



Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

August 3, 2017

In reply refer to: BPA-2017-01518-F

Niels Holch
Holch & Erickson LLP
400 North Capitol Street NW #585
Washington, DC 20001
nholch@holcherickson.com

Dear Mr. Holch:

The Bonneville Power Administration (BPA) has received your request for agency records made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Your records request was received by BPA on July 26, 2017 and has been assigned the Department of Energy (DOE) tracking number BPA-2017-01518-F. Please use that tracking number in any communication with the agency regarding your FOIA request.

Request

“...the Memorandum of Understanding or Agreement among Bonneville Power Administration, the Pacific Northwest Regional Council (the Governors of Idaho, Oregon, and Washington), and four Indian Tribes (NezPerce, Yakama, Umatilla, and Warm Springs). This Memorandum was executed sometime in 1976.”

Acknowledgement

BPA reviewed your request and determined it fulfills all criteria of a proper request under both the FOIA and the DOE FOIA regulations at Title 10, Code of Federal Regulations, Part 1004.

Response

In accord with the FOIA requirements, BPA conducted electronic searches of records in the following agency offices:

Office of the General Counsel

The agency record responsive to your request has been identified. It is an existing public record and it accompanies this communication, with no exemption-based redactions applied.

Certification

Your FOIA request BPA-2017-01518-F is now closed with all available agency records provided. Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the determinations and the records release described above.

Fee

There are no FOIA fees applicable to your request for BPA records.

Appeal

This decision, as well as the adequacy of the search, may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to:

Director, Office of Hearings and Appeals,
HG-1, L'Enfant Plaza
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. The appeal must contain all of the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either: 1) in the district where you reside; 2) where you have your principal place of business; 3) where DOE's records are situated; or 4) in the District of Columbia.

You may contact BPA's FOIA Public Liaison, Sarah Westenberg, at the address on this letter header for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail: ogis@nara.gov
Phone: 202-741-5770; Toll-free: 1-877-684-6448; Fax: 202-741-5769

Questions about this communication may be directed to James King, CorSource Technology Group, Inc., assigned to the BPA FOIA office, at jjking@bpa.gov or 503-230-7621.

Sincerely,

A handwritten signature in blue ink, appearing to be 'C. M. Frost', written over a horizontal line.

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

Responsive Record Attached

MEMORANDUM OF UNDERSTANDING

PREAMBLE

One of the most priceless assets and precious natural resources of the Pacific Northwest is the anadromous fishery of the Columbia River and its tributaries. The gradual depletion of this great resource is of grave concern to a broad range of Northwest interests, be they social, cultural, economic, environmental, recreational, or governmental. The preservation and restoration of the fishery has long been a common goal of dedicated, albeit fragmented, efforts on the part of numerous agencies, organizations, and individuals.

The parties to this Memorandum of Understanding are committed to the premise that decisive action is essential if further deterioration of the fishery is to be forestalled. They are equally committed to the concept of solving a regional problem on a coordinated regional basis.

The signatories to this Memorandum of Understanding represent the following parties: the Nez Perce Tribe of Idaho, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakima Indian Nation (hereinafter collectively referred to as "The Tribes"), the Bonneville Power Administration (hereinafter referred to as "BPA"), and the Pacific Northwest Regional Commission, consisting of the Governors of the States of Idaho, Washington and Oregon and the Federal co-chairman (hereinafter referred to as "PNRC").

COMMUNITY OF INTEREST

The parties hereto each have compelling reasons for jointly participating with each other and with other interests in a regional program to assure protection and enhancement of the fishery, and for entering into this Memorandum of Understanding.

The Tribes have a deep-rooted cultural and economic concern for the well-being of the resource. The BPA and the PNRC recognize that The Tribes have governmental powers which are reinforced by judicial decisions which recognize their salient interests with regard to the equitable sharing of the resource. It is further recognized that Federal court decisions have specifically established that The Tribes have treaty rights to an equitable share of the Columbia Basin fishery resource, and to restraints on fluctuations in river levels which would interfere with their harvest of the resource.

BPA recognizes that operation of the Federal Columbia River Power System (FCRPS) may be subject to restraints on peaking and rates of flow for the protection of the fishery resource, even though such restraints may reduce power generation. Any fishery improvement programs which would permit greater FCRPS power production would directly benefit the users of BPA power.

