



Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

January 29, 2018

In reply refer to: FOIA #BPA-2018-00236-F

Christopher Hudak, Esq.
Counsel for Ecological Rights Foundation
P.O. Box 1000
Santa Cruz, California 95061
ecorights@earthlink.net; (b) (6)

Dear Mr. Hudak:

This communication is the Bonneville Power Administration's (BPA) final response to your request for agency records made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Your records request was initially received by the Portland District, U.S. Army Corps of Engineers (USACE), on November 6, 2016 and was assigned the FOIA Request No. USACE-FP-17-003254. Part of your records request was transferred to the Bonneville Power Administration (BPA) on November 1, 2017; we assigned the internal tracking number of BPA-2018-00236-F. Your request was then formally acknowledged by this agency on November 16, 2017.

November 6, 2016 Request

“Any and all of "Your" internal "documents", and any and all "documents" "You" sent to or received from "NMFS", "FWS", Congressional offices and/or any other third parties "related to" whether "You" have implemented or will implement Reasonable and Prudent Alternative actions in the July 11, 2008 biological opinion ("2008 BiOp") for the Willamette River Basin Flood Control Project ("Project") concerning fish passage past Cougar Dam, Lookout Dam, and Detroit Dam. The pertinent fish passage actions relevant to this request are described in the 2008 BiOp pages 9-53 through 9-56 attached herein. The Cougar Dam fish passage action is 4.12.1, the Lookout Point fish passage action is 4.12.2, and the Detroit Dam fish passage action is 4.12.3. Again this request is only for documents generated after June 11, 2013.”

December 27, 2016 Clarifications

“We are not requesting documents that discuss how the Portland District is physically going to install or operate the particular infrastructure or devices that it has decided to implement. We are not requesting plans, specs, and design or operation information for the

PFFC at Cougar Dam. We are looking for documents (post June 11, 2013) concerning the Corps' discussions and decisions about whether or not to implement the Reasonable and Prudent ("RPA") actions in the Willamette Basin Biological Opinion and concerning the decisions about which actions, if any, the Corps will implement, particularly with regard to the discretion and authority that the Corps has to undertake the RPA actions." [and;]

"Any and all of "Your" internal "documents", and any and all "documents" "You" sent to or received from "NMFS", "FWS", Congressional offices and/or any other third parties "related to" "Your" "ESA" section 7 consultations with "NMFS" and/or "FWS" for the Toutle River Sediment FOIA Request No. USACE-FP-17-003254 – Referral for Direct Response U.S. Department of Energy, Bonneville Power Administration Retention Structure Spillway Raise Project ("SRS Project"), including but not limited to any and all draft or final biological assessments, any and all draft or final biological opinions, and any "documents" "related to" reinitiation of "ESA" section 7 consultation concerning the SRS Project. The SRS Project is part of the Mount St. Helens Sediment Management Project. This request includes any and all "documents" "related" to whether "You" are required to, or will engage in, "ESA" section 7 consultation, and whether "You" are required to, or will reinitiate ESA section 7 consultation with "NMFS" and/or "FWS" concerning the SRS Project. This request also includes any and all "documents" "related to" whether or not "You" have implemented or will implement the Reasonable and Prudent Alternative ("RPA") actions included in any draft or final SRS Project biological opinion and the reasons or explanations for implementing or not implementing any such RPA actions. Again this request is only for documents generated after June 11, 2013."

Response

USACE's responsive records included 41 pages of records that originated with BPA. These pages were forwarded to BPA from USACE and were reviewed by BPA's Office of General Counsel and office of Fish Operations Policy & Planning. Those required efforts are complete. In accord with the FOIA, BPA is herein releasing 41 pages of responsive records, with 37 pages withheld in full under 5 U.S.C. § 552(b)(5) (Exemption 5), and with 4 pages containing some redactions to non-responsive information and some redactions applied under Exemption 5, as described herein.

Exemption 5

BPA asserts Exemption 5 here to withhold sensitive, pre-decisional internal analysis and discussion, the public disclosure of which would harm the interests protected by Exemption 5. Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." In plain language, the exemption protects privileged information. Exemption 5's deliberative process privilege protects records evincing the deliberative or decision-making processes of government agencies. Records protected under this privilege must be both "pre-decisional" and "deliberative." A record is "pre-decisional" if it is "generated before the adoption of an agency policy." A record is "deliberative" if it "reflects the give-and-take of the consultative process," either by assessing the

merits of a particular viewpoint, or by articulating the process used by the agency to formulate a decision. BPA has considered and declined a discretionary release of some pre-decisional and deliberative information in the responsive records set because disclosure of the records would harm the interests protected and encouraged by Exemption 5.

Records Subject to Discretionary Release

In reviewing the responsive agency records for potential redactions under Exemption 5, BPA has been at all times mindful of the Memorandum for Heads of Executive Departments and Agencies Concerning the FOIA, 74 Fed. Reg. 51879 (Oct. 8, 2009). This memo directs all Federal agencies to adopt a presumption in favor of disclosure, and permits discretionary release of records that might otherwise be protected under Exemption 5. BPA has considered and approved the discretionary release of certain information in the responsive records set that would otherwise be arguably subject to Exemption 5.

