



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Bonneville Power Administration
Attn: FOIA Coordinator
905 NE 11th Avenue
Portland, Oregon 97232-3601

DEC 19 2001

Re: Freedom of Information Act (FOIA) (NMFS Request #2001-340) Perkins COIE LLP/
Methow River Basin, Okanogan County

Dear FOIA Coordinator:

Enclosed you will find a copy of a request for information under the Freedom of Information Act (FOIA), 5 USC 552, from Galen Schuler, Perkins COIE LLP, addressed to the National Marine Fisheries Service (NMFS). The requests asks for documents related to the Methow River Basin in Okanogan County.

NMFS has found one document pertaining to this request that is the exclusive or primary concern of the U.S. Bonneville Power Administration. Accordingly, per our governing regulations, 15 CFR 4.6 (a)(4), we hereby refer the requester to BPA for further action related to this document. You will find a copy of the final letter that was sent on behalf of the NMFS.

The NMFS has made a copy of the requested document and is enclosing it with this letter. We hope by doing this, we have eliminated any unnecessary time trying to locate the document in your records system.

Thank you for your attention to this matter. Please do not hesitate to call me at (206) 526-4358, should you have any questions.

Sincerely,

Nicolle Hill
FOIA Coordinator

Enclosure



PERKINS COIE LLP

1201 THIRD AVENUE, SUITE 4800 · SEATTLE, WASHINGTON 98101-3099
TELEPHONE: 206 583-8888 · FACSIMILE: 206 583-8500

SCHULER, GALEN G.
(206) 583-8442
schug@perkinscoie.com



April 11, 2001

Via First Class Mail

FOIA Officer
National Oceanic and Atmospheric
Administration
Public Reference Facility (OFAX2)
1305 East-West Highway (SSMC4)
Room 8627
Silver Springs, Maryland 20910

FOIA Officer
National Marine Fisheries Service
Northwest Regional Office
7600 Sand Point Way N.E.
Seattle, Washington 98115-0070

Re: FOIA Request

Dear National and Regional FOIA Officers:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, I am writing to request the disclosure of public documents within the control of your agency. This request is made on behalf of Okanogan County, Washington State, whom I represent.

Specifically, I hereby request copies of all records created by, developed for, submitted to, or considered by the National Marine Fisheries Service (NMFS) in connection with implementation and enforcement of the Endangered Species Act (ESA) as it relates to the diversion and use of surface or ground water in the Methow River Basin of Okanogan County, Washington State. This request includes communications that are intra-agency, interagency, intergovernmental, or communications with private entities and nongovernmental organizations. This request includes, but is not limited to, the following documents:

- 1) All drafts, reference materials, memoranda, reports, analysis, notes, correspondence, and e-mail messages in the possession of NMFS that are related to or were relied on by NMFS in developing three biological opinions for the Okanogan National Forest: Early Winters and Willis Irrigation Ditches, WSB 98-050 (Aug. 2, 2000); Wolf Creek Irrigation

[30104-0012/SL010920.459]

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Ditch, WSB 98-058 (Aug. 2, 2000); and Skyline Irrigation Ditch, WSB 98-061 (Sept. 6 2000) (the "Biological Opinions").

- 2) Any correspondence, reports, or other information collected or received by NMFS in connection with the Biological Opinions since the Biological Opinions were issued in final form.
- 3) All records of ESA enforcement investigations, findings, recommendations, notices, etc. pertaining to use of water in the Methow River Basin, including, but not limited to:

Investigation files, notices, and other records leading to the ESA enforcement action United States v. Methow Valley Irrigation District, No. CS-00-0196-FVS (E.D. Wash.) as well as the consent decree and any amendments or subsequent enforcement measures.

