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December 6, 2016

*Via Electronic Mail through FOIAonline**
https://foiaonline.regulations.gov

Ana Liza S. Malabanan
Regional FOIA Coordinator of
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
West Coast Region
501 West Ocean Blvd
Long Beach, CA 90802-4213
E-mail: ana.liza.malabanan@noaa.gov

National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Public Reference Facility (OFA56)
1315 East West Highway (SSMC3)
Room 10730
Silver Spring, Maryland 20910
E-mail: FOIA@noaa.gov

Re: FOIA Request

To Whom It May Concern,

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and relevant Department of Commerce, National Marine Fisheries Service ("NMFS") regulations, Ecological Rights Foundation (EcoRights') (via counsel), hereby requests that NMFS provide all responsive records ("documents") that are in the files maintained by NMFS personnel or offices on the date that NMFS staff conducts their searches for the documents responsive to this request.[1]

Definitions

[1] *See McGehee v. CIA*, 697 F.2d 1095 (D.C. Cir. 1983); *Pub. Citizen v. Dep't of State*, 276 F.3d 634 (D.C. Cir. 2002); *Oregon Natural Desert Ass'n v. Gutierrez*, 419 F. Supp. 2d 1284, 1288 (D. Or. 2006) (federal agencies must release all documents in their possession through the date they conduct the review of their files for documents responsive to FOIA requests).

1. The term "You" or "Your" as used herein refers to the NATIONAL MARINE FISHERIES SERVICE ("NMFS"), PENNY PRITZKER, as Secretary of Commerce, and/or any person acting or purporting to act on their behalf.

2. The term "document" or "documents" as used herein means all written, typewritten, drawn or printed material or record of any type or description and all information kept or recorded on magnetic or electronic media, including, without limitation, correspondence, letters, agreements, contracts, memoranda of agreement or understanding, electronic mail (including both messages sent and received from NMFS personnel), telegrams, inter- and intra-office communications, forms, reports, studies, working papers, handwritten or other notes, phone records, logs, diaries, minutes, spreadsheets, computation sheets, data sheets, transcripts, drawings, sketches, plans, leases, invoices, index cards, checks, check registers, maps, charts, graphs, bulletins, circulars, pamphlets, notices, summaries, books, photographs, sound recordings, videotapes, rules, photocopied or computer-related materials, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations of them, and all forms of written or recorded matter to which You have access or of which You have any knowledge, or copies of such documents where originals are not available. The terms "document" or "documents" includes all matter that relates in whole or in part to the subject referred to in this request. Where a document has been prepared in several copies that are not identical, or where, by reason of subsequent modification, addition or notation, they are no longer identical, each non-identical copy shall be considered a separate document. Handwritten or other notations of any kind on a copy render it a non-identical copy.

3. The term "related to" as used herein includes comprising, constituting, containing, evidencing, setting forth, summarizing, alluding to, responding to, commenting upon, discussing, supporting, refuting, showing, disclosing, explaining, mentioning, analyzing, recording, reflecting upon, or characterizing, either directly or indirectly, in whole or in part.

4. The term "Stockdale Memo" means the June 11, 2013 Memorandum, subject ESA Guidance, from Corps Chief Counsel, Earl Stockdale, to all Corps counsel, HQ, Dist, Center, Lab, and FOA Offices [attached as Exhibit 1 for your reference].

5. The term "Chris Yates email" refers to the July 24, 2014 email from Chris Yates, NOAA Federal, subject: Fwd:Response to COE Stockdale memo [attached as Exhibit 2 for your reference]..

6. The term "draft Englebright concurrence letter" refers to the draft letter to the Corps entitled "Endangered Species Act Section 7(a)(2) Concurrence Letter for the U.S. Army Corps of Engineers' (Corps) Ongoing Operation and Maintenance of Englebright Dam and Reservoir on the Yuba River" [attached as Exhibit 3 for your reference].

7. The term "unauthorized take" means take that is prohibited by section 9 of the Endangered Species Act.

The foregoing definitions, used below in quotation marks, refer to the terms as defined above.

Requests for Documents

EcoRights requests that "You" please provide the following "documents":

1. Any and all "documents" "related to" the "Chris Yates email" concerning input he, and any NMFS West Coast Region staff provided to NOAA HQ on the impact of the "Stockdale Memo." This request is only for the input on the impact of the "Stockdale Memo" that Chris Yates provided to NOAA HQ and the input on the impact of the "Stockdale Memo" the NMFS West Coast Region staff provided to NOAA HQ and is not a broader request for other documents related to the "Stockdale memo." This request is only for "documents" generated on or prior to July 24, 2014.

2. Any documents to or from NMFS staff Chris Kiefer "related to" the "draft Englebright concurrence letter."

3. