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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10	SIERRA CLUB, a California nonprofit corporation,)	
11	Plaintiff)	Case No.:
12	v.)	
13	VICE PRESIDENT RICHARD CHENEY, in his official capacity as Vice President of the United States and Chairman of the National Energy Policy Development Group,)	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
14)	Violations of Federal Advisory Committee Act, 5 U.S.C. Appendix 2
15	The NATIONAL ENERGY POLICY DEVELOPMENT GROUP, an advisory committee commissioned by President George W. Bush, Jr.,)	
16)	
17	ANDREW LUNDQUIST, in his official capacity as Executive Director of the National Energy Policy Development Group, and Director of Energy Policy for Vice President Cheney and Senior Policy Advisor to the Department of Energy,)	
18)	
19)	
20)	
21)	
22	SPENCER ABRAHAM, in his official)	

1 capacity as Secretary of the United States)
Department of Energy and member of the)
2 National Energy Policy Development Group,)
)
3 DONALD EVANS, in his official capacity)
as Secretary of the United States Department)
4 of Commerce and member of the National)
Energy Policy Development Group,)
5)
6 GALE NORTON, in her official capacity as)
Secretary of the United States Department of)
the Interior and member of the National)
7 Energy Policy Development Group,)
)
8 ANN VENEMAN, in her official capacity as)
Secretary of the United States Department of)
9 Agriculture and member of the National)
Energy Policy Development Group,)
10)
11 PAUL O'NEILL, in his official capacity as)
Secretary of the United States Department of)
the Treasury and member of the National)
12 Energy Policy Development Group,)
)
13 NORMAN MINETA, in his official)
capacity as Secretary of the United States)
14 Department of Transportation and member)
of the National Energy Policy Development)
15 Group,)
)
16 CHRISTINE TODD WHITMAN, in her)
official capacity as Administrator of the)
17 United States Environmental Protection)
Agency and member of the National Energy)
18 Policy Development Group,)
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19 Defendants)

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INTRODUCTION

The Sierra Club brings this action to enforce the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, (“FACA”), a “sunshine law” providing for public scrutiny of the manner in which the Executive Branch obtains advice from private individuals on policy matters. The Sierra Club seeks access to information under FACA concerning the activities of the National Energy Policy Development Group (better known colloquially as the “Cheney Energy Task Force”), and its related sub-groups (“Task Force Sub-Groups”). The Cheney Energy Task Force is a Presidential advisory committee, the purpose of which is to gather information, deliberate and make recommendations to the President on national energy policy.

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JURISDICTION

1. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (action arising under the laws of the United States), 28 U.S.C. § 1361 (mandamus), 5 U.S.C. §§ 701 *et seq.* (Administrative Procedure Act) and 28 U.S.C. §§2201 and 2202 (Declaratory Judgment Act). Venue in this district is proper under 28 U.S.C. § 1391(e) because the Sierra Club is incorporated in California and maintains its headquarters and resides in this district.

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INTRADISTRICT ASSIGNMENT

2. Pursuant to Civil Local Rule 3-2(c), Plaintiff states that it bases venue in this district and the San Francisco Division on the following: 1) Plaintiff is incorporated in California and maintains its headquarters and resides in San Francisco County; 2) this action seeks relief

1 against federal officials acting in their official capacities; and 3) 28 U.S.C. §§ 1361 and 1391(e)
2 provide for venue in the district of Plaintiff's residence, including the San Francisco Division.

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4 **PARTIES**

5 3. Plaintiff Sierra Club is a nonprofit corporation organized under California law,
6 with more than 700,000 members nationwide. The Sierra Club's mission is to explore, enjoy, and
7 protect the wild places of the Earth; to practice and promote the responsible use of the Earth's
8 resources and ecosystems; to educate and enlist humanity to protect and restore the quality of
9 the natural and human environment; and to use all lawful means to carry out these objectives.

10 4. The Sierra Club's concerns encompass the nation's use of energy and the
11 environmental and health impacts caused by the development, extraction, production and use of
12 energy. The Sierra Club has actively participated in the public discussion regarding the Bush
13 Administration's national energy policy. The Sierra Club has educated its members about
14 national energy policy, participated in and organized community events, such as rallies and
15 demonstrations; discussed energy policy with members of Congress and other government
16 leaders, and sought to disseminate information on energy policy via the media.

17 5. Sierra Club members reside in, work in, and regularly visit, use, and enjoy areas
18 that would be affected by the Bush Administration's energy policy. These areas include, among
19 many examples, federal public lands, national forests, and coastal areas subject to oil and gas
20 drilling and related activities; and populated areas downwind of power plants and other sources
21 of energy-caused pollution. Moreover, Sierra Club members routinely make use of information

1 concerning energy policy while engaging in First Amendment activities as environmentalists and
2 Sierra Club members.

