



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 07-028

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 Thursday, May 31, 2007, and was assigned a control number, 07-028.

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. All documents prepared and submitted to the Department of the Army, Seattle District, Corps of Engineers, P.O. Box 3755, Seattle, WA 98124-3755, for Phase 2 of the Fulton Diversion Dam, BPA Project # 2005-007-00. Specifically, the information submitted for the approval of the 404 DA Permit.
2. All documents submitted to the BPA, NEPA/ESA, or other Federal Agencies, specifically for the Habitat Improvement Program Biological Opinion (HIP Opinion) for Phase 2 of the Fulton Diversion Dam, BPA Project # 2005-007-00.
3. The resulting HIP Opinion for Phase 2 of the Fulton Diversion Dam, BPA Project # 2005-007-00.
4. Copies of Chewuch Basin Council's (CBC) written procurement procedures per OMB Circular 110, if applicable. If CBC is under OMB Circular 102, then the Financial Management Practices CBC uses.
5. All documents and records provided to the DOE/BPA as to the CBC's relationship with the Fulton Ditch Company and/or any other state recognized Irrigation District.

6. All documents relative to CBC's accounting of the costs and expenditures for the above referenced project.
7. All documents and records relating to the official transmittal of all required local, state, and federal permits from the Chewuch Basin Council to Opportunity Construction Company, as required by contract and in some cases federal law.
8. All documents and records relating to the lawful ownership of the Fulton Diversion Dam, on which this funded work was performed.
9. All documents and records relative to permit agency's required re-submittal of radical changes in the project work sequencing and design. This would have transpired between September 2006 and March 2007.

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. You have agreed to pay a maximum of \$1,000.00 in fees and are asking for the information to be provided in electronic format.

You have also asked for expedited processing of the request. You stated that because improprieties associated with this project have had considerable impact on your ability to meet obligations and said that the information will be reviewed by you and disseminated to the public at OCC's discretion.

The FOIA permits agencies to expedite the processing of a request if the requester demonstrates a "compelling need." A "compelling need" is established when two criteria are met. The criteria are met when (1) failure to obtain the records quickly "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," or (2) if the "requester is primarily engaged in disseminating information" and can demonstrate that there is an "urgency to inform the public concerning actual or alleged Federal Government activity."

The reason that you have provided does not adequately address the basis under which is a request may be expedited. You have not articulated or established that there is any threat to the life or safety of an individual that would justify expeditious processing of the request. You also have not identified any particular urgency that requires the provision of information in an expedited manner.

For these reasons, I am denying your request for the expeditious processing. The request will be processed in accordance with provisions of the FOIA.

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 Thursday, June 28, 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,

Christina J. Brannon
Freedom of Information Act Officer