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UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF WASHINGTON

COLUMBIA RIVERKEEPER,	)	
	)	No. 2:16-CV-236
Plaintiff,	)	
v.	)	COMPLAINT
	)	
UNITED STATES BUREAU OF	)	
RECLAMATION; and ESTEVAN	)	
LÓPEZ, in his official capacity as	)	
the Commissioner of the United	)	
States Bureau of Reclamation,	)	
	)	
Defendants.	)	
	)	
	)	

COMPLAINT - 1

KAMPMEIER & KNUTSEN, PLLC  
 833 S.E. Main Street, No. 318  
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## I. INTRODUCTION

1  
2 1. This is a civil action by plaintiff Columbia Riverkeeper for  
3  
4 declaratory and injunctive relief to compel defendants the United States Bureau of  
5 Reclamation and Commissioner Estevan López, in his official capacity as the  
6 Commissioner of the United States Bureau of Reclamation (collectively, the  
7 “Bureau”), to comply with sections 301(a) and 402 of the Clean Water Act  
8 (“CWA”), 33 U.S.C. §§ 1311(a) and 1342, by discontinuing unpermitted  
9 discharges of pollutants from the Grand Coulee Dam (“Dam”)<sup>1</sup> located on the  
10 Columbia River unless and until the Bureau obtains a National Pollutant Discharge  
11 Elimination System (“NPDES”) permit authorizing the discharges.  
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19 <sup>1</sup> The term “Dam,” as used herein, includes the Grand Coulee Dam and all  
20 associated structures and facilities, including turbines, powerhouses, transformers,  
21 spillways, navigation lock systems, and cranes. The term Dam specifically includes  
22 the following: (1) the Left Powerplant, (2) the Right Powerplant, (3) the Third  
23 Powerplant, (4) the Pump/Generator Plant, and (5) the Main Dam. The term  
24 “Dam” does not include the Switchyards, described as “Facility 7” in the Bureau’s  
25 Spill Prevention Control and Countermeasure Plan for the Grand Coulee Project.  
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1           2.     This action is a citizen suit brought under section 505 of the CWA as  
2 amended, 33 U.S.C. § 1365.

3           3.     The Bureau owns and operates the hydroelectric Dam on the  
4 Columbia River that discharges pollutants, including oils, greases, other lubricants,  
5 and cooling water and the heat associated therewith. These discharges are not  
6 authorized by an NPDES permit, and therefore violate section 301(a) of the CWA,  
7 33 U.S.C. § 1311(a).<sup>2</sup>

8           4.     Columbia Riverkeeper seeks a declaratory judgment, injunctive relief,  
9 and the award of costs, including attorneys' and expert witnesses' fees.

## 10                               II.     JURISDICTION AND VENUE

11           5.     The Court has subject matter jurisdiction over Columbia  
12 Riverkeeper's claim under section 505(a) of the CWA, 33 U.S.C. § 1365(a), 28  
13 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1346(a)(2) (United States as  
14 Defendant). Section 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d),  
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24           <sup>2</sup> The Bureau has obtained an NPDES permit for discharges of sanitary wastewater  
25 processed at the Grand Coulee Dam Wastewater Treatment Plant; NPDES Permit  
26 No. WA0024163. Those discharges are not the subject of this Complaint.  
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1 authorizes the requested relief. The requested relief is also proper under 28 U.S.C.  
2 § 2201 (declaratory relief) and 28 U.S.C. § 2202 (injunctive relief).

3  
4 6. Section 505(a) of the CWA, 33 U.S.C. § 1365(a), waives the Bureau's  
5 sovereign immunity for Columbia Riverkeeper's claim.

6  
7 7. In accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. §  
8 1365(b)(1)(A), and 40 C.F.R. § 135.2, Columbia Riverkeeper notified the Bureau  
9 of its violations of the CWA and of Columbia Riverkeeper's intent to sue by letter  
10 dated April 20, 2016 ("Notice Letter"). A copy of the Notice Letter is attached to  
11 this complaint as Exhibit 1. The allegations in section III of the Notice Letter are  
12 incorporated herein by this reference. In accordance with section 505(b)(1)(A) of  
13 the CWA, 33 U.S.C. § 1365(b)(1)(A), and 40 C.F.R. § 135.2(a)(3), Columbia  
14 Riverkeeper provided copies of the Notice Letter to the Administrator of the  
15 United States Environmental Protection Agency ("EPA"), the Regional  
16 Administrator of Region 10 of the EPA, the Attorney General of the United States,  
17 and the Director of the Washington Department of Ecology ("Ecology").

18  
19 8. At the time of the filing of this Complaint, more than sixty days have  
20 passed since the Notice Letter and the copies thereof were issued as described in  
21 the preceding paragraph.

22  
23 9. Neither the EPA nor Ecology has commenced any action constituting  
24 diligent prosecution to redress these violations.

10. The violations complained of in the Notice Letter are continuing or are reasonably likely to continue to occur. The Bureau is in violation of the CWA.

11. The source of the violations complained of is located in Grant County and Okanogan County, Washington, within the Eastern District of Washington, and venue is therefore appropriate in the Eastern District of Washington under section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1).

### III. PARTIES

12. Plaintiff Columbia Riverkeeper is suing on behalf of itself and its members. Columbia Riverkeeper is a 501(c)(3) non-profit corporation registered in the State of Washington. The mission of Columbia Riverkeeper is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Columbia Riverkeeper operates scientific, educational, and legal programs aimed at protecting water quality, air quality, and habitat in the Columbia River Basin.