3 6. Defendant Richard Cheney is sued in his official capacity as the Vice President of
4 the United States and Chairman of the Cheney Energy Task Force. As the Chairman of the
5 Cheney Energy Task Force, Vice President Cheney acted on behalf of the President in gathering
6 information, advice and recommendations on national energy policy and supervising the work of
7 the Cheney Energy Task Force and the Task Force Sub-Groups. He participated in meetings and
8 deliberations, and his office contributed to the formulation of the Bush Administration’s national
9 energy policy.

10 7. Defendant National Energy Policy Development Group (“Cheney Energy Task
11 Force”) is a Presidential advisory committee, the purpose of which is to gather information,
12 deliberate and make recommendations to the President on national energy policy.

13 8. Defendant Lundquist is sued in his official capacity as Executive Director of the
14 Cheney Energy Task Force, Director of Energy Policy for Vice President Cheney, and Senior
15 Policy Advisor to the U.S Department of Energy. As the Executive Director of the Cheney
16 Energy Task Force, he participated in its meetings and deliberations, and contributed to the
17 formulation of the Bush Administration’s national energy policy.

18 9. Defendant Abraham is sued in his official capacity as Secretary of Energy and
19 member of the Cheney Energy Task Force. Defendant Abraham participated in Cheney Energy
20 Task Force meetings and deliberations, and he and his agency gathered information, advice and
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1 recommendations on national energy policy and supervised the work of the Cheney Energy Task
2 Force and the Task Force Sub-Groups.

3 10. Defendant Evans is sued in his official capacity as Secretary of Commerce and
4 member of the Cheney Energy Task Force. Defendant Evans participated in Cheney Energy
5 Task Force meetings and deliberations, and he and his agency gathered information, advice and
6 recommendations on national energy policy and supervised the work of the Cheney Energy Task
7 Force and the Task Force Sub-Groups.

8 11. Defendant Norton is sued in her official capacity as Secretary of the Interior and
9 member of the Cheney Energy Task Force. Defendant Norton participated in Cheney Energy
10 Task Force meetings and deliberations, and she and her agency gathered information, advice and
11 recommendations on national energy policy and supervised the work of the Cheney Energy Task
12 Force and the Task Force Sub-Groups.

13 12. Defendant Veneman is sued in her official capacity as Secretary of Agriculture and
14 member of the Cheney Energy Task Force. Defendant Veneman participated in Cheney Energy
15 Task Force meetings and deliberations, and she and her agency gathered information, advice and
16 recommendations on national energy policy and supervised the work of the Cheney Energy Task
17 Force and the Task Force Sub-Groups.

18 13. Defendant O'Neill is sued in his official capacity as Secretary of the Treasury and
19 member of the Cheney Energy Task Force. Defendant O'Neill participated in Cheney Energy
20 Task Force meetings and deliberations, and he and his agency gathered information, advice and
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1 recommendations on national energy policy and supervised the work of the Cheney Energy Task
2 Force and the Task Force Sub-Groups.

3 14. Defendant Mineta is sued in his official capacity as Secretary of Transportation
4 and member of the Cheney Energy Task Force. Defendant Mineta participated in Cheney
5 Energy Task Force meetings and deliberations, and he and his agency gathered information, advice
6 and recommendations on national energy policy and supervised the work of the Cheney Energy
7 Task Force and the Task Force Sub-Groups.

8 15. Defendant Whitman is sued in her official capacity as Administrator of the
9 Environmental Protection Agency and member of the Cheney Energy Task Force. Defendant
10 Whitman participated in Cheney Energy Task Force meetings and deliberations, and she and her
11 agency gathered information, advice and recommendations on national energy policy and
12 supervised the work of the Cheney Energy Task Force and the Task Force Sub-Groups.

13 **BACKGROUND**

14 **The Cheney Energy Task Force**

15 16. On or about January 29, 2001, George W. Bush signed a memorandum to his Vice
16 President, Richard Cheney, commissioning the Cheney Energy Task Force. The Presidential
17 memorandum stated that the purpose of the Cheney Energy Task Force was to develop a
18 national energy policy. The membership of the Cheney Energy Task Force included the
19 defendants.

1 23. The Cheney Energy Task Force and the Task Force Sub-Groups were established
2 or utilized by the President and the defendants for the purpose of obtaining information, advice
3 and recommendations for the development of the “National Energy Policy.” The Bush
4 Administration has developed legislative proposals based on the “National Energy Policy.” The
5 House of Representatives has passed legislation containing many of the elements of this National
6 Energy Policy. That legislation and related energy policy legislative proposals are still pending.

