



Columbia Riverkeeper
111 Third Street
Hood River, OR 97031
www.columbiariverkeeper.org

November 2, 2012

United States Army Corps of Engineers
Portland District
Attn: FOIA Officer
CENWP-OC
P.O. Box 2946
Portland, OR 97208-2946
Email: foia-nwp@usace.army.mil

Via Certified Mail & Email

RE: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *as amended*, Columbia Riverkeeper (Riverkeeper) hereby requests the records described herein maintained by, or within the control of, the United States Army Corps of Engineers (Corps). Riverkeeper is a 501(c)(3) non-profit organization whose mission is to protect and restore the Columbia River and all life connected to it, from the headwaters to the Pacific. To achieve this objective, Riverkeeper operates scientific, educational, and advocacy programs aimed at protecting water quality and habitat in the Columbia Basin. Riverkeeper submits the following FOIA request to advance its mission of protecting and restoring the Columbia River, which is currently threatened by coal export.

Request for Government Records

Riverkeeper seeks information regarding Ambre Energy's proposed coal export project described in the Corps' Public Notice NWP-2012-56 (hereinafter, the "Morrow Pacific Project"). The Corps has jurisdiction over the proposed project based on Section 10 of the Rivers and Harbors Act (Section 10), and must prepare an Environmental Analysis (EA) or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). *See* Corps' Public Notice No. NWP-2012-56. Riverkeeper requests information on the Corps' decision to prepare an EA versus an EIS for the proposed Morrow Pacific Project. Specifically, Riverkeeper requests:

1. All communications among employees of the Corps' Portland District and the employees of federal and state agencies and elected officials (including Corps employees and officials) outside the Corps' Portland District regarding the decision whether to prepare an EA or an EIS for the proposed Morrow Pacific Project.
2. All communications among employees of the Corps' Portland District regarding the decision whether to prepare an EA or an EIS for the proposed Morrow Pacific Project.
3. All communications regarding the Morrow Pacific Project among employees of the Corps' Portland District and any individuals working on behalf of Ambre Energy, Coyote Island Terminals, LLC, and/or any other affiliated corporation.
4. All records, in whatever form, whose disclosure is not expressly prohibited by law, that discuss or pertain to the decision whether to prepare an EA or an EIS for the proposed Morrow Pacific Project.

This request also applies to any non-identical duplicates of records that, by reason of notation, attachment, or other alteration or supplement, include any information not contained in the original record. Additionally, this request is not meant to be exclusive of other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

If you should withhold or redact of any of the requested information, we request that you: (i) identify each document or record with particularity (including title, subject, date, author, recipient, and parties copied), (ii) fully and specifically explain the legal justification for withholding or redacting each document or record, and (iii) provide us with any segregable portions of the documents or records for which you do not claim a specific exemption.

Please provide electronic copies where available.

Request for Fee Waiver

Riverkeeper seeks a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver is appropriate because Riverkeeper will use the information obtained through this FOIA request to inform the public about the proposed Morrow Pacific project and the effects of coal export on the Columbia River. FOIA's fee waiver provision states: "[d]ocuments shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the

requester.” *Id.* Disclosure of the requested documents will significantly contribute to public understanding of the Corps’ operations and of the potential impact of the proposed Morrow Pacific coal export facility. This request is not in the commercial interest of Riverkeeper, a non-profit organization.

Specifically, the disclosed documents will illuminate in a clear and direct way how the Corps intends to analyze the environmental effects of the Morrow Pacific coal export proposal. Presenting information gained through Riverkeeper’s FOIA request is in the public interest because it will expand the public’s understanding of industrial development proposals affecting the Columbia River and how the Corps responds to those proposals. Riverkeeper closely monitors water quality and works to improve habitat in the Columbia, particularly for ESA-listed species. In turn, Riverkeeper is requesting these documents from the Corps to expand public awareness of activities that impact the Columbia and encourage public awareness of government operations.

Riverkeeper has expertise in reviewing and disseminating information obtained through FOIA requests. Presenting such information to the public is a central focus of our organization. Riverkeeper presents information to the public through our website, newsletters, e-newsletters, public action alerts, public reports, media, and public presentations. For example, Riverkeeper regularly presents information on Columbia River issues, including coal export proposals, at elementary and high schools, community colleges, public meetings, at Riverkeeper public events, and in front of government bodies. Accordingly, waiving Riverkeeper’s FOIA fees will benefit the general public by leading to an increased awareness of the impacts of coal export on the Columbia River.

Again, the disclosed material will be disseminated solely for the purpose of informing and educating the public and will not be used for commercial gain. Riverkeeper intends to disseminate the information gleaned from the requested documents through an array of effective channels.

If a fee waiver is not granted, Riverkeeper asks that the Corps provide a cost estimate prior to completing this request. Please contact me at (541) 272 - 0027 or miles@columbiariverkeeper.org if you have any questions about this FOIA request.

Sincerely,

Miles Johnson
Clean Water Attorney, Columbia Riverkeeper