13. Columbia Riverkeeper has representational standing to bring this action. Columbia Riverkeeper has over 10,000 members, many of which reside in Washington in the vicinity of waters affected by the Bureau's illegal discharges of pollutants. Members of Columbia Riverkeeper use and enjoy the waters and the surrounding areas that are adversely affected by the Bureau's discharges. Columbia Riverkeeper's members use these areas for, *inter alia*, fishing, rafting, hiking,

1 walking, windsurfing, photographing, boating, and observing wildlife. The  
2 environmental, health, aesthetic, and recreational interests of Columbia  
3 Riverkeeper's members have been, are being, and will be adversely affected by the  
4 Bureau's illegal discharges of pollutants from the Dam and by the members'  
5 reasonable concerns related to the effects of the discharges. The members are  
6 further concerned that, because these discharges are not subject to an NPDES  
7 permit as required by the CWA, there are not sufficient restrictions imposed on,  
8 and monitoring and reporting of, the discharges to minimize the adverse water  
9 quality impacts of the discharges. These injuries are fairly traceable to the  
10 violations and redressable by the Court.

15 14. Columbia Riverkeeper has organizational standing to bring this  
16 action. Columbia Riverkeeper has been actively engaged in a variety of  
17 educational and advocacy efforts to improve water quality and to address sources  
18 of water quality degradation in the waters of the Columbia River and its tributaries.  
19 The Bureau's failure to obtain an NPDES permit for its discharges has deprived  
20 Columbia Riverkeeper of information that would be required by the permit's  
21 monitoring and reporting conditions and available to Columbia Riverkeeper. This  
22 information could assist Columbia Riverkeeper in its efforts to educate and  
23 advocate for greater environmental protection. Thus, Columbia Riverkeeper's  
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1 organizational interests have been adversely affected by the Bureau's violations.  
2 These injuries are fairly traceable to the violations and redressable by the Court.

3  
4 15. Defendant United States Bureau of Reclamation is a federal agency,  
5 or bureau, within the United States Department of the Interior. The United States  
6 Bureau of Reclamation owns and/or operates the Dam.

7  
8 16. Defendant Commissioner Estevan López is the Commissioner of the  
9 United States Bureau of Reclamation. Mr. López is being sued in his official  
10 capacity. As the Commissioner of the United States Bureau of Reclamation, Mr.  
11 López is responsible for ensuring that the United States Bureau of Reclamation  
12 complies with applicable laws.  
13  
14

#### 15 IV. LEGAL FRAMEWORK

16  
17 17. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes unlawful the  
18 discharge of any pollutant by any person unless authorized by, *inter alia*, a NPDES  
19 permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342.  
20

21 18. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines  
22 “discharge of a pollutant” to include “any addition of any pollutant to navigable  
23 waters from any point source.”  
24

25 19. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term  
26 “navigable waters” as “the waters of the United States, including the territorial  
27 seas.”  
28

1        20. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point  
2 source” as “any discernible, confined and discrete conveyance, including but not  
3 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,  
4 rolling stock, concentrated animal feeding operation, or vessel or other floating  
5 craft, from which pollutants are or may be discharged.”  
6  
7

## 8                                    V.     FACTUAL BACKGROUD

### 9                    The Affected Community & Environment

10        21. The Columbia River is one of the West’s great river systems. The  
11 river supports rich fishing traditions and provides water for communities,  
12 agriculture, recreation opportunities, and for hydroelectric dams. The Columbia  
13 River is also severely degraded by pollution. Toxic pollution threatens the health of  
14 people that eat local fish and jeopardizes the public’s right to eat fish caught  
15 locally. Rising water temperatures also threaten the health of salmon and other  
16 aquatic life that rely on cool water for survival.  
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21        22. In 2006 EPA designated the Columbia River Basin a Critical Large  
22 Aquatic Ecosystem because toxic contamination and other pollution are so severe.  
23 In 2009 EPA released an in-depth report on toxic pollution in the Columbia River,  
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1 the *Columbia River Basin: State of River Report for Toxics*.<sup>3</sup> EPA's report  
2 concluded that harmful pollutants are moving up the food chain, impacting  
3 humans, fish, and wildlife. As the report explains, "[i]n 1992, an EPA national  
4 survey of contaminants in fish in the United States alerted EPA and others to a  
5 potential health threat to tribal and other people who eat fish from the Columbia  
6 River Basin." This survey prompted further study on the contaminated fish and the  
7 potential impacts on tribal members.  
8  
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10  
11 23. In particular, EPA funded four Columbia River Tribes, through the  
12 Columbia River Intertribal Fish Commission ("CRITFC"), to study contaminant  
13 levels in fish caught at traditional fishing sites.<sup>4</sup> The study demonstrated the  
14 presence of 92 toxic chemicals in fish consumed by tribal members, resulting in a  
15 50-fold increase in cancer risk among tribal members whose diets rely on river-  
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23 <sup>3</sup> U.S. EPA, *Columbia River Basin State of River Report for Toxics* (hereafter *State*  
24 *of the River Report*) (January 2009),  
25 <http://yosemite.epa.gov/r10/ecocomm.nsf/Columbia/SoRR/>.  
26  
27

28 <sup>4</sup>*State of the River Report* at 4.

1 caught fish. Contaminants found in these fish include PCBs, dioxins, furans,  
2 arsenic, mercury, and DDE, a toxic breakdown product of DDT.<sup>5</sup>

3  
4 24. The CRITFC study is not alone in demonstrating the serious problem  
5 of toxic contamination. From 1989 to 1995, the Lower Columbia River Bi-State  
6 Water Quality Program (“Bi-State Program”) generated substantial evidence  
7  
8 showing that water and sediment in the Lower Columbia River and its tributaries  
9 have levels of toxic contaminants that are harmful to fish and wildlife.<sup>6</sup> The Bi-  
10 State Program concluded that:

- 12 • Dioxins and furans, metals, PCBs, PAHs, and pesticides impair the water  
13 sediment, and fish and wildlife;
- 14  
15 • Arsenic, a human carcinogen, exceeded both EPA ambient water criteria for  
16 protection of human health and the EPA human health advisories for  
17 drinking water;
- 18  
19 • Beneficial uses such as fishing, shellfishing, wildlife, and water sports are  
20 impaired;
- 21

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25 <sup>5</sup> *Id.* at 19.