7 **The Bush Administration’s Failure to Divulge Cheney Energy Task Force Information**

8 24. The defendants have refused to provide information to Congress, the General
9 Accounting Office or the public (including the Sierra Club) concerning the names of non-federal
10 employees who participated in the activities of the Cheney Energy Task Force and Task Force
11 Sub-Groups, or details about the number of meetings such individuals attended, the agendas of
12 each meeting, the purpose and scope of the meeting(s), the topics on which factual information or
13 policy advice was sought, and whether conflicts of interest were properly addressed at each
14 meeting.

15 25. Throughout the spring and summer of 2001, and continuing to the present,
16 Congressional leaders and the General Accounting Office (GAO) have sought to obtain
17 information from the Cheney Energy Task Force and its members concerning the activities and
18 membership of the Cheney Energy Task Force and Task Force Sub-Groups. Representatives
19 Henry Waxman and John Dingell, GAO Comptroller General David Walker and GAO General
20 Counsel Anthony Gamboa have requested access to Cheney Energy Task Force and Task Force
21 Sub-Group information, corresponding numerous times with Vice President Cheney, Cheney
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1 Energy Task Force Executive Director Andrew Lundquist, and Counsel to the Vice President
2 David Addington.

3 26. The Vice President, Mr. Lundquist, and Mr. Addington have failed to provide the
4 information requested by Representatives Waxman and Dingell and the GAO.

5 27. On or about January 16, 2002, Representative Henry Waxman issued a report
6 detailing how the Cheney Energy Task Force's final report advocated energy policies favoring
7 private companies whose representatives participated in the activities of the Cheney Energy
8 Task Force and Task Force Sub-Groups.

9 28. The Sierra Club has corresponded with the defendants requesting information
10 relating to activities of the Cheney Energy Task Force and the Task Force Sub-Groups including,
11 but not limited to, the involvement of non-federal employees. Defendants have failed to provide
12 this information to the Sierra Club. The Sierra Club intends to use this information to educate its
13 members and, on behalf of its members, to participate actively in the ongoing national debate over
14 energy policy, including but not limited to specific legislative proposals pending in Congress.

15 **FIRST CLAIM FOR RELIEF**
16 **(Violations of FACA / Mandamus)**

17 29. The Sierra Club incorporates by reference the allegations of the preceding
18 paragraphs of this Complaint.

19 30. The Cheney Energy Task Force and Task Force Sub-Groups are advisory
20 committees as defined under FACA.

21 31. The defendants have violated FACA as follows:

1 a. By failing to open each meeting of the Cheney Energy Task Force and
2 Task Force Sub-Groups to the public. (Violation of FACA § 10(a)(1).)

3 b. By failing to publish timely notice of each meeting of the Cheney Energy
4 Task Force and Task Force Sub-Groups in the Federal Register. (Violation of FACA § 10(a)(2).)

5 c. By failing to allow the Sierra Club and other interested persons to attend,
6 appear before, or file statements with the Cheney Energy Task Force and Task Force Sub-
7 Groups. (Violation of FACA § 10(a)(3).)

8 d. By failing to make available for public inspection and copying the records,
9 reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other
10 documents which were made available to or prepared for or by the Cheney Energy Task Force
11 and Task Force Sub-Groups. (Violation of FACA § 10(b).)

12 e. By failing to keep detailed minutes of each meeting of the Cheney Energy
13 Task Force and Task Force Sub-Groups, certified as accurate, that contain a record of the
14 persons present, a complete and accurate description of matters discussed and conclusions
15 reached and copies of all reports received, issued, or approved by the Cheney Energy Task Force
16 and Task Force Sub-Groups. (Violation of FACA § 10(c).)

17 f. By establishing the Task Force Sub-Groups without specific authorization
18 by statute or by the President and without a determination, published in the Federal Register,
19 that establishing the Task Force Sub-Groups is in the public interest. (Violation of FACA §
20 9(a).)

1 g. By allowing the Cheney Energy Task Force and Task Force Sub-Groups
2 to meet and take action without filing an advisory committee charter containing the information
3 required by FACA. (Violation of FACA § 9(c).)

4 32. The defendants have a nondiscretionary duty to comply with the procedural
5 requirements of FACA including but not limited to those set forth in the preceding paragraph as
6 items (a) through (g).

7 33. This Court has jurisdiction to compel the defendants to perform a
8 nondiscretionary duty pursuant to the Mandamus and Venue Act, 28 U.S.C. § 1361.

9 **SECOND CLAIM FOR RELIEF**
10 **(Violations of FACA / Administrative Procedure Act)**

11 34. The Sierra Club incorporates by reference the allegations of the preceding
12 paragraphs of this Complaint.

