

*Friends of the Wild Swan
P.O. Box 103
Bigfork, MT 59911*

December 12, 2014

Bonneville Power Administration
Attn: Kim Winn, FOIA Public Liaison
Via e-mail to: kswinn@bpa.gov

Dear Ms. Winn,

You requested clarification of Friends of the Wild Swan's November 21, 2014 Freedom of Information Act request. We are amending the FOIA request as follows:

All documents regarding dam operations within the Federal Columbia River Power System affecting bull trout critical habitat from November 17, 2010 to present. This should include documents, correspondence, communications, formal and informal re-consultations between the USFWS and Bonneville Power Administration.

For example, BPA informed us that they are currently engaged in consultation with the U.S. Army Corps of Engineers, Bureau of Reclamation and US Fish and Wildlife Service on the effects of the operation and maintenance of the Federal Columbia River Power System on bull trout critical habitat since February 2011.

BPA also informed us that they consulted with and received a programmatic biological opinion from the US Fish and Wildlife Service for BPA's Habitat Improvement Program in November 2013.

This request excludes any contracts relating to bull trout habitat restoration or dam improvements for fish passage.

I hope this clarifies what we are requesting and will assist you in locating those documents in a timely manner.

Sincerely,
/s/Arlene Montgomery
Program Director

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November 21, 2014

Dept. of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, OR 98208-3621
Attn: Sarah McNary, Senior Policy Advisor – Endangered Species

Date Rec'd:
12/3/2014
Due Date:
1/5/2015
Tracking Number:
BPA-2015-00273-F

Dear Ms. McNary,

Pursuant to the Freedom of Information Act we request the following documents relating to consultation between the U.S. Fish and Wildlife Service and the Bonneville Power Administration pertaining to dam operations and bull trout critical habitat.

- 1) Any and all communications, meeting minutes and other correspondence between the Bonneville Power Administration and **U.S. Fish and Wildlife Service** regarding dam operations in bull trout critical habitat since November 17, 2010.
- 2) Any and all communications, meeting minutes and other correspondence between the Bonneville Power Administration and **other federal agencies** regarding dam operations in bull trout critical habitat since November 17, 2010.
- 3) Any and all communications, meeting minutes and other correspondence between the Bonneville Power Administration and **state agencies** regarding dam operations in bull trout critical habitat since November 17, 2010.
- 4) Any and all communications, meeting minutes and other correspondence between the Bonneville Power Administration and agricultural or energy interests in bull trout critical habitat since November 17, 2010.
- 5) Any and all documents that are the result of consultation between the U.S. Fish and Wildlife Service and Bonneville Power Administration regarding dam operations in bull trout critical habitat since November 17, 2010.

Friends of the Wild Swan is a 501(c)(3) non-profit, public interest, public education organization.

To the requester's knowledge, this information is not available from any other federal, state, or public agency required to provide it. In addition, the release of this information

will not result in financial benefit to Friends of the Wild Swan or any individuals, groups or organizations.

As you know, the FOI Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. We expect to receive all non-exempt portions of the documents that we have requested, and ask that you justify any deletions by reference to specific exemptions allowed under the FOI Act. Friends of the Wild Swan reserves the right to appeal a decision to withhold any materials.

We hereby request a fee waiver for all search and duplication fees under the FOIA regulations [5 U.S.C. Sec. 552(a)(4)(A) and 36 CFR 2.19(c)(1)]. The information requested will benefit the citizens of the United States and is for the purpose of public education and to encourage public debate on important policy issues. Friends of the Wild Swan has no commercial interest in the documents requested. There is widespread public interest in dam operations and bull trout throughout the northwest. Disclosure of the requested documents, which are not generally available to the public elsewhere, will further enhance and enlighten the public's understanding of this issue.

Friends of the Wild Swan has the ability and intention to disseminate the information we receive to the general public through: publication of the group's newsletter, website, news media and at public meetings and conferences. Information available through the group's office and newsletters are used in press conferences and releases, television and radio interviews, and regional and national publications, and reach a significant number of individuals nationwide.

As the Program Director of Friends of the Wild Swan I have been a speaker on panels discussing the Endangered Species Act at law conferences as well as at U.S. and international environmental conferences. Friends of the Wild Swan has a proven track record of disseminating information to the public through various media. Release of this information will contribute to public understanding of this issue.

In addition to meeting the general standard for FOIA fee waiver requests Friends of the Wild Swan is also a representative of the news media. The group publishes newsletters, writes articles on this issue for other organizations, disseminates information through our website and gives public presentations at meetings and conferences.

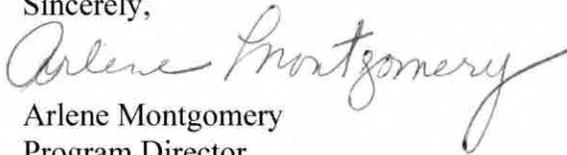
Friends of the Wild Swan has a long-standing interest in bull trout protection and recovery. This includes petitioning for Endangered Species Act protection for bull trout in 1992, securing listing in 1998 and 1999, securing critical habitat in 2010 and recovery plan development in 2014.

Friends of the Wild Swan has a long history of education efforts and has absolutely no financial or commercial interest in these documents. Our work provides a public benefit and is in the best interest of the people of the state of Montana as well as the people of the United States. All information provided pursuant to this request will be used in furtherance of these purposes and will be available to the public.

The language of the FOIA clearly indicates that Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government records. In addition, the legislative history of the FOIA fee waiver language indicates that Congress intended a liberal interpretation of the phrase "Primarily benefiting the public." This suggests that all fees are to be waived whenever the release of information contributes to public debate on important policy issues. This has been affirmed by the US Court of Appeals for the District of Columbia, in *Better Government Association v. Department of State*, 780 F. 2d 86 (D.C. Cir., 1986). In that case, the Court found that under the FOIA, Congress had explicitly recognized the need for non-profit organizations to have free access to government documents and that government agencies cannot impair this free access by charging duplication or search for FOIA information requests (Id. at 89).

If you need more information or would like to discuss this request contact me at 406-886-2011 or arlene@wildswan.org. We anticipate no delay in granting this fee waiver request. We prefer the requested records and documents be provided in common electronic formats whenever possible. As per the FOIA, we expect that you will respond to this request within 20 working days.

Sincerely,

A handwritten signature in cursive script that reads "Arlene Montgomery". The signature is written in dark ink and is positioned to the right of the typed name.

Arlene Montgomery
Program Director