



Department of Energy

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

PUBLIC AFFAIRS

February 7, 2012

In reply refer to: DK-7

Susan Drumheller
Idaho Conservation League
P.O. Box 2308
Sandpoint, ID 83864

FOIA #BPA-2012-00243-F

Dear Ms. Drumheller:

This is a partial release in response to your request for records that you made to the Bonneville Power Administration (BPA) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Y

You have requested the following:

1. Project file for the Albeni Falls Dam Flexible Winter Operations Environmental Assessment
2. Correspondence between agencies regarding this proposal
3. Memoranda and other material related to the environmental assessment and the final decision

Response:

BPA's project file for the Albeni Falls Dam Flexible Winter Operations Environmental Assessment is under review for release. As we complete the review of the remaining documents they will be forwarded to you. On the enclosed CD are the documents that have completed review and are being released in their entirety.

Pursuant to 10 CFR 1004.8, if you are dissatisfied with this determination, or the adequacy of the search, you may appeal in writing within 30 calendar days of receipt of a final response letter. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA Appeal is being made.

I appreciate the opportunity to assist you. Please contact Kim Winn, Communications Specialist at 503-230-7305 with any questions about this letter.

Sincerely,

/s/Christina J. Munro
Christina J. Munro
Freedom of Information Act/Privacy Act Officer

Enclosure: CD

Due to the size of the responsive documents they cannot be posted. To obtain a copy please contact the BPA FOIA Office at 503-230-7305.



Department of Energy

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

PUBLIC AFFAIRS

February 22, 2012

In reply refer to: DK-7

Idaho Conservation League
Attn: Susan Drumheller
PO Box 2308
Sandpoint, ID 83864

FOIA# BPA-2012-00243-F

Dear Ms. Drumheller:

This is the final response to your request for records that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

You have requested the following:

1. Project file for the Albeni Falls Dam Flexible Winter Operations Environmental Assessment
2. Correspondence between agencies regarding this proposal
3. Memoranda and other material related to the environmental assessment and the final decision

Response:

As mentioned in our February 7, 2012, letter, the remaining 67 documents have been reviewed under Exemption 5 of the FOIA. Exemption 5 protects from mandatory disclosure "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency . . ." Exemption 5 incorporates the deliberative process privilege to protect the advice, recommendations, and opinions that are part of the agency's decision and policy process.

Exemption 5 also protects attorney client communications, those that relate to a matter for which the client has sought legal advice. The Exemption covers attorney work-product information as well.

The 67 documents withheld here under Exemption 5 are draft documents that discuss numerous issues and concerns that address the Albeni Falls Dam Flexible Winter Operations Environmental Assessment. Draft documents, by their very nature, are pre-decisional because they are prepared prior to the undertaking of any action by the agency. None of the withheld documents represent the final agency policy on these matters.

As is required under FOIA, BPA attempted to segregate factual and non-deliberative information in the 67 withheld documents. In doing so, it became clear that any information that could

possibly be released would be of little to no value, and would not benefit the public. For that reason only these documents will be withheld in their entirety under Exemption 5.

One document was found that could be released in its entirety and is enclosed.

There are no fees associated with this request.

Pursuant to 10 CFR 1004.8, if you are dissatisfied with this determination, or the adequacy of the search, you may appeal in writing within 30 calendar days of receipt of a final response letter. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA Appeal is being made.

I appreciate the opportunity to assist you. Please contact Kim Winn, Communications Specialist at 503-230-7305 with any questions about this letter.

Sincerely,

/s/Christina J. Munro
Christina J. Munro
Freedom of Information Act/Privacy Act Officer

Enclosure:



Department of Energy

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

PUBLIC AFFAIRS

April 27, 2012

In reply refer to: DK-7

Idaho Conservation League
Attn: Susan Drumheller
PO Box 2308
Sandpoint, ID 83864

FOIA #BPA-2012-00243-F

Dear Ms. Drumheller:

In the context of your appeal to the Department of Energy, Office of Hearings & Appeals, Bonneville Power Administration (BPA) is withdrawing its response to this FOIA request dated February 22, 2012.

BPA will again review the records that had any redactions under Exemption 5, to determine if more of them are candidates for further discretionary release. In any event, BPA will index any records, or portions of them, that may be withheld.

The goal is for this review to be complete by May 30, 2012.

I appreciate your patience. Please contact Kim Winn, Communications Specialist, at 503-230-7305 with any questions about this letter.

Sincerely,

/s/Christina J. Munro
Christina J. Munro
Freedom of Information Act/Privacy Act Officer

cc: Janet Fishman, DOE OHA



Department of Energy

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

PUBLIC AFFAIRS

May 16, 2012

In reply refer to: DK-7

Idaho Conservation League
Attn: Susan Drumheller
PO Box 2308
Sandpoint, ID 83864

FOIA #BPA-2012-00243-F

Dear Ms. Drumheller:

As promised in our letter dated April 27, 2012, withdrawing BPA's original response to your FOIA request, we are reviewing the 67 documents that were previously withheld in their entirety. While not complete, we can give to you this partial response.

