

Attorney, Laura M - DK-7

From: larry@westernwatersheds.org
Sent: Friday, October 30, 2009 10:20 AM
To: FOIA
Subject: FOIA Request

RECEIVED BY BPA FOIA OFFICE THIS DATE: 11-02-09
DUE DATE: 12-03-09
LOG # BPA-2010-00239-F

The following is a New FOIA request:

Name: Larry Zuckerman
Organization: Western Watersheds Project
Address: PO Box 1322 Salmon, Idaho 83467
Phone: 208 756-8000
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Email: larry@westernwatersheds.org

Description of Request: Twelvemile Creek Pipeline (may also be listed as 12mile Creek Pipeline or other variations) - I believe the construction phase of the irrigation project was around August 2004. Apparently, it was planned before August 2003, when the USBWP mentions in its notes that the NRCS was working with landowners on this screening-diversion-pipeline project. So, documents I am looking for would be from January 2001 through December 31, 2008. Twelvemile Creek irrigation diversions and ditch conveyances combined to a new point of diversion with lockable and measurable headgates and a fish screen. BPA funded this project as part of its anadromous salmonid habitat mitigation for the Federal Columbia River Basin Power System dams in Twelvemile Creek, a tributary of the Salmon River in Lemhi County, Idaho. BPA conducted the NEPA and ESA consultations while the Salmon Basin Model Watershed Project (now Upper Salmon Basin Watershed Project) oversaw the project and handled the funds for contracting and purchasing materials. Idaho Fish and Game installed the fish screen and possibly the NRCS or BOR oversaw the design and construction of the new diversion and pipeline that replaced the old diversions and ditches. One water user on the irrigation pipeline is Marvin and Irene Hutchings. Their address is: 1141 Hwy 93 South, Salmon, Idaho 83467, so there should be no need to block their names and address in any disclosed documents or other FOIA items. I am not sure if other parties are on the pipeline as it was designed. Please do not confuse this project with a similarly sounding project in Custer County, the Twelvemile Reach of the Salmon River, which is also a FCRPS mitigation project involving the Corps of Engineers and BPA. I request copies of the NEPA documents (Environmental Assessment), ESA documents (BA and letters of concurrence), project plans and proposal, site assessments, and documents including emails pertaining to the project and its completion between the Upper Salmon Basin Watershed Project and the BPA. I am particularly interested in the sizes of the pipeline and the diversion structure (their capacities for water) and any documents or discussions relating to flow agreements, which the Idaho Fish and Game Screen Shop (also funded by BPA) normally negotiates with the water users. I would also appreciate receiving any post-construction inspection and/or monitoring data, information, or photographs taken. I would appreciate receiving documents as soon as possible, so if the complete FOIA request cannot be filled at once, receiving information in phases or separate electronic or hardcopy shipments will work well for us. I will email the FOIA administrative officer a description of Western Watersheds Project, its membership, actions, and mission and provide additional detail on why we should be exempt from FOIA fees.

Preferred format: electronic or hard copy

Type of Requester: Scholarly

10/30/2009

I request a fee Waiver

I request a waiver or reduction of fees because my request concerns "the operations or activities of the government" as explained below:

This request concerns the operations and activities of the Federal government, including the BPA, NRCS, BOR, and potentially, the BLM. It includes ESA/MSA consultations, NEPA, and planning, funding, and implementing a project as habitat mitigation for losses of the FCRPS dams and reservoirs.

I request a waiver or reduction of fees because the disclosure is "likely to contribute" to an understanding of government operations or activities as explained below:

The information requested for disclosure will contribute to the understanding of the operations and activities of the BPA, FWS, NMFS, BOR, NRCS, and potentially the BLM in regards to the Twelvemile Creek Pipeline Project.

I request a waiver or reduction of fees because an understanding by the general public of the subject is likely to result from disclosure, taking into account my ability and intent to disseminate the information to the public in a form that can further understanding of the subject matter as explained below:

WWP regularly acquires public information like that which is being requested from the BPA, disseminates it to its members, staff, and the general public through website postings, newsletters, email alerts, blogs, interviews with journalists and other means of disseminating public information about government operations and activities like anadromous salmonid restoration and mitigation work in the Upper Salmon River Basin and more specifically, modifications to irrigation diversion systems to reduce their conservation costs. The technical information is presented in a manner that furthers the understanding of the operations and activities of the government and how they interact with private landowners and water users and public trust natural resources.

I request a waiver or reduction of fees because the disclosure is likely to contribute "significantly" to public understanding of government operations or activities as explained below:

The disclosure of the requested public information will significantly add to the public understanding of Federal and state government activities as it pertains to the Upper Salmon River's tributaries and to Endangered Species Act and Magnuson-Stevens Act listed salmonids and their recovery.

I request a waiver or reduction of fees because of a commercial interest that would be furthered by the requested disclosure, and, if so:

There is not commercial interest in the requested information for WWP or its members.

I request a waiver or reduction of fees because 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." as explained below:

The commercial interest of the requester is none, making the public interest in disclosure of the requested information pertaining to the Twelvemile Creek Pipeline Project, which includes a fish screen, a lockable, measurable headgate, a new point-of-diversion, and a pipeline as a replacement for an irrigation ditch, 100% and therefore sufficiently large.

If denied a waiver or reduction, I Agree to pay up to 25.00

I believe a compelling need exists to warrant expedited processing because there is an urgency to inform the public concerning actual or alleged Federal Government activity exists as described below:

Questions raised recently concern: 1) the use of Bureau of Land Management lands for irrigated farming and livestock pasturing; 2) apparent expansion of land holdings by downstream landowners that benefit from the pipeline; 3) the apparent shortage of water by some Twelvemile Creek water users this year, residential development and channel modifications by an upstream riparian landowner in the vicinity of the new Point-Of-Diversion (POD) on Twelvemile Creek; 4) if other water users can use the BPA-funded irrigation pipeline, conserve water, and therefore increase the instream flows (to the benefit of anadromous salmonids and bull trout) of Twelvemile Creek; and 4) what are the agreements in place among the water users, BPA, IDFG, IDWR, and the Upper Salmon Basin Watershed Project (Model Watershed) in regards to the operations and maintenance of the POD, headgate, fish screen, pipeline, etc. Getting the facts from the design specs, consultations, NEPA, and any flow or other agreements will allow WWP to inform the public and dispel any unfounded rumors.



Larry Zuckerman <larry@westernwatersheds.org>

assistance of finding reports and contracts for BPA funded restoration project in the Upper Salmon River Basin

1 message

Larry Zuckerman <larry@westernwatersheds.org>
To: efweb@bpa.gov

Fri, Sep 4, 2009 at 4:45 PM

Hi:
I am looking for plans, reports, and contracts pertaining to the BPA-funded water diversion pipeline and fish screen on Twelvemile Creek in Lemhi County, a tributary of the mainstem Salmon River (upstream of Salmon, downstream of Elk Bend, Idaho).

The pipeline was built with the assistance of the Upper Salmon Basin Watershed Project and was supposed to handle irrigation diversions for multiple water users of Twelvemile Creek water. As far as I can tell, only one water user, Marvin Hutchings, ever transferred his water right to the new point of diversion and utilizes the BPA funded diversion, fish screen, and pipeline.

I am trying to find out what the capacity of the pipeline is in terms of CFS and if there were any reductions made on the diversion structure, headgate, or fish screen to restrict the amount of flows diverted after the other water users on Twelvemile Creek were excluded from participating in the government-sponsored pipeline that was designed to benefit anadromous salmonids and bull trout.

I am also trying to figure out if the BPA still retains ownership of the pipeline and diversion works or if it was transferred to the water users on Twelvemile Creek? Also who decides if others can participate in the pipeline with their water right? Marvin Hutchings? or the BPA? Is there some sort of clause that is inherent in these type of projects for who is in charge and if so, for how many years after the pipeline and diversion becomes operational

Marv Hutchings has recently applied for a transfer of his water right that is contained in your pipeline project and Western Watersheds Project is examining his request with the public trust in mind for valuable public trust natural resources.

I would appreciate an answer ASAP and any information that is available. Other information that may be coming in the future - a schedule would be appreciated.

cheers, thanks and have a great holiday weekend

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Larry Zuckerman, Central Idaho Director
Western Watersheds Project
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Salmon, Idaho 83467

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<http://www.westernwatersheds.org>

Western Watersheds Project ("WWP") requests a waiver of any search and copy costs related to the above request. WWP is a non-profit organization dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP has over 2,000 members, including many members who live in Idaho. WWP is active in seeking to protect and improve riparian areas, water quality, fisheries, wildlife, and other natural resources and ecological values of Western watersheds, including within the Upper Salmon River Basin, one of the main BPA areas for habitat mitigation for the FCRPS. To do so, WWP actively participates in agency decision-making concerning public lands throughout the West, particularly with respect to management of livestock grazing and related water diversions.

