



United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE 11th Avenue
Portland, Oregon 97232-4181



In Reply Refer to:
ABA-CGS-FOIA
FWS-2015-00279

June 8, 2015

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

Date Rec'd:
6/15/2015
Due Date:
7/14/2015
Tracking Number:
BPA-2015-01485-F

Dear FOIA Officer:

The Fish and Wildlife Service received a request under the Freedom of Information Act (FOIA) dated November 21, 2014, from Ms. Arlene Montgomery of Friends of the Wild Swan regarding dams and bull trout critical habitat. Copies of the request and of our final response dated June 8, 2015, are enclosed for your reference.

In the course of our record search we found that three (3) records originated with or significantly involved the Bonneville Power Administration. Pursuant to provisions of Department of the Interior FOIA regulations (43 CFR 2.13), we are referring this request and those records (included on the enclosed CD) for review and direct response by your agency. We do not object to full disclosure of any portions of these records involving our agency.

I would appreciate a copy of your reply to the requester. Please send it to my attention at the above letterhead address and refer to my tracking number FWS-2015-00279.

If you have any questions about this FOIA request or our response, please contact me at larry_buklis@fws.gov or by telephone at 503-231-2072.

Sincerely,

Larry Buklis
Pacific Regions FOIA Coordinator

Enclosures (3)

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

November 21, 2014

U.S. Fish and Wildlife Service
Pacific Region
911 NE 11th Avenue
Portland, OR 97232

Pursuant to the Freedom of Information Act we request the following documents relating to consultation between the U.S. Fish and Wildlife Service and/or Bureau of Reclamation, Army Corps of Engineers, Bonneville Power Administration and the Federal Energy Regulatory Commission pertaining to dam operations and bull trout critical habitat.

- 1) Any and all communications, meeting minutes and other correspondence between the Bureau of Reclamation, Army Corps of Engineers, Bonneville Power Administration and/or Federal Energy Regulatory Commission 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 Fish and Wildlife Service 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 Fish and Wildlife Service 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 Fish and Wildlife Service 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/or Bureau of Reclamation, Army Corps of Engineers, Bonneville Power Administration and Federal Energy Regulatory Commission 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.

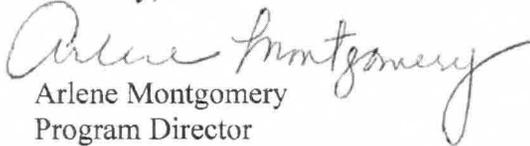
Friends of the Wild Swan has a long history of education efforts and has absolutely no financial or commercial interest in these documents. Our work provides a public benefit and is in the best interest of the people of the state of Montana as well as the people of the

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,

Arlene Montgomery
Program Director