26 <sup>6</sup> Lower Columbia River Estuary Partnership. 2007. *Lower Columbia River and*  
27 *Estuary Ecosystem Monitoring: Water Quality and Salmon Sampling Report* at 1.  
28

- 1 • Many toxic contaminants are moving up the food chain and accumulating in
- 2 the bodies of animals and humans that eat fish;
- 3
- 4 • People who eat fish from the lower Columbia over a long period of time are
- 5 exposed to health risks from arsenic, PCBs, dioxins and furans, and DDT
- 6 and its breakdown products.<sup>7</sup>
- 7

8 25. Other studies have confirmed and added to the overwhelming  
9 scientific evidence on toxic contamination in the Columbia River Basin.<sup>8</sup>  
10

11 26. The pollution discharges that are the subject of this Complaint  
12 contribute to the pollution crisis on the Columbia River. According to the National  
13 Oceanic & Atmospheric Administration (“NOAA”): “Spilled oil can harm living  
14 things because its chemical constituents are poisonous. This can affect organisms  
15 both from internal exposure to oil through ingestion or inhalation and from  
16 external exposure through skin and eye irritation. Oil can also smother some small  
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24 <sup>7</sup> *Id.* at 5–6.

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26 <sup>8</sup> *Id.* at 6 (citing studies by USGS, the U.S. Army Corps of Engineers, DEQ, and  
27 others); *see generally* U.S. EPA, *State of the River Report*.  
28

1 species of fish or invertebrates and coat feathers and fur, reducing birds' and  
2 mammals' ability to maintain their body temperatures.”<sup>9</sup>

3  
4 27. The vicinity of the Dam that is the subject of this Complaint and the  
5 Columbia River are used by the citizens of Washington and visitors, as well as by  
6 Columbia Riverkeeper's members, for recreational activities. Columbia  
7  
8 Riverkeeper's members also derive aesthetic benefits from the receiving waters.  
9  
10 Columbia Riverkeeper's members' enjoyment of these activities and waters is  
11 diminished by the polluted state of the receiving waters, shorelines, air and the  
12 nearby areas, and by the Bureau's contributions to such polluted state.

13  
14 **The Bureau's Dam and Discharges of Pollutants**

15 28. The Bureau owns and operates the hydroelectric Dam on the  
16 Columbia River.  
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18 29. The Dam is located on the Columbia River approximately one and a  
19 half miles northeast of the city of Grand Coulee, Washington. The Dam is located  
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25 <sup>9</sup> NOAA, Office of Response and Restoration, *How Oil Effects Fish and Wildlife in*  
26 *Marine Environments*, [http://response.restoration.noaa.gov/oil-and-chemical-](http://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/how-oil-harms-animals-and-plants-marine-environments.html)  
27 [spills/oil-spills/how-oil-harms-animals-and-plants-marine-environments.html](http://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/how-oil-harms-animals-and-plants-marine-environments.html).  
28

1 within, and discharges pollutants to waters within, Grant County and Okanogan  
2 County, Washington.

3 30. The Columbia River is a navigable water body at the location of the  
4 Dam.  
5

6 31. Upon information and belief, the Bureau discharges oils, greases,  
7 lubricants, and other pollutants at the Dam collected from various sources through  
8 sumps, including powerhouse drainage sumps, unwatering sumps, spillway sumps,  
9 and other systems. These discharges have occurred each and every day during the  
10 six years and sixty days prior to the filing of this Complaint, and are continuing to  
11 occur or are reasonably likely to reoccur. These discharges are not authorized by  
12 an NPDES permit.  
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15 32. Upon information and belief, the Bureau discharges from the Dam  
16 cooling water, and the associated heat, used to cool a variety of Dam components  
17 and materials, including turbines, generators, transformers, and lubricating oils.  
18 These discharges have occurred each and every day during the six years and sixty  
19 days prior to the filing of this Complaint, and are continuing to occur or are  
20 reasonably likely to reoccur. These discharges are not authorized by an NPDES  
21 permit.  
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24 33. Upon information and belief, the Bureau utilizes Francis turbines at  
25 the Dam, which discharge grease to the Columbia River. Wicket gates control the  
26

1 amount of water flowing through the turbines at the Dam. The wicket gate bearings  
2 are lubricated with grease or another lubricant. This grease or lubricant is  
3 continuously fed into the bearings and discharged directly into surface waters.  
4 These discharges have occurred each and every day during the six years and sixty  
5 days prior to the filing of this Complaint, and are continuing to occur or are  
6 reasonably likely to reoccur. These discharges are not authorized by an NPDES  
7 permit.  
8

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11 34. Upon information and belief, the Bureau also discharges oils, greases,  
12 lubricants, and other pollutants from the Dam due to spills, equipment failures,  
13 operator errors, and other similar events. The discharges that had been reported and  
14 that had occurred during the six years prior to issuance of the Notice Letter are  
15 summarized in section III.B of the Notice Letter.<sup>10</sup> Discharges of this nature at the  
16 Dam are continuing to occur or are reasonably likely to reoccur. These discharges  
17 are not authorized by an NPDES permit.  
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23 <sup>10</sup> The table included in section III.B of the Notice Letter details specific reports of  
24 pollution at the Dam. Columbia Riverkeeper does not concede that the amount of  
25 pollution reported is, in fact, the amount of pollution actually discharged by the  
26 Dam during those events.  
27  
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36. The discharges from the Dam described herein are discharges of pollutants to navigable waters from point sources that violate section 301(a) of the CWA, 33 U.S.C. § 1311(a), if made without the authorization of a NPDES permit.