One of the core aspects of WWP's mission is to educate the public about the natural wonders of the West, and about land, resource and wildlife decisions made by government, private, and other entities that affect the natural environment and wildlife. WWP is effective at increasing public awareness of environmental matters, such as protection of watersheds from impacts of livestock grazing and related water diversions, through public education and outreach, participation in administrative processes, litigation and other enforcement of federal environmental laws. As explained below, WWP meets the criteria for a fee waiver under FOIA.

The requested records concern government activities regarding irrigation and water use on lands managed or historically managed by the Idaho Falls District of the BLM and private lands along Twelvemile Creek. The information requested will help WWP and the public understand what effect habitat mitigation in the Upper Salmon River Basin is having on anadromous salmonid and bull trout conservation, recovery, and habitat restoration; private use of grazing lands and water are having on watersheds in the Idaho Falls District of the BLM; and, whether the BPA has complied with all statutory and regulatory requirements. The public has a great interest in preserving natural resources, and thus a great interest in determining whether federal agencies are making management decisions that protect these resources. The public also has an interest in knowing whether federal agencies are complying with all required standards and laws and properly managing public lands to avoid degradation and damage.

WWP will use the requested information to contribute to the public's understanding of grazing, water use, and public lands management decisions and their impacts on watersheds in the Upper Salmon River Basin and the Idaho Falls District of the BLM by analyzing the information and presenting it to the public. WWP has staff members who are familiar with agency practices and who have scientific backgrounds providing expertise in water, range, and wildlife management. This staff has the expertise and capability to assess, analyze, and summarize the requested management and scientific documents and then use that information to inform the public about the BPA's habitat mitigation program. Federal and private land management practices and conditions of watersheds on federal public trust lands and/or contain public trust natural resources such as water, ESA-listed fishes, and their designated critical habitats. WWP has the ability to disseminate this information to the public both orally and in written form through reports, news articles, and presentations.

WWP uses the media to spread information to the public, with news articles appearing in papers across the West, as well as radio features, discussing WWP's work and grazing issues with which WWP is involved. WWP has over 400 media contacts throughout the nation to ensure media attention for its work. In addition to the media, WWP participates in and helps host conferences at the local, regional, and national levels, where it disseminates information about its work and reveals results of its studies and projects to scientists, lawyers, conservationists, and other interested public who attend these conferences. It participates in educational outreach such as presentations to high school students, issues written reports on grazing and water use impacts that it disseminates at conferences or other meetings across the West, and it distributes a newsletter four times a year that discusses its current work. Finally, it also disseminates information through its website and email notices. The website contains press articles, updates on WWP's current work, information about government activities and management decisions, as well as research reports and scientific articles. Many of the reports and articles that WWP distributes at conferences, on its website, and in its newsletter are based on information obtained through FOIA requests.

As one of the few organizations specifically dedicated to the preservation and protection of the lands and waters on public lands from the impacts of livestock grazing and related water use, WWP is a critically important hub of information for both its members and the general public who have an interest in the health and management of our public lands and the watersheds that support them.

The disclosure of the requested documents to WWP will significantly contribute to public understanding of government activities because these documents are not readily available to the public without such a request. These are not the type of documents the agency routinely publicizes or otherwise broadly disseminates to the public on a normal basis. Thus, a FOIA request is required to obtain the documents. In addition, WWP will use its skills and expertise to analyze these documents, which are often complex and difficult to understand without special training or experience, to assess the BPA's management decisions, its compliance with standards and other requirements, and the effects of grazing and related water use on endangered, threatened, candidate, and regionally sensitive species in the affected watersheds. It is the product of this analysis that will significantly contribute to the public's understanding of whether the Bonneville Power Administration is properly managing its public trust resources and/or mitigating for losses due to their projects and activities elsewhere in the Columbia River Basin. WWP's sole interest in requesting these documents is to further its mission of protecting watersheds in the Interior West, and to educate its members and the general public to enable and empower them to advocate for this protection. WWP is a non-profit, public interest organization and has no commercial or profit interest in this information.

Please send the documents to WWP; PO Box 1322; Salmon, Idaho 83467. If you have any questions about this request, please feel free to contact me. Thank you very much.

Sincerely,

Larry Zuckerman, Central Idaho Director
Western Watersheds Project
PO Box 1322
Salmon, Idaho 83467

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