



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

PUBLIC AFFAIRS

May 9, 2007

In reply refer to: DK-7

Mr. James W. Simpkin  
Opportunity Construction Company, Inc.  
1810 Schneidmiller Ave. #140  
Post Falls, ID 83854

RE: FOIA 07-027

Dear Mr. Simpkin:

This letter responds to your request for information that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your letter was received in this office on Monday, May 7, 2007, and was assigned a control number, 07-027.

In your request you asked for the following regarding BPA Project #2005-007-00, and also known as the Fulton Diversion Dam, Phase 2:

1. Engineering design documents and cost estimates prepared by BPA and/or received by BPA from the Bureau of Reclamation and/or others;
2. Bid package preparation and information for the above project;
3. Copies of regulatory documents regarding the project;
4. Copy of approved applicable Biological Assessment prepared for the project;
5. Notifications of technical changes to the JARPA prior to actual construction field changes occurring;
6. Qualifications of Contract Officer/Technical Representative (Chris Johnson) for project management;
7. Copy of certification of Chris Johnson to BPA requirements for the handling of project funds;
8. Project correspondence between BPA and other governmental agencies regarding this project;
9. Project correspondence between BPA and private entities, companies, non-profit organizations, etc.;
10. BPA's determination process for allowing Chewuch Basin Council to manage the project, contract negotiations, contract award, and distributing BPA funds;
11. Copies of project solicitation and award process for this project;
12. Changes in design of the diversion approach (BOR);
13. Documents justifying the use of a grant for construction work that involves work relative to the Endangered Species Act;
14. Documents received from the Independent Scientific Review Panel (ISRP) specifically associated with this project; and
15. Copy of document used to allow the bid proposal winner to improperly retract their bid without penalty.

After reviewing your letter, it was determined that you addressed all the criteria of a proper request under the FOIA, DOE, and BPA regulation that implements the FOIA at Title 10, Code of Federal Regulations, Part 1004, except for the fees. In your letter you have agreed to pay up to \$1,000.00 if we do not allow a fee waiver.

The FOIA provides that “[d]ocuments shall be furnished without any charge or at a charge below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” See 5 U.S.C. § 552(a)(4)(A)(iii). The DOE has implemented this statutory standard for fee waivers or reduced fees in its FOIA regulation at Title 10, Code of Federal Regulations (CFR), Section 104.9(a)(8).

Although you have requested a waiver or reduction of fees, you have not addressed the criteria established in that section. The regulation sets forth the following pertinent factors that are considered by the agency in applying the criteria:

1. The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government,”
2. The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
3. The contribution to an understanding by the general public of the subject likely to result from disclosure, taking into the account your ability and intent to disseminate the information to the public in a form that can further understanding of the subject matter;
4. The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities;
5. The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so
6. The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

If you would like your request for a fee waiver to be fully considered, please provide additional information that addresses these factors to Laura M. Atterbury of this office. You should provide the information to her by Tuesday, May 22, 2007. A decision about a waiver of fees or reduced fees will be made after receipt of the information. If additional information is not received by that date, we will consider your request for a waiver withdrawn.

Mr. Robert Austin, Deputy Manager, Fish and Wildlife, has been designated as the Authorizing Official for your request. Mr. Austin has 20 working days, until Monday, June 4, 2007, to provide a response. Should you have any questions, Mr. Austin may be reached by calling (503) 230-4748.

I appreciate the opportunity to assist you with this matter. If you have any questions about this letter, please contact my FOIA Specialist, Laura M. Atterbury, at (503) -230-7305.

Sincerely,

*/s/ Christina J. Brannon*

Christina J. Brannon  
Freedom of Information Act Officer



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

PUBLIC AFFAIRS

June 1, 2007

In reply refer to: DK-7

Mr. James W. Simpkin  
Opportunity Construction Company, Inc.  
1810 Schneidmiller Ave. #140  
Post Falls, ID 83854

RE: FOIA 07-027

Dear Mr. Simpkin:

I am writing regarding your request for information that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. We are unable to meet the initial deadline for completion of this FOIA request.

As permitted by statute, we will take a ten working-day extension of time in which to respond to your request. This extension will provide us enough time to complete the review process of the materials gathered in your response to your FOIA request. The new due date for this FOIA is Monday, June 18, 2007.

If you have any questions, please contact me at (503) 230-7303 or Laura M. Atterbury, FOIA Specialist, at (503) 230-7305. Thank you for your patience.

Sincerely,

Christina J. Brannon  
Freedom of Information Act Officer