There are seven documents BPA has discretionarily released without redaction. They are on the enclosed CD.

We determined that 15 of the redacted documents originated from the U.S. Army Corps of Engineers. As required, those documents will be forwarded to the Corps for a FOIA determination. They will be asked to reply directly to you.

The remaining documents are being reviewed further for possible discretionary release. That review is scheduled for Monday, May 21, 2012.

I appreciate your patience. Please contact Kim Winn, Communications Specialist, at 503-230-7305 with any questions about this letter.

Sincerely,

/s/Christina J. Munro
Christina J. Munro
Freedom of Information Act/Privacy Act Officer

Enclosure: CD



Department of Energy

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

PUBLIC AFFAIRS

June 13, 2012

In reply refer to: DK-7

Idaho Conservation League
Attn: Susan Drumheller
PO Box 2308
Sandpoint, ID 83864

FOIA# BPA-2012-00243-F

Dear Ms. Drumheller:

This is the final response to your request for records that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

You have requested the following:

1. Project file for the Albeni Falls Dam Flexible Winter Operations Environmental Assessment
2. Correspondence between agencies regarding this proposal
3. Memoranda and other material related to the environmental assessment and the final decision

Response:

BPA has completed a review for the discretionary release of Exemption 5 material. There are 17 files released in their entirety. One file entitled "ADF – Cultural Resources Martine Redacted.pdf" is redacted in part under Exemption 5 and Exemption 6.

Twenty-five documents are withheld in their entirety under Exemption 5. Two documents have been withheld as non-responsive. Those documents have been indexed for you and are listed in a file entitled "12-00243WithheldIndex.pdf."

Exemption 5 protects from mandatory disclosure "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency . . ." Exemption 5 incorporates the deliberative process privilege to protect the advice, recommendations, and opinions that are part of the agency's decision and policy process.

Exemption 5 also protects attorney client communications, those that relate to a matter for which the client has sought legal advice. The Exemption covers attorney work-product information as well.

BPA asserts Exemption 6 for information which could reasonably be expected to constitute an unwarranted invasion of personal privacy if disclosed. The withheld information consists of the

names and personal contact information (address, email, and/or phone numbers) of individual citizens who have expressed an interest in this Project, as well as the personal cell phone numbers and email addresses of various individuals working on this Project. Release of this information could subject these individuals to unwanted intrusions of privacy. There is no public interest in the disclosure of this information because it does not shed any light on how BPA has performed its statutory duties.

Pursuant to 10 CFR 1004.8, if you are dissatisfied with this determination, or the adequacy of the search, you may appeal in writing within 30 calendar days of receipt of a final response letter. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA Appeal is being made.

Thank you for your patience during this process. Please contact Kim Winn, Communications Specialist at 503-230-7305 with any questions about this letter.

Sincerely,

For/s/Kim S. Winn
Christina J. Munro
Freedom of Information Act/Privacy Act Officer

Enclosure: CD



Department of Energy

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

PUBLIC AFFAIRS

September 11, 2012

In reply refer to: DK-7

Idaho Conservation League
Attn: Susan Drumheller
PO Box 2308
Sandpoint, ID 83864

FOIA# BPA-2012-00243-F

Dear Ms. Drumheller:

A. Background

This is BPA's determination letter in response to DOE's Office of Hearings and Appeals August 16, 2012, Decision and Order. In that Order, OHA remanded back to BPA its June 13, 2012, determination of the Idaho Conservation League's FOIA request. As noted in the Order, BPA previously had provided to the ICL a number of responsive records. The other responsive records had either been partially redacted, or entirely withheld.¹

This determination re-examines the remaining 28 responsive records to ICL's FOIA request: one partially redacted record, two records that were determined to be non-responsive, and the 25 records withheld in their entirety. Order at 2. (This determination does not address the 15 records sent to the Corps for a FOIA determination, as OHA found that BPA was correct in doing so because the records originated with the Corps.)

For the remaining records, OHA directed BPA to identify which records (or portions of a record) that BPA redacted under either Exemption 5 or 6, to identify the two non-responsive records, and finally to more fully explain the specific redactions. Order at 3.²

B. Analysis of the 28 Records

For reference, BPA has indexed the 28 records, broken down by category of analysis. Note that BPA decided to make a further discretionary release of responsive records, and that BPA is also releasing the non-responsive records that originated with BPA.

¹ The Order describes the procedural history and background of the ICL's FOIA request and BPA's responses, and will not be repeated here. Order at 1-2.

² In so doing, BPA will release any reasonably segregable factual portion of any record, and will also consider whether the public interest justifies a release of any record otherwise protectable under Exemption 5. Order at 3.

Finally, BPA is providing you with all of the records (except for one from the Corps noted below). Some are in redacted form, so that you can make a determination whether to appeal the specific redaction(s).