As the marketing agent, BPA collects, and under Federal law may make authorized expenditures from revenues from the power generated at the projects of the FCRPS. The investment to date in fishery mitigation programs and facilities authorized as part of these projects is approximately \$300 million. Currently some \$19.5 million annually is allocated for repayment from power revenues to cover operation and maintenance costs and interest and amortization on this investment.

As a bureau of the U.S. Department of the Interior, BPA recognizes the special trust and treaty responsibilities vested in the Secretary of the Interior with regard to Indian Tribes.

Additionally, BPA has indicated its responsiveness to a recent joint proposal by the Governors of Oregon, Washington, and Idaho that BPA expand its participation in a regional program of fishery mitigation through whatever entity (hereinafter called the designated entity) may be designated by the three Governors acting in their joint capacity as members of the PNRC, and concurred in by The Tribes and BPA.

PNRC is a joint State/Federal commission with responsibility for economic development and resource program coordination in the Pacific Northwest. PNRC or its designated entity shall consult and coordinate with the other parties hereto and other resource and user groups in identifying and implementing projects and in assessing their results.

Other parties share with The Tribes, BPA, and PNRC a common concern for and dedication to the restoration of the fishery. These include other Federal, State, and local government agencies, other Indian tribes, sports and wildlife associations, river and marine commercial fisheries, environmental, business and labor organizations, and many thousands of concerned individuals. These groups may recommend fish restoration activities for implementation hereunder.

STATEMENT OF PURPOSE

The purpose of this Memorandum of Understanding is to forge a partnership among The Tribes, BPA, and PNRC for undertaking coordinated programs aimed at helping to restore the Columbia River anadromous fishery, in coordination with all other fishery interests for the betterment of the region as a whole.

OBJECTIVES

The objectives of this joint program are:

- A. To assure that programs approved compliment and strengthen those carried out by other resource agencies;
- B. To develop funding procedures that can support a flexible ongoing program;
- C. To assure The Tribes and all other concerned agencies, groups and individuals equitable participation in the preparation of regional fisheries restoration programs and policies;
- D. To identify initially a specific pilot project or projects which promise measurable results in the near term (2-4 years) and which are compatible to a regional program;

- E. To consult and coordinate with other resource and user entities in identifying and implementing projects, and in assessing their results;

AGREEMENT

With the foregoing principles in mind, the parties hereto agree as follows:

1. BPA agrees, within the limits of its authority, to participate in funding a regional program of Columbia River Fisheries Restoration. In the event it is determined that BPA lacks the administrative authority to provide such funding, BPA will use its best efforts to obtain legislative funding authority.
2. BPA will exert its best efforts to improve the fishery without involving itself in the regulation or user apportionment of the resource.
3. The parties hereto will identify specific projects which promise measurable results and which are compatible to a regional program.
4. BPA will be responsible for the final approval of the expenditure of all BPA funds pursuant to this agreement.
5. All programs and projects developed under this agreement will be administered by and through the PNRC or its designated entity after consultation with the parties hereto and with the appropriate State resource management agencies.

JOINT COMMITMENT

The parties to this Memorandum of Understanding jointly commit their good faith and best efforts to seeking the restoration of the anadromous fishery of the Columbia River and its tributaries. We welcome the advice, assistance, and cooperation of all interested parties in pursuing this goal on a coordinated regional basis. Nothing in this agreement prevents the parties from seeking minimum stream flows consistent with maintaining the integrity of fish and wildlife habitat.

This Memorandum replaces the original agreement signed by The Tribes and the BPA on October 13, 1976, and strengthens the concepts and goals stated in that agreement by the addition of the PNRC.

This Memorandum of Understanding is hereby executed in nine duplicate original copies on this 29th day of November, 1976.

NEZ PERCE TRIBE OF IDAHO

Richard A. Helgeson
Chairman
Alta Geyman

CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON

Zane Jackson
Chairman

CONFEDERATED TRIBES OF THE UMATILLA
INDIAN RESERVATION

Lubin Matheson
Chairman

CONFEDERATED TRIBES AND BANDS OF
THE YAKIMA INDIAN NATION

Watson Tatum
Chairman

BONNEVILLE POWER ADMINISTRATION

Ronald Paul Boal
Administrator

PACIFIC NORTHWEST REGIONAL COMMISSION

Robert W. Straub
Robert W. Straub, State Cochairman
Governor, State of Oregon

Jack O. Padrick
Jack O. Padrick, Federal Cochairman

Daniel J. Evans
Daniel J. Evans
Governor, State of Washington

Cecil D. Andrus
Cecil D. Andrus
Governor, State of Idaho