## VI. CAUSE OF ACTION

39. The Bureau is in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants to navigable waters from the Dam as described

1 herein without an NPDES permit.<sup>11</sup> These violations are violations of an “effluent  
2 standard or limitation” as defined by section 505(f) of the CWA, 33 U.S.C. §  
3 1365(f).  
4

5 40. Upon information and belief, these violations committed by the  
6 Bureau are continuing or are reasonably likely to reoccur. Any and all additional  
7 violations of the CWA which occur after those described in the Notice Letter but  
8 before a final decision in this action should be considered continuing violations  
9 subject to this Complaint.  
10  
11

## 12 **VII. RELIEF REQUESTED**

13  
14 Wherefore, Columbia Riverkeeper respectfully requests that this Court grant  
15 the following relief:  
16

17 A. Issue a declaratory judgment that the Bureau has violated and  
18 continues to be in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), by  
19 discharging pollutants from the Dam to the Columbia River without the  
20 authorization of an NPDES permit as described herein;  
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24  
25 <sup>11</sup> Discharges of sanitary wastewater processed at the Grand Coulee Dam  
26 Wastewater Treatment Plant are authorized by NPDES Permit No. WA0024163  
27 and are therefore excluded from this allegation.  
28



1 B. Issue an injunction enjoining the Bureau from discharging pollutants  
2 from the Dam to the Columbia River as described herein until such discharges are  
3 authorized by an NPDES permit;  
4

5 C. Issue an injunction requiring the Bureau to take specific actions to  
6 evaluate and remediate the environmental harm caused by its violations;  
7

8 D. Grant such other preliminary and/or permanent injunctive relief as  
9 Columbia Riverkeeper may from time to time request during the pendency of this  
10 case;  
11

12 E. Award Columbia Riverkeeper its litigation expenses, including  
13 reasonable attorneys' and expert witness fees, as authorized by section 505(d) of  
14 the CWA, 33 U.S.C. § 1365(d), and any other applicable authorization; and  
15

16 F. Grant such additional relief as this Court deems appropriate.  
17

18 RESPECTFULLY SUBMITTED this 29th day of June, 2016.  
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16 *Attorneys for plaintiff Columbia Riverkeeper*

# **EXHIBIT 1**

KAMPMEIER & KNUTSEN PLLC  
ATTORNEYS AT LAW

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April 20, 2016

**Certified U.S. Mail – Return Receipt Requested**

Commissioner Estevan López  
U.S. Bureau of Reclamation  
1849 C Street, N.W.  
Washington, D.C. 20240-0001

**Re: NOTICE OF INTENT TO SUE THE U.S. BUREAU OF RECLAMATION UNDER  
THE CLEAN WATER ACT**

Dear Commissioner López:

This letter is to provide you with sixty days notice of Columbia Riverkeeper's ("Riverkeeper") intent to file a citizen suit against the United States Bureau of Reclamation and Commissioner Estevan López in his official capacity as Commissioner of the United States Bureau of Reclamation (collectively, "Reclamation") under section 505 of the Clean Water Act, 33 U.S.C. § 1365, for the violations described herein. The Clean Water Act prohibits any person from discharging any pollutant to waters of the United States except as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit. Continuing to discharge a pollutant without securing an NPDES permit constitutes an ongoing violation of the Clean Water Act.

Reclamation has and continues to violate section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), by discharging pollutants to waters of the United States and Washington state from the Grand Coulee Dam Project (hereafter "the Dam").<sup>1</sup> Specifically, Reclamation discharges oils (including transformer oil), greases, other lubricants, and cooling water from the Dam without an NPDES permit in violation of the Clean Water Act.<sup>2</sup>

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<sup>1</sup> The term "Dam," as used herein, includes the Grand Coulee Dam and all associated structures and facilities, including turbines, powerhouses, transformers, spillways, navigation lock systems, and cranes. The term Dam specifically includes the following: (1) the Left Powerplant, (2) the Right Powerplant, (3) the Third Powerplant, (4) the Pump/Generator Plant, and (5) the Main Dam. Pursuant to 40 C.F.R. § 135.3(a), the approximate location of the Dam is 47.9550°, - 118.9833° (47°57'23.59" N, 118°58'51.55" W). The term "Dam" does not include the Switchyards, described as "Facility 7" in Reclamation's Spill Prevention Control and Countermeasure Plan for the Grand Coulee Project.

<sup>2</sup> As explained below, Reclamation holds one NPDES permit for the Dam, NPDES Permit No. WA0024163, which addresses sanitary wastewater processed at the Grand Coulee Dam Wastewater Treatment Plant. Those discharges are not subject to this notice letter.

Reclamation stores and utilizes large volumes of oil at the Dam. According to Reclamation's Spill Prevention Control and Countermeasure Plan ("SPCC") for the Grand Coulee Project, eight facilities for the Grand Coulee Project store more than 1,320 gallons of oil aboveground and are located in close proximity to navigable surface waters of the United States.<sup>3</sup> An unknown amount of oil stored and used at the Dam enters the Columbia River without the monitoring and pollution control technology required by the Clean Water Act.

Reclamation has a history of both acute spills and chronic pollutant discharges into the Columbia River.<sup>4</sup> Reclamation reports oil spills on an annual basis to the United States Coast Guard's National Response Center. For example, on two occasions in 2015, Reclamation reported a 300 foot-long sheen on the Columbia River caused by an equipment failure at the Right Power Plant. As this notice of intent to sue explains, Reclamation has a history of discharging oil and other pollution from the Dam without an NPDES permit.

This notice of intent to sue is part of Riverkeeper's effort to protect people who rely on the Columbia River for purposes including drinking water, food, and recreation. Riverkeeper's mission is to protect and restore the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Riverkeeper's strategy includes working in river communities and enforcing laws that protect public health, salmon, and other fish and wildlife. Riverkeeper has over 10,000 members, including many that live and recreate near and downstream of the Dam.

This notice of intent to sue builds on Riverkeeper's earlier work to ensure federal agencies comply with the Clean Water Act and protect the Columbia and Snake rivers from oil and other pollution from hydroelectric dams. In 2013, Riverkeeper sued the United States Army Corps of Engineers ("Corps") for discharging without NPDES permits oils, cooling water, and other pollutants from eight dams on the Columbia and Snake rivers. The dams at issue in *Columbia Riverkeeper v. United States Army Corps of Engineers*, E.D. Wash. No. 2:13-md-02494-LRS, include: (1) Bonneville, (2) The Dalles, (3) John Day, (4) McNary, (5) Ice Harbor, (6) Lower Monumental, (7) Little Goose, and (8) Lower Granite (collectively "the dams").