Certification

Your FOIA request BPA-2018-00236-F is now closed. Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the release and exemption determinations described above.

Fee

There are no fees associated with your FOIA request response.

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 at the 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, LLC, at jjking@bpa.gov or 503.230.7621.

Sincerely,



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

From: [Spear, Daniel J \(BPA\) - PGB-5](#)
To: [Kuhn, Timothy S NWP](#); [Ammann, Julie H NWP](#); [Piaskowski, Richard M NWP](#); [Griffith, David W NWP](#); [Askelson, Sean K NWP](#); [Chane, Ian B NWP](#)
Subject: [EXTERNAL] Questions on Biological Uncertainty Graphs in FBW/SLAM/VSP Analysis
Date: Thursday, December 12, 2013 5:39:09 PM

Hello:

I have a question about the biological uncertainty associated with the various floating surface collector options that have been analyzed through the FBW/SLAM/VSP machine. (b)(5)

As I'm sure you are all aware, one of the reasons that the COP Process was incorporated into the Willamette BiOp RPA was because the success of collecting and passing Chinook in reservoirs that frequently fluctuated over a hundred feet was not knowable. (b)(5)

(b)(5)

Thanks,

Dan Spear

From: [Spear, Daniel J \(BPA\) - PGB-5](#)
To: [Chane, Ian B NWP](#); [Askelson, Sean K NWP](#); [Harwood, Holly C \(BPA\) - PGB-5](#); [Oliver, Stephen R \(BPA\) - PG-5](#); [BPA Rick Pendergrass](#)
Cc: [Griffith, David W NWP](#); [Ammann, Julie H NWP](#); [Kuhn, Timothy S NWP](#); [Piaskowski, Richard M NWP](#)
Subject: [EXTERNAL] [REDACTED] Non-Responsive
Date: Thursday, December 12, 2013 6:30:46 PM
Importance: High

Sean and Ian:

Thank you for your timely and thoughtful responses to my suggestion regarding a means to exclude outmigrants from passage until favorable elevations and outflows can be obtained.

[REDACTED] Non-Responsive

Would it be possible to put a scenario like this into the SLAM/VSP machine? [REDACTED] Non-Responsive

Thank you very much,

Dan Spear

-----Original Message-----

From: Chane, Ian B NWP [<mailto:Ian.B.Chane@usace.army.mil>]
Sent: Wednesday, December 11, 2013 4:49 PM
To: Askelson, Sean K NWP
Cc: Griffith, David W NWP; Spear, Daniel J (BPA) - PGB-5; Ammann, Julie H NWP; Kuhn, Timothy S NWP
Subject: RE: [REDACTED] (b)(5) (UNCLASSIFIED)

Sean,
[REDACTED] (b)(5)

Ian Chane
Program Manager
Willamette Biological Opinion Implementation U.S. Army Corps of Engineers - Portland District
333 SW First Avenue
Portland, OR 97204-3440
Ian.B.Chane@usace.army.mil

Office 503-808-4766
Mobile 503-961-5723
FAX 503-808-4699

-----Original Message-----

From: Askelson, Sean K NWP
Sent: Wednesday, December 11, 2013 4:38 PM
To: Spear, Daniel J (BPA) - PGB-5; Ammann, Julie H NWP; Kuhn, Timothy S NWP; Chane, Ian B NWP
Cc: Griffith, David W NWP
Subject: RE: [REDACTED] (b)(5) (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Dan,

From a biological performance measurement standpoint, we could use the Fish Benefits Workbook plus some RES-SIM runs to see if this could be a benefit. If we are creative with the timing (or manually apply the timing we think is appropriate), we could come up with something for comparison purposes.

[REDACTED] (b)(5)

[REDACTED]

From the PDT perspective, I would like to discuss it a little bit and recommend an analysis approach going forward with you, the COP, and PDT on the same page. If it looks like it might show potential, we could get McMillan to flesh it out a bit further.

Thanks
Sean x4882

-----Original Message-----

From: Spear, Daniel J (BPA) - PGB-5 [<mailto:djspear@bpa.gov>]
Sent: Wednesday, December 11, 2013 12:55 PM
To: Ammann, Julie H NWP; Kuhn, Timothy S NWP; Askelson, Sean K NWP; Chane, Ian B NWP
Cc: Oliver, Stephen R (BPA) - PG-5; Harwood, Holly C (BPA) - PGB-5; BPA Rick Pendergrass; Barco III, John W (BPA) - A-7
Subject: [EXTERNAL] [REDACTED] (b)(5)
Importance: High

USACE COP Team:

BPA would like you to consider an additional scenario for downstream passage at Cougar.

(b)(5)

A large rectangular area of the document is completely redacted with black ink.

(b)(5)

A large rectangular area of the document is completely redacted with black ink.

Thank you,

Dan Spear

Classification: UNCLASSIFIED
Caveats: NONE