



## Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

August 30, 2016

In reply refer to: FOIA #BPA-2016-01047-F

Kristine M. Akland  
Alliance for the Wild Rockies  
Akland Law Firm, PLLC  
PO Box 7274  
317 E. Spruce Street  
Missoula, MT 59807  
[aklandlawfirm@gmail.com](mailto:aklandlawfirm@gmail.com)

Dear Ms. Akland:

This communication follows up on the Bonneville Power Administration's (BPA) July 1, 2016 letter to you acknowledging your June 1, 2016 request for records under the Freedom of Information Act (5 U.S.C. § 552).

### **Your June 1, 2016 Request**

"...we request the following documents relating to consultation between the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Association and the U.S. Army Corps of Engineers/Bureau of Reclamation/Bonneville Power Administration specifically pertaining to the operation of the following dams within bull trout critical habitat: Libby, Upper Baker, Diablo, Dworshak, Lower Granite, Little Goose, Lower Monumental, Lee Harbor, McNary, John Day, The Dalles, Howard Hanson, Dexter, Mud Mountain Dam, Roza, Chandler, Hungry Horse, Albeni Falls, Grand Coulee, Chief Joseph, Bonneville, Green Peter, Cougar, Dexter, Look Out Point, Hills Creek, Blue River, Fall Creek, Dorena, Cottage Grove, Fern Ridge.

Specifically, Alliance for the Wild Rockies requests:

1. Any and all documents that are a result of the consultation between U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric [Administration] and the U.S. Army Corps of Engineers/Bureau of Reclamation/ Bonneville Power [Administration] since January 1, 2015. [And]
2. Any and all Biological Assessments and Biological Opinions regarding the effects of the operation and maintenance of the above dams on bull trout critical habitat."

## Your Clarifications

On June 17, 2016, via reply email to BPA, you indicated a date range of “September 30, 2010 until present date” for the records you are requesting under item 2, above.

On June 30, 2016, via reply email to BPA, you confirmed the following:

At the start of the FOIA request(s) where you listed specific dams, with the exception of the second reference to Dexter (which you acknowledge was a typographical error), all of the dams listed were intended to be listed, even if located outside of designated bull trout critical habitat in the October 18, 2010 final rule, because you believe there is some evidence that operations of those dams listed affect designated bull trout critical habitat.

For item 1, you clarified that this request is only intended to address documents that involve analysis of bull trout critical habitat, and only intended to include consultation with the U.S. Fish and Wildlife Service.

## FOIA Process Update

In BPA’s July 1, 2016 acknowledgment letter to you, we indicated that your FOIA request was deemed complex and incorporated unusual circumstances. These designations were made in accord with 5 U.S.C. § 552(a)(6)(D)(i) and 5 U.S.C. § 552(a)(6)(B)(i), respectively. Owing to those designations, we further informed you that BPA could not, on July 1, 2016, provide you with an accurate estimate of a completion date for your BPA-2016-01047-F request. BPA’s records-gathering efforts in response to your FOIA request have been ongoing and we can now estimate that your FOIA request response will be completed by November 1, 2016.

If you have any questions about this communication you may contact James King (CorSource Technology Group, Inc.), assigned to the BPA FOIA office, at 503-230-7621.

Sincerely,



C. M. Frost  
Freedom of Information/Privacy Act Officer



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July 1, 2016

In reply refer to: FOIA #BPA-2016-01047-F

Kristine M. Akland  
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Akland Law Firm, PLLC  
PO Box 7274  
317 E. Spruce Street  
Missoula, MT 59807  
aklandlawfirm@gmail.com

Dear Ms. Akland:

The Bonneville Power Administration (BPA) has received your June 1, 2016 request for records under the Freedom of Information Act (5 U.S.C. § 552). Your request was received on June 8, 2016 and has been assigned tracking number BPA-2016-01047-F. Please use that tracking number in any correspondence with the agency regarding your request.

### Request

“...we request the following documents relating to consultation between the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Association and the U.S. Army Corps of Engineers/Bureau of Reclamation/Bonneville Power Administration specifically pertaining to the operation of the following dams within bull trout critical habitat: Libby, Upper Baker, Diablo, Dworshak, Lower Granite, Little Goose, Lower Monumental, Lee Harbor, McNary, John Day, The Dalles, Howard Hanson, Dexter, Mud Mountain Dam, Roza, Chandler, Hungry Horse, Albeni Falls, Grand Coulee, Chief Joseph, Bonneville, Green Peter, Cougar, Dexter, Look Out Point, Hills Creek, Blue River, Fall Creek, Dorena, Cottage Grove, Fern Ridge.

Specifically, Alliance for the Wild Rockies requests:

1. Any and all documents that are a result of the consultation between U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric [Administration] and the U.S. Army Corps of Engineers/Bureau of Reclamation/Bonneville Power [Administration] since January 1, 2015. [And]

2. Any and all Biological Assessments and Biological Opinions regarding the effects of the operation and maintenance of the above dams on bull trout critical habitat.”

### **Clarifications**

On June 17, 2016, via reply email to BPA, you indicated a date range of “September 30, 2010 until present date” for the records you are requesting under item 2 above.

On June 30, 2016, via reply email to BPA, you confirmed the following:

At the start of the FOIA request(s) where you listed specific dams, with the exception of the second reference to Dexter (which you acknowledged was a typographical error), all of the dams listed were intended to be listed, even if located outside of designated bull trout critical habitat in the October 18, 2010 final rule, because you believe there is some evidence that operations of those dams listed affect designated bull trout critical habitat.

For item 1, you clarified that this request is only intended to address documents that involve analysis of bull trout critical habitat, and only intended to include consultation with the U.S. Fish and Wildlife Service.

### **Acknowledgement**

We have reviewed both your request and clarification and have determined that they fulfill all of the criteria of a proper request for agency records under the FOIA and the Department of Energy’s (DOE) FOIA regulations at Title 10, Code of Federal Regulations, Part 1004.

### **Complex Request**

The FOIA requires that BPA act on requests “promptly” and that we make a determination on your request and respond within 20 working days (5 U.S.C. § 552(a)(6)). However, BPA has instituted multi-track processing, as permitted by the FOIA (5 U.S.C. § 552(a)(6)(D)(i)). In accord with this process, simple requests and complex requests are placed in two different queues, and each queue is processed on its own first-in, first-out basis. Requests are placed in the complex queue if they will require significant agency time and resources to process or will require consultations with the other Federal agency components. We have determined that a response to your request will likely require a review for statutory exemptions and consultations with possible third parties, including other Federal agencies and BPA agency components, which you have articulated in your request. We have therefore designated your request as complex.

**Unusual/Exceptional Circumstances**

Under the FOIA, an agency may extend the response time if “unusual circumstances” exist (5 U.S.C. § 552(a)(6)(B)(i)). Unusual circumstances include the need to search records located in field facilities, requests for a voluminous amount of records, and requests that require consultation with other agency components. We have determined that a response to your request will likely require consultation with other agency components, and have therefore determined that your request involves unusual circumstances.

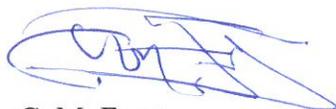
In light of the above conditions and determinations, BPA cannot at this time accurately estimate the completion date for your request, as our records-gathering efforts are ongoing. Once we have assessed the collected records, we will then provide you with a target completion date.

**FOIA Fee**

FOIA fees are waived.

If you have any questions about this communication, you may contact James King (CorSource Technology Group, Inc.), assigned to the BPA FOIA office, at 503-230-7621.

Sincerely,



C. M. Frost  
Freedom of Information/Privacy Act Officer