1. Non-responsive records

In reviewing again the 28 records, BPA determined there are four—not two—that are non-responsive to the FOIA request. Nonetheless, the three that originated with BPA are released in full. One potentially non-responsive record originated with the Corps, and it therefore will be forwarded to the Corps for a FOIA determination.

Decision tree draft simplified.pdf	Non-responsive. Used to set minimum control elevation. Discretionarily released
Revised Albeni Falls Study.pdf	Non-responsive. Document is regarding the fall draw down. Discretionarily released
Power comment responses.pdf	Non-responsive. Discretionarily released.
Memorandum For Record_final_draft_if Tony Comments -.pdf	Non-responsive. Document originated with Corps and will be sent to it for determination. .

2. Further Discretionary Releases

The following 10 records are released in full with no redactions.

ADF ³ _FWPO_Final_Draft_EA[1].pdf	Discretionarily released
Albeni Falls Purpose and Need -.pdf	Discretionarily released
Pend Oreille operations TPs Tony Comments 12-22-09.pdf	Discretionarily released
POPUD Questions Responses.pdf	Discretionarily released
tps_Pend Oreille operations09-10 (2).pdf	Discretionarily released
tps_Pend Oreille operations09-10 (3).pdf	Discretionarily released
tps_Pend Oreille operations09-10.pdf	Discretionarily released
Winter operating flexibility at Lake Pend Oreille 2.pdf	Discretionarily released
Winter operating flexibility at Lake Pend Oreille srk.pdf	Discretionarily released
Winter operating flexibility at Lake Pend Oreille.pdf	Discretionarily released

One record has the non-responsive parts redacted, and the responsive part released in full.

³ ADF is an acronym for “Agency Decision Framework” whereby BPA insures that an adequate internal review of a potential decision occurs.

Response to Notes on Chip Corsi - redacted.pdf	Discretionary release of responsive part.
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3. Exemption 5 Attorney Client Communications and Work Product

Of the remaining 13 records, 4 are exempt from disclosure under Exemption 5 as attorney-client communications, or as attorney work product prepared in reasonable anticipation of litigation. The privileged communications and work product have remained confidential, and have not been disclosed outside of BPA.

Therefore, the following records have the privileged communications and/or work product redacted, as noted on each individual page of the record. All non-protected portions of the records are released.

AFD legal paper re FONSI – DRAFT - redacted.pdf	Ex 5 Attorney-client
Albeni Falls Op ADF - legal factors draft - redacted.pdf	Ex 5 Attorney-client
MEMO_BPA_Albeni Falls and TDG Issues - redacted.pdf	Ex 5 Attorney-Client
MEMO_BPA_SEIS Case Excerpts redacted.pdf	Ex 5 Attorney work product

4. Exemption 5 Deliberative Process Redactions

For the final 9 responsive records, portions of each are exempt from disclosure because they reflect internal BPA deliberations about the Albeni Falls Dam Flexible Winter Operations. The redacted portions are not recitations of a final agency action or decision.

As you know, Exemption 5 protects from mandatory disclosure “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency....” Exemption 5 incorporates the deliberative process privilege to protect the advice, recommendations, and opinions that are part of the agency’s decision and policy making process. BPA also has considered whether to make a discretionary release of these records and has determined that—at this point in time—their release would compromise BPA’s past and future decision making process for the Albeni Falls Dam Flexible Winter Operations. Finally, all segregable factual portions of the records are released.⁴

ADF - Cultural Resources Martine Redacted.pdf	Ex 5 Deliberative and Ex 6
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⁴ BPA had previously made limited redactions under Exemption 6 of various email addresses and telephone numbers contained within the packet of records labeled “ADF—Cultural Resources.” Upon further review and consideration, BPA has determined that there is no privacy interest in any of the previously redacted federal employee work email and telephone information. That information will not be redacted. For non-federal employees, however, BPA has determined that there is a privacy interest in the email and telephone numbers, and that there is no public interest in the information as it sheds no light on BPA’s activities. That information is redacted.

Albeni Falls Issues - redacted.pdf	Ex 5 Deliberative
Benefit description - redacted.pdf	Ex 5 Deliberative
Dear Governor - redacted.pdf	Ex 5 Deliberative
DQC Comments DRAFT EA_BPA w Tony's Comments - redacted.pdf	Ex 5 Deliberative
Draft ADF on winter flexibility 2009 - redacted.pdf	Ex 5 Deliberative
Pend Oreille Options clean additional Tony Comments- redacted.pdf	Ex 5 Deliberative
revised CH 2 Albeni EA - redacted.pdf	Ex 5 Deliberative
Summary of changes - redacted.pdf	Ex 5 Deliberative

Please contact Kim Winn, Communications Specialist at 503-230-7305 with any questions about this determination letter.

Sincerely,

/s/Christina J. Munro

Christina J. Munro

Freedom of Information Act/Privacy Act Officer

Enclosure: CD

cc: Kimberly Jenkins-Chapman
Office of Hearings and Appeals HG-1
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-1615