In 2014, Riverkeeper and the Corps reached a settlement: The Corps agreed to apply for NPDES permits to address discharges alleged in Riverkeeper's lawsuit. The settlement also required the Corps to account for and reduce oil pollution from the dams while state and federal agencies develop NPDES permits. Specifically, the settlement required the Corps to develop Oil Accountability Plans ("OAPs"). OAPs track the addition, and then the removal, of all oil and grease to the dams and account for the difference. In addition, the Corps agreed to investigate using Environmentally Acceptable Lubricants at the dams and, if technically feasible, switch to

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<sup>3</sup> Spill Prevention and Countermeasure Plan (SPCC), Version 2.0, Grand Coulee Project, Grand Coulee Power Office, Pacific Northwest Region at 2-2 (Feb. 2012) (hereafter "SPCC").

<sup>4</sup> For the purposes of this notice of intent to sue, Riverkeeper uses the term "Columbia River" to describe the Columbia River upstream and downstream of the Dam. The Columbia River between the Dam and the U.S.-Canada border is also known as Lake Roosevelt.

these lubricants. The Federal District Court of the Eastern District of Washington entered a consent decree in August 2014. Regional and national news outlets, including the New York Times and Washington Post, reported on the settlement. In 2015, the Corps filed NPDES permit applications pursuant to the settlement.

To date, Reclamation has not applied for or obtained NPDES permits to address oil or other pollution the Dam, with the exception of sanitary wastewater. In turn, Reclamation fails to monitor and report pollution in a manner that enables the public to understand the extent and severity of the problem. Reclamation's decision to forgo applying for and obtaining an NPDES permit for oil and other pollution harms water quality, fish and wildlife, and the public's enjoyment of one of our nation's most valuable water resources, the Columbia River. With this notice of intent to sue, Riverkeeper aims to end a forty-year era of Reclamation's non-compliance with the Clean Water Act's fundamental requirement: obtain and comply with permits to reduce pollution in our nation's waterways.

## **I. Legal Background.**

In 1972, Congress passed the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The Clean Water Act is the cornerstone of surface water quality protection in the United States. In the forty years since its passage, the Act has dramatically increased the number of waterways that are once again safe for fishing and swimming. Despite the great progress in reducing water pollution, many of the nation's waters still do not meet the water quality goals. In fact, the vast majority of rivers and streams in Washington State fail to meet basic state water quality standards for pollutants such as toxics and temperature.

The NPDES permitting scheme is the primary means to control water pollution. At a minimum, NPDES permits must include technology-based effluent limitations, any more stringent limitations necessary to meet water quality standards, and monitoring and reporting requirements. *See* 33 U.S.C. §§ 1311, 1342, 1318.

## **II. The Heavy Toll of Pollution on the Columbia River.**

In 2006 EPA designated the Columbia River Basin a Critical Large Aquatic Ecosystem because toxic contamination and other pollution are so severe. In 2009 EPA released an in-depth report on toxic pollution in the Columbia, the *Columbia River Basin: State of River Report for Toxics*.<sup>5</sup> EPA concluded that harmful pollutants are moving up the food chain, impacting humans, fish, and wildlife.

Many studies document the serious problem of toxic pollution in the Columbia River. For example, in the 1990s, EPA funded four Columbia River tribes, through the Columbia River

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<sup>5</sup> U.S. EPA, *Columbia River Basin State of River Report for Toxics* (hereafter *State of the River Report*) (January 2009), <http://yosemite.epa.gov/r10/ecocomm.nsf/Columbia/SoRR/>.

Intertribal Fish Commission (“CRITFC”), to study contaminant levels in fish caught at traditional fishing sites.<sup>6</sup> The study found 92 toxic chemicals in fish consumed by tribal members, resulting in a 50-fold increase in cancer risk among tribal members whose diets rely on river-caught fish. Contaminants found in these fish include PCBs, dioxins, furans, arsenic, mercury, and DDE, a toxic breakdown product of DDT.<sup>7</sup> The CRITFC study is one of many demonstrating the serious problem of toxic contamination in the Columbia River.<sup>8</sup>

Oil pollution from the Dam contributes to the Columbia River pollution crisis. In particular, oil pollution directly and indirectly injures fish and wildlife. According to the National Oceanic & Atmospheric Administration (“NOAA”):

Spilled oil can harm living things because its chemical constituents are poisonous. This can affect organisms both from internal exposure to oil through ingestion or inhalation and from external exposure through skin and eye irritation. Oil can also smother some small species of fish or invertebrates and coat feathers and fur, reducing birds’ and mammals’ ability to maintain their body temperatures.<sup>9</sup>

Oil pollution threatens fish and wildlife, as well as people that eat local fish. In addition, oil pollution interferes with the public’s enjoyment of valuable water resources.

The Dam also discharges heat in the form of cooling water to a river system recognized by EPA as too warm to support designated uses, including salmon habitat. Salmon need cool water to survive. Nearly two decades ago, federal scientists declared the Columbia River too hot for healthy salmon runs. Hot water pollution from point sources, including the Dam, contributes to elevated water temperatures in the Columbia River. Specifically, Reclamation uses water to cool a variety of Dam components and materials, including turbines, generators, transformers, and lubricating oils. Reclamation discharges this cooling water to the Columbia River.

The devastating impact of hot water pollution on the Columbia River is not hypothetical. Northwest rivers had unseasonably high temperatures in summer 2015, warm enough to kill thousands of migrating sockeye salmon headed to the mid-Columbia and lower Snake Rivers. Scientists estimate that more than 277,000 sockeye, about 55 percent of the total run, returning from the ocean to spawn died in the Columbia and Snake Rivers due to warm water temperatures in 2015. The Fish Passage Center, which provides technical assistance and information to fish

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<sup>6</sup> *State of the River Report* at 4.

<sup>7</sup> *Id.* at 19.

