



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

In Reply Refer To:
FWS/DCC/BEL/059828
FOIA FWS # 2014-01226

MAR 26 2015

Mr. Eric E. Huber
Senior Managing Attorney
Sierra Club Environmental Law Program
1650 38th Street, Suite 102W
Boulder, Colorado 80301

Sent by U.S. Postal Mail

Dear Mr. Huber:

This letter and enclosed CD represents the U.S. Fish and Wildlife Service's (Service) second partial response to your August 11, 2014, Freedom of Information Act (FOIA) request in which you asked for:

1. All FWS drafts of all or portions of the Endangered Species Act (ESA) Section 7 Consultation Programmatic Biological Opinion on the U.S. Environmental Protection Agency's Issuance and Implementation of the Final Regulations Section 316(b) of the Clean Water Act (the "BiOp"), Incidental Take Statement and its appendices;
2. All documents exchanged between Service staff and between the Service and the Environmental Protection Agency (EPA), or any other governmental agency or official, during interagency review of, and concerning, drafts of the BiOp and/or Incidental Take Statement;
3. All documents between Service staff and between the Service and EPA, or any other governmental agency or official, concerning the ESA section 7 consultation on EPA's most recent 316(b) rule;
4. All documents serving as the basis for, or which were considered by, the Service in connection with its "no jeopardy" and/or "no adverse modification" of critical habitat findings on the ESA section 7 consultation for the most recently proposed 316(b) rule;
5. All documents between Service staff and between the Service and EPA, or any other governmental agency or official, concerning any ESA section 7 consultation on EPA's previously proposed 316(b) rule(s), including for new sources as well as existing sources; and
6. All documents exchanged and all documents related to any meetings, telephone conversations, emails, or any other communications between the Service and the utility (i.e., electric generation) industry or manufacturing industry, representatives of the utility or manufacturing industries, trade

groups, special interest groups, and/or other non-governmental parties relating to the ESA section 7 consultation on the 316(b) rule.

Your request was assigned to the Headquarters Office Ecological Services Program for processing. It falls under the Exceptional/Voluminous processing track and we assigned it Request Number FWS-2014-01226.

This second partial response consists of 94 documents that we had intended to include in our March 10, 2015, first partial response. No information has been withheld. In accordance with the Department of Interior's (Department) FOIA regulations at 43 CFR 2, any fees associated with your request have been waived. We are continuing to search for and review responsive records in coordination with EPA and other stakeholder Federal agencies. We anticipate providing our final response by the end of May.

Appeals

You may appeal this response to the Department FOIA Appeals Officer. If you choose to appeal, the FOIA Appeals Officer must receive your FOIA appeal **"no later than 30 workdays"** from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

FOIA Appeals Officer
U.S. Department of the Interior
1849 C Street, N.W., MS 6556
Washington, D.C. 20240
202-208-5339
Fax: 202-208-6677
Email: FOIA.Appeals@sol.doi.gov

You must include with your appeal copies of all correspondence between you and the Service concerning your FOIA request, including a copy of your original FOIA request and your denial letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. All communications concerning your appeal, including envelopes, should be clearly marked with the words "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the Service's response is in error. For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at [43 CFR Part 2, Subpart H.](#)

Although we do not believe your request is implicated by the following, please note for your information that Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using the OGIS services does not affect your right to pursue litigation. You may contact the OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov/>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

If you have any questions concerning this response or need additional information, please contact Headquarters Ecological Services (HQ ES) FOIA Coordinator, Mary Klee, at (703) 358-2421 or by email at Mary_Klee@fws.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Helen Speights', with a long horizontal flourish extending to the right.

Helen Speights
Chief, Branch of ES Litigation Support
Ecological Services Program

Enclosures