions as they
15 have in this case.

16 46. Unless enjoined and made subject to a declaration of Plaintiff’s legal
17 rights by this Court, Defendants will continue to violate the rights of Plaintiff and
18 fail to disclose public records under the FOIA.

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

21 **Second Claim for Relief**
22 **(Unlawful Withholding of Agency Records Based on Constructive Denial)**

23 48. Plaintiff re-alleges and incorporates, as if fully set forth herein, each
24 and every allegation in the preceding paragraphs of this Complaint.

25 49. FOIA provides that any person may obtain access to the records of
26 federal agencies provided the statute’s disclosure exemptions do not apply. 5
27 U.S.C. § 552. Plaintiff has a statutory right to the records sought. By failing to
28

1 make a determination as to whether to comply with the OCS Pipeline FOIA,
2 Defendants have effectively and unlawfully denied Plaintiff's FOIA request.

3 50. Plaintiff's organizational activities will be adversely affected if
4 Defendants are allowed to continue violating FOIA's disclosure provisions as they
5 have in this case.

6 51. Unless enjoined and made subject to a declaration of Plaintiff's legal
7 rights by this Court, Defendants will continue to violate the rights of Plaintiff and
8 fail to disclose public records under the FOIA.

9 52. Plaintiff is entitled to reasonable costs of litigation, including attorney
10 fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

11 **RELIEF REQUESTED**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court:

- 13 A. Declare that Defendants' unlawful withholding of agency records
14 responsive to the OCS Pipeline FOIA violates FOIA;
- 15 B. Order Defendants to produce all non-exempt records, and parts of
16 records, responsive to the OCS Pipeline FOIA within 30 days;
- 17 C. Award Plaintiff its costs and reasonable attorney fees incurred in this
18 action; and
- 19 D. Grant such additional relief as the Court deems just and proper.

20 Respectfully submitted this 7th day of December, 2015

21 /s/

22 _____
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