<sup>8</sup> *Id.* at 6 (citing studies by USGS, the U.S. Army Corps of Engineers, DEQ, and others); see generally U.S. EPA, *State of the River Report*.

<sup>9</sup> NOAA, Office of Response and Restoration, *How Oil Effects Fish and Wildlife in Marine Environments*, <http://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/how-oil-harms-animals-and-plants-marine-environments.html>.

and wildlife agencies, concluded that higher water temperatures in the Columbia and Snake Rivers are largely due to dams.<sup>10</sup> Dams heat the river by decreasing river flow and creating huge, stagnant reservoirs.<sup>11</sup> The Grand Coulee Dam discharges cooling water, which contributes warm water to a river that is already too warm to support healthy fish populations.

### **III. Unpermitted Pollutant Discharges.**

Section 301(a) of the Clean Water Act prohibits discharges of oils (including transformer oil), greases, lubricants, cooling water, and other pollutants to the Columbia River from the Dam without NPDES permit authorization. 33 U.S.C. § 1311(a). Reclamation has violated this provision by discharging pollutants from the Dam without an NPDES permit on each and every day during the last six years.<sup>12</sup> Without an NPDES permit, Reclamation is failing to monitor, report, and reduce pollution discharges pursuant to the Clean Water Act and state and federal implementing rules.

#### **A. Chronic Pollution Discharges from the Dam.**

The Dam discharges oils, greases, lubricants, and other pollutants collected from various sources through sumps, including powerhouse drainage sumps, unwatering sumps, spillway sumps, and other systems. Reclamation violates section 301(a) of the CWA by discharging pollutants from these various drainage and/or un-watering sumps and other systems at the Dam. These violations occurred each and every time Reclamation made these discharges in the past six years and continue to occur.<sup>13</sup>

The Dam discharges cooling water, and the associated heat, used to cool a variety of Dam components and materials, including turbines, generators, transformers, and lubricating oils.

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<sup>10</sup> Fish Passage Center, Memorandum on Water Temperature Issues in The Columbia and Snake rivers (Oct. 28, 2015), <http://www.fpc.org/documents/memos/159-15.pdf>.

<sup>11</sup> While government experts identify dams as a major source of heat pollution in the Columbia River, Riverkeeper's notice of intent to sue limits heat related discharge allegations to point source discharges of cooling water.

<sup>12</sup> Riverkeeper excludes from this assertion discharges from the Grand Coulee Wastewater Treatment Plant authorized by NPDES Permit No. WA0024163, which authorizes sanitary wastewater discharges from a portion of the Grand Coulee Dam.

<sup>13</sup> Reclamation is in the best position to know the specific location of the points sources (*i.e.*, the structures that discharge pollutants from drainage sumps, unwatering sumps, spillway sumps, and other systems into the Columbia River) at the Dam. According to Reclamation, the public cannot obtain this information under the Freedom of Information Act, 5 U.S.C. § 522, due to security concerns. Attachment A (Letter from Yadyra P. Esparza, Reclamation Freedom of Information Act Specialist, to Lauren Goldberg, Staff Attorney Columbia Riverkeeper (Aug. 27, 2015)).



Reclamation is in violation of section 301(a) of the CWA by discharging cooling water, and the associated heat, from the Dam each and every day for the past six years.<sup>14</sup>

The Dam utilizes Francis turbines, which discharge grease to the Columbia River. Wicket gates control the amount of water flowing through the turbines at the Dam. The wicket gate bearings are lubricated with grease or another lubricant. This grease or lubricant is continuously fed into the bearings and discharged directly into surface waters. Reclamation is in violation of section 301(a) of the CWA by discharging grease or lubricant from the bearings at each of the turbine wicket gates at the Dam each and every day for the past six years.

#### **B. Acute Pollution Discharges from the Dam.**

Reclamation violates section 301(a) of the CWA every time the agency discharges oil, lubricant, or other pollutants to the Columbia River from the Dam. Columbia Riverkeeper requested public records detailing oil spills from the Dam. In response, Reclamation directed Columbia Riverkeeper to the United States Coast Guard's National Response Center website, which maintains a national database of oil spills.<sup>15</sup> Table 1 describes reported acute pollution discharges from the Dam to the Columbia River since April 20, 2010. Riverkeeper does not concede that the amount of pollution reported is, in fact, the amount of pollution actually discharged by the Dam. For example, an undated copy of Reclamation's SPCC for the Dam notes the challenge of detecting oil spills, stating:

Detection of oil spills into the Columbia River tailbay of Grand Coulee Dam currently depends on human observation of the water surface for the presence of oil slicks. Detection is frequently complicated by river currents, eddies and boils[,] poor light conditions or darkness, and false alarms.<sup>16</sup>

Riverkeeper provides notice that Reclamation has violated section 301(a) of the CWA every time during the last six years the agency discharged oil, lubricant, or other pollutants to the Columbia River from the Dam. At a minimum, Reclamation has violated section 301(a) of the CWA by discharging pollutants at the Dam as described in Table 1.

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<sup>14</sup> For the reasons stated above, Reclamation is in the best position to know the specific location of cooling water discharges to the Columbia River.

<sup>15</sup> Attachment A at 2.

<sup>16</sup> Grand Coulee Power Office (Project) Spill Prevention Control and Countermeasure Plan at 1-2 (undated).