- 4) All reports, drafts, notes, memoranda, and records of interviews (whether taped, transcribed, or noted) created or relied on in a performance audit of the National Marine Fisheries Service, Pacific Northwest Region's implementation and enforcement of the Endangered Species Act in the Columbia River Basin. To the best of our knowledge, the audit was conducted by the Office of the Inspector General, United States Department of Commerce, within the last three years and is related to an expected audit report or project file with a reference number believed to be STL-12155. The requested audit records and results have been reported to be in the possession of Bob Hoy, and were prepared, in part, by Ms. Michele Paratte.
- 5) All correspondence, notes, drafts, analysis or other communications from 1999 to present concerning a draft memorandum of agreement among NMFS, Okanogan County, and other state and federal agencies addressing ESA issues in the Methow River Basin.
- 6) All records of correspondence, negotiations, grant applications, grant approvals, or notes of meetings between NMFS, water users, and/or third parties concerning development of habitat conservation plans for water diversion and use activities in the Methow River Basin.
- 7) All correspondence, notes of conversations or meetings, memoranda, or reports authored by NMFS personnel Mike Grady or Robert Turner or

Dennis Carlson or Dale Bambrick concerning implementation or enforcement of the Endangered Species Act in the Methow River Basin.

- 8) All records of personal communications concerning the Biological Opinions between the authors of the Biological Opinions and any other federal, state, tribal, or local officials, private individuals, or environmental interest groups including, but not limited to:
 - (a) Personal communications between Bob Barwin and Dennis Carlson and Mike Grady re: water rights applications in the Early Winters Creek watershed (May 12, 1999).
 - (b) Personal communications between Hal Beecher, Brad Caldwell, Mike Grady, and Dennis Carlson (Feb. 12, 2000 and Feb. 14, 2000).
 - (c) Personal communications between Brad Caldwell, Mike Grady, and Dennis Carlson re: flow studies for Early Winters (Feb. 14, 2000).
 - (d) Personal communications between Bob Anderson and Dennis Carlson and Mike Grady re: deep water aquifers in Early Winters Creek (Feb. 14, 2000).
 - (e) Personal communications between D. Reiser and Mike Grady from April to June concerning flow protocols (2000)
 - (f) Personal communications between B. Bilby and Dennis Carlson and Mike Grady re: agency flow protocols from April-July 2000.
 - (g) Personal communications between M. Bennett and Dennis Carlson (July 28, 2000)
 - (h) Personal communications between Brad Caldwell and Dennis Carlson and Mike Grady re: IFIM study on Chewuch from January to August, 2000.

In the event that any of the requested documents are not disclosable in their entirety, I request that you release any reasonably redacted or segregable material that may be separated and released. Furthermore, for any documents, or portions thereof, that are determined to be potentially exempt from disclosure, I request that you

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exercise your discretion to disclose the materials, absent a finding that sound grounds exist to invoke an exemption.

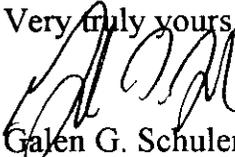
Should documents within the scope of this request be withheld from disclosure, I request that you provide me with a "Vaughn index" that (1) identifies each and every document that is withheld, and (2) states with specificity the statutory exemption claimed for each document and an explanation of how disclosure of a particular document would damage the interest protected by a particular exemption.

Okanogan County respectfully requests that you waive any applicable response fees. Release of the requested information is in the public interest because it will contribute significantly to public understanding of government operations and activities. Pursuant to state law, Okanogan County is the lead agency for watershed planning in the Methow River Basin. Future use and development of water resources in the Methow Basin will be directly affected by enforcement and compliance measures under the ESA. As a local government implementing state water resource planning law and serving the public, Okanogan County requests a fee waiver in the public interest.

If the fee waiver is denied or is granted only in part, please notify me concerning the expected fee arrangement before incurring the costs of searching for records and duplicating records.

I look forward to your response within ten days after receipt of this request. I would be pleased to receive a prompt partial response followed by a complete response if some of the requested documents prove more easy to retrieve and copy than other documents. Please call me if you have any questions concerning this request or want to discuss reasonable accommodations to clarify or narrow this request.

I thank you for your attention to this matter.

Very truly yours,

Galen G. Schuler

cc: Don Anderson, Okanogan County



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, MD 20910

THE DIRECTOR

DEC 18 2001

Mr. Galen G. Schuler
Perkins COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099

Dear Mr. Schuler:

Thank you for your letter to the National Marine Fisheries Service (NMFS), dated April 11, 2001, requesting information pursuant to the Freedom of Information Act (FOIA). You specifically requested documents in connection with the implementation and enforcement of the Endangered Species Act (ESA) as it relates to the diversion and use of surface or ground water in the Methow River Basin of Okanogan County, Washington State.

A search of agency records has identified documents responsive to your request. To date, we have released 561 documents in their entirety. We have also released 45 partially redacted documents. After reviewing the remaining responsive material, we have determined that 95 entire documents and portions of 13 additional documents are exempt from disclosure under 5 USC 552(b)(5). This exemption incorporates the deliberative process privilege, attorney work-product and the attorney-client privilege. Thirty-eight of these documents are being withheld under the deliberative process privilege. The privilege for deliberative material applies to agency documents that reflect advisory opinion, preliminary staff recommendations and deliberations including interpretations of technical data. The documents being withheld are predecisional analyses, the disclosure of these records would inhibit the open and candid discussion necessary to the decision-making process between subordinates and superiors and protect against public confusion that might result from disclosure of reasons and rationales that are not in fact ultimately the grounds for the agency's action. Two documents are being withheld under the attorney work-product privilege. The remaining 55 documents and 13 redacted documents are being withheld under the attorney-client privilege.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



We are also redacting portions of 32 additional documents under 5 USC 552(b)(7)(c). Releasing the information could reasonably be expected to constitute unwarranted invasion of personal privacy.

Furthermore, documents originating from other federal agencies are not included. Pursuant to the provisions of 15 CFR 4.6 (a)(4), your request and a copy of the documents in question are being forwarded to the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, U.S. Forest Service, Environmental Protection Agency, Department of Justice, Bonneville Power Administration and Bureau of Reclamation. A response to your request will come directly from these agencies. For your information, contact points for those agencies are listed below.

Four documents sent to USEWS:
U.S. Fish and Wildlife Service
Western Washington Office
Attn: FOIA Coordinator
510 Desmond Drive SE, Suite 102
Lacey, Washington 98503

One document sent to the USCOE:
Department of the Army
Portland District, Corps of Engineers
Attn: FOIA Coordinator
333 S.W. 1st.
Portland, Oregon 97204

One document to EPA:
Environmental Protection Agency
Attn: Associate Director
FOIA Operations
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

One document to BOR:
Bureau of Reclamation
Attn: FOIA Coordinator
1150 N. Curtis Rd., PN-7602
Boise ID 83706-1234

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One document to DOJ:

Wynne Cathcart, Paralegal Specialist
Policy, Legislation and Special Litigation Section
Environment and Natural Resources Division
Department of Justice
P.O. Box 4390, Ben Franklin Station
Washington, DC 20044-4390

One document to BPA:

Bonneville Power Administration
Attn: FOIA Coordinator
905 NE 11th Avenue
Portland, Oregon 97232-3601

Forty-five documents to USFS:

USDA Forest Service
Pacific Northwest Region
PO Box 3623, 333 SW First Avenue
Portland, Oregon 97208-3623

Since this is deemed to be a partial denial of your request, you may appeal my decision under 15 CFR section 4.8 within 30 working days from the date of this letter. An appeal must be submitted in writing to the Assistant General Counsel for Administration, Department of Commerce, Room 5875, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Both the appeal letter and envelope should be clearly marked "FREEDOM OF INFORMATION APPEAL." You should include a copy of your initial request, this response, and a statement of the reasons why the records requested should be made available, and why the initial denial was in error.

If you have any further questions or require additional information, please contact Nicolle Hill, FOIA Coordinator, Northwest Region at (206) 526-4358.

Sincerely,



for William T. Hogarth, Ph.D.
Assistant Administrator
for Fisheries