13 35. By violating FACA as set forth in paragraph 31, the agency defendants have
14 acted arbitrarily and capriciously and not in accordance with law, and without observance of
15 procedure required by law, in violation of 5 U.S.C. § 706(2)(A) and § 706(2)(D).

16 **PRAYER FOR RELIEF**

17 36. The Sierra Club prays for relief and judgment as follows:

18 A. A declaration that the Cheney Energy Task Force and Task Force Sub-Groups are
19 advisory committees under FACA and must comply with all requirements of FACA, 5
20 U.S.C. Appendix 2, and other applicable laws.

21 B. A declaration that the defendants have violated FACA in the following ways:

- 1 i. Defendants violated section 10(a)(1) of FACA by failing to open each meeting of the
2 Cheney Energy Task Force and Task Force Sub-Groups to the public.
- 3 ii. Defendants violated section 10(a)(2) of FACA by failing to publish timely notice of
4 each meeting of the Energy Task Force and Task Force Sub-Groups in the Federal
5 Register.
- 6 iii. Defendants violated section 10(a)(3) of FACA by failing to allow the Sierra Club and
7 other interested persons to attend, appear before, or file statements with the Cheney
8 Energy Task Force and Task Force Sub-Groups.
- 9 iv. Defendants violated section 10(b) of FACA by failing to make available for public
10 inspection and copying the records, reports, transcripts, minutes, appendices,
11 working papers, drafts, studies, agenda, or other documents which were made
12 available to or prepared for or by the Cheney Energy Task Force and Task Force Sub-
13 Groups.
- 14 v. Defendants violated section 10(c) of FACA by failing to keep detailed minutes of
15 each meeting of the Energy Task Force and Task Force Sub-Groups, certified as
16 accurate, that contain a record of the persons present, a complete and accurate
17 description of matters discussed and conclusions reached and copies of all reports
18 received, issued, or approved by the Cheney Energy Task Force and Task Force Sub-
19 Groups.
- 20 vi. Defendants violated section 9(a) of FACA by establishing the Task Force Sub-
21 Groups without specific authorization by statute or by the President and without a
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1 determination, published in the Federal Register, that establishing the sub-groups is in
2 the public interest.

3 vii. Defendants violated section 9(c) of FACA by allowing the Cheney Energy Task
4 Force and Task Force Sub-Groups to meet and take action without filing an advisory
5 committee charter containing the information required by section 9(c) of FACA.

6 C. A declaration that the defendants have failed to perform a nondiscretionary duty to
7 comply with the procedural requirements of FACA including those set forth in the
8 preceding paragraph as items (i) through (vii).

9 D. A declaration that each violation of FACA described above as items (i) through (vii) in
10 paragraph B is arbitrary and capricious and not in accordance with law, and without
11 observance of procedure required by law, in violation of 5 U.S.C. § 706(2)(A) and (D).

12 E. A permanent injunction prohibiting the defendants from convening, conducting or holding
13 any activities of the Cheney Energy Task Force and Task Force Sub-Groups that are not
14 in full compliance with sections 5, 9 and 10(a)-(c) of FACA.

15 F. A permanent injunction ordering the defendants to provide to the Sierra Club, within ten
16 working days and at no cost to the Sierra Club, a full and complete copy of all records,
17 reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or
18 other documents which were made available to or prepared for or by the Cheney Energy
19 Task Force or Task Force Sub-Groups, irrespective of whether any such document
20 otherwise is or could be exempt from disclosure under 5 U.S.C. § 552(b)(2), (5) or (7)-(9).

1 G. A permanent injunction ordering the defendants to prepare and deliver to plaintiff, within
2 10 working days, detailed minutes of each meeting of the Cheney Energy Task Force and
3 Task Force Sub-Groups, certified as accurate, that contain a record of the persons
4 present, a complete and accurate description of matters discussed and conclusions reached
5 and copies of all reports received, issued, or approved by the Cheney Energy Task Force
6 and Task Force Sub-Groups.

7 H. An award to the Sierra Club of its costs of suit.

8 I. An award of such other relief as this Court deems appropriate.

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10 DATED : _____, 2002.

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13 Respectfully submitted,

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15 _____
16 Patrick Gallagher
17 Alex Levinson
18 Sierra Club
19 Attorneys of Record
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CERTIFICATION OF INTERESTED PARTIES OR ENTITIES

Pursuant to General Order No. 48, the undersigned certifies that as of this date, there is no such interest to report.

Dated: January _____, 2002

Patrick Gallagher
Alex Levinson
Joanne Spalding
Sierra Club
Attorneys of Record