**Table 1. Oil spills from the Dam reported to the U.S. Coast Guard National Response Center.**

<b>Reported Date</b>	<b>Reported Pollutant</b>	<b>Reported Amount</b>	<b>Reported Cause</b>	<b>Comments</b>
6/9/15	Lubricating Oil	1 gallon	Equipment failure; Loose fitting at the Right Power House, G-11 Coaster Gate Cylinder	Caller reported a rainbow colored sheen in the river measuring 300 x 1 ft.
6/10/15	Lubricating Oil	1 gallon	Equipment failure from a coaster gate cylinder	Caller reported a rainbow colored sheen in the river estimated at 300 x 40 ft.
2/14/14	Hydraulic Oil	10 gallons	Lift gate had a leaking fitting which caused a release of 10 gallons of hydraulic oil into Lake Roosevelt (Columbia River upstream of the Dam)	Caller reported a rainbow colored sheen in the river estimated at 10 x 3 ft.
7/29/14	Hydraulic Oil	1 gallon	Coaster gate cylinder had a bad fitting and leaked oil into the Columbia River upstream of the Dam	Caller reported a yellowish-brown sheen in the river; no size estimate provided
8/27/14	Hydraulic Oil	1 gallon	Coaster gate cylinder overheated, causing the product to rise to the top and spill	Caller reported a gray/rainbow colored sheen in the river; no size estimate provided
9/18/14	Mineral Oil	.5 gallon	Operator error	Caller reported a grayish sheen in the river estimated at 100 x 50 ft.; caller stated the discharge occurred from the drainage sump

<b>Reported Date (cont.)</b>	<b>Reported Pollutant (cont.)</b>	<b>Reported Amount (cont.)</b>	<b>Reported Cause (cont.)</b>	<b>Comments (cont.)</b>
1/14/13	Lubricating Oil	1 quart	Caller reported oil in the river from the generator	Caller reported a rainbow colored sheen in the river estimated at 30 x 1 ft.
3/6/13	Lubricating Oil	10 gallons	Generator 22 (G-22) turbine oil cooler leaked oil in the river	
1/26/13	Unknown	1 quart	Unknown lube oil spill collected in eddy near Third Power Plant	Caller reported a yellowish-brown sheen in the river estimated at 30 x 60 ft.
5/7/12	Hydraulic Oil	2 gallons	A cylinder had a bad fitting that caused the discharge of approximately 2 gallons of hydraulic oil	Caller reported a rainbow colored sheen in the river estimated at 150 by 105 ft.
7/19/12	Mineral Oil	1 quart	Kill bay gate lift	Caller reported a rainbow colored sheen in the river estimated at 20 x 20 ft.
9/30/11	Lubricating Oil	15 gallons	Lubricating oil released from a coaster gate cylinder due to operational testing	Caller reported a rainbow colored sheen in the river estimated at 150 x 10 ft.

#### **IV. PARTY GIVING NOTICE OF INTENT TO SUE.**

The full name, address, and telephone number of the party giving notice is:

Columbia Riverkeeper  
 111 Third Street  
 Hood River, Oregon 97031  
 (541) 387-3030

#### **V. ATTORNEYS REPRESENTING RIVERKEEPER.**

The attorneys representing Columbia Riverkeeper in this matter are:

Brian A. Knutsen  
Kampmeier & Knutsen, PLLC  
833 S.E. Main Street, No. 318  
Portland, Oregon 97214  
(503) 841-6515  
brian@kampmeierknutsen.com

Lauren Goldberg, Staff Attorney  
Columbia Riverkeeper  
111 Third Street  
Hood River, OR 97031  
(541) 965-0985  
lauren@columbiariverkeeper.org  
(Licensed in Oregon)

## **VI. CONCLUSION.**

The above-described violations reflect those indicated by the information currently available to Columbia Riverkeeper. These violations are ongoing. Columbia Riverkeeper intends to sue for all violations, including those that are uncovered and/or committed after the date of this Notice of Intent to Sue.

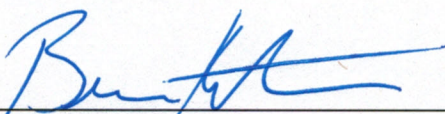
Columbia Riverkeeper intends to seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Columbia Riverkeeper further seeks to recover its litigation expenses as authorized by section 505(d) of the CWA, 33 USC § 1365(d).

Columbia Riverkeeper believes that this Notice of Intent to Sue sufficiently states grounds for filing suit. Columbia Riverkeeper intends, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Reclamation under Section 505(a) of the Clean Water Act for the violations described herein.

Columbia Riverkeeper is willing to discuss effective remedies for the violations described in this letter and settlement terms during the 60-day notice period. If Reclamation wishes to pursue such discussions in the absence of litigation, we suggest that the agency initiate those discussions within ten (10) days of receiving this notice so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

KAMPMEIER & KNUTSEN, PLLC

By:   
Brian A. Knutsen

cc:

Regina McCarthy, Administrator, U.S. EPA  
Loretta Lynch, U.S. Attorney General  
Dennis McLerran, Region 10 Administrator, U.S. EPA  
Maia Bellon, Director, Washington Department of Ecology

cc via email:

Lorri Lee, Pacific Northwest Regional Director, U.S. Bureau of Reclamation  
Coleman Smith, Grand Coulee Power Office Manager, U.S. Bureau of Reclamation



**CERTIFICATE OF SERVICE**

I, Brian A. Knutsen, declare under penalty of perjury of the laws of Washington and the United States that I am counsel for Columbia Riverkeeper and that on April 20, 2016, I caused copies of the foregoing Notice of Intent to Sue the U.S. Bureau of Reclamation Under the Clean Water Act to be served on the following by depositing it with the United States Postal Service, certified mail, return receipt requested, postage prepaid:

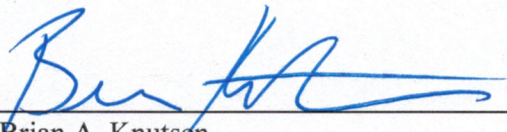
Commissioner Estevan López  
U.S. Bureau of Reclamation  
1849 C Street, N.W.  
Washington, D.C. 20240-0001

Director Maia D. Bellon  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Attorney General Loretta E. Lynch  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

Regional Administrator Dennis J. McLerran  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Mail Code RA-210  
Seattle, WA 98101

Administrator Regina A. McCarthy  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Ave., N.W.  
Mail Code 1101A  
Washington, D.C. 20460

  
\_\_\_\_\_  
Brian A. Knutsen

# **ATTACHMENT A**



## United States Department of the Interior

BUREAU OF RECLAMATION  
Pacific Northwest Regional Office  
1150 North Curtis Road, Suite 100  
Boise, ID 83706-1234

IN REPLY REFER TO:

PN-4402

RIM-6.11

**AUG 27 2015**

CERTIFIED MAIL RETURN RECEIPT – 7012 2210 0001 4286 9261

Ms. Lauren Goldberg  
Staff Attorney  
Columbia Riverkeeper  
111 Third Street  
Hood River, OR 97031

Subject: Freedom of Information Act (FOIA) Request No. BOR-2015-00294 (PN-15-49)

Dear Ms. Goldberg:

This letter is in response to your May 22, 2015, FOIA request received by the Bureau of Reclamation (BOR) Pacific Northwest Regional Office on May 26, 2015. In your request, you ask seek information concerning pollution at Grand Coulee Dam. Specifically, you seek the following:

1. All documents cataloguing or describing pollution discharges from the Grand Coulee Dam from January 1, 2012, to present (May 28, 2015).
2. Discharge Monitoring Reports (DMRs) for the Grand Coulee Dam submitted by Reclamation to the U.S. Environmental Protection Agency pursuant to the Clean Water Act's National Pollution Discharge Elimination System (NPDES).
3. All documents describing or containing the U.S. Army of Corps of Engineers draft or final NPDES permit application.
4. All documents (dated after January 1, 2012) describing the status of or work related to the Corps' draft and/or final NPDES permit application for operations of the Grand Coulee Dam.
5. The current Spill Prevention Plan and the Area Contingency Plan for the Grand Coulee Dam.
6. All documents describing pollution discharge points from the Grand Coulee Dam to the Columbia River.

With this letter, we have enclosed a compact disc (CD) containing 90 pages responsive to items 65 and 6 your request. We redacted (blacked out) information under Exemptions 6, 7C, and 7F of the FOIA. These exemptions are explained below:



Exemption 6 of the FOIA protects information about individuals when the privacy interest of the individual outweighs the interest of the public. When appropriate and subject to a case-by-case analysis, Exemption 6 allows Reclamation to withhold the names and other personal information of individuals where disclosure “would constitute a clearly unwarranted invasion of personal privacy.” We have withheld the home/cell phone numbers of Reclamation employees who are listed as emergency contacts in one of the documents. *See* 5 U.S.C. § 552(b)(6).

Exemption 7(C) of the FOIA provides protection for personal information in law enforcement records. This exemption is the law enforcement counterpart to Exemption 6, which is the FOIA’s fundamental privacy exemption. The identities of both private individuals and law enforcement personnel contained within law enforcement records are protected under this exemption. *See* 5 U.S.C. § 552(b)(7)(C). We invoked both Exemptions 6 and 7C to protect the identity of a security officer.

Exemption 7(F) of the FOIA (Physical Safety) allows agencies to withhold information that “could reasonably be expected to endanger the life or physical safety of any individual.” Much of the information responsive to Items 5 and 6 of your request could potentially expose vulnerabilities and response activities at the Grand Coulee Dam. Therefore, under this exemption we protected sensitive material related to the reservoir capacities, flood operations, emergency action plans, detailed drawings/maps of the Grand Coulee Dam, and other information that might be used to harm national security interests or endanger the life or physical safety of any individual. *See* 5 U.S.C. § 552(b)(7)(F).

Responsive to Item 1: The information concerning spill history from 2012 to present can be identified on the National Response Center homepage. The website address is: <http://www.nrc.uscg.mil/>. The following are the incident code numbers listed by year to assist you in locating the documentation for each spill:

2012 – 1023988  
2013 – 1035707; 1060078  
2014 – 1090575; 1093682; 1095716  
2015 – 1119210; 1119342

Responsive to Items 2, 3, and 4: You ask that we exclude information related to the National Pollution Discharge Elimination System (NPDES) Permit No. WA-002416-3; excluding the NPDES Permit No. WA-002416-3 information, we have no records responsive to Items 2, 3, and 4 of your request.

I am responsible for this decision, in consultation with Felipe Moncarz, FOIA Attorney, for the Department of the Interior, Office of the Solicitor, Boise Field Office.

Under 43 CFR § 2.58, you may appeal this response to the FOIA Appeals Officer. 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 5:00 p.m. (Eastern Time) Monday through Friday will be deemed received on the next workday. Your appeal must be in writing and addressed to:

Freedom of Information Act Appeals Officer  
U.S. Department of the Interior  
Office of the Solicitor  
1849 C Street, NW, MS 6556  
Washington, DC 20240

You must include with your appeal copies of all correspondence between you and Reclamation concerning your FOIA request. Failure to include all documentation will result in the Department of the Interior's rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, "FREEDOM OF INFORMATION ACT APPEAL." Your letter should include, in as much detail as possible, any reason(s) why you believe Reclamation's response is in error.

Under the Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007, an agency shall not assess search fees if the agency fails to comply with any time limit (s) under 552(a)(6)(A)(i) of the FOIA. Since our response was not provided within the statutory time limit, we are precluded from charging search fees related to responding to your request. Additionally, the Department of the Interior does not charge for FOIA processing fees totaling \$50 or less (*See* 43 CFR Subpart G §2.49). Because the cost of duplication is under the \$50 threshold, there is not charge for the enclosed CD.

In 2007, a number of amendments to the FOIA were enacted. As part of these FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS as follows:

Office of Government Information Services  
National Archives and Records Administration, Room 2510  
8601 Adelphi Road  
College Park, Maryland 20740-6001  
ogis@nara.gov  
877-684-6448

Beginning October 1, 2012, the inclusion of the following statement is mandatory for all BOR FOIA response letters:

For your information, 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) (2006 & Supp. IV (2010)). 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.

If you have any questions or concerns regarding this letter, please refer to the assigned FOIA request number above in all correspondence that pertains to this request. You may contact me at (208) 378-5122 or send an e-mail to [PNFOIA@usbr.gov](mailto:PNFOIA@usbr.gov).

Sincerely,



Yadyra P. Esparza  
Freedom of Information Act Specialist

Enclosure

- Responsive Records (1 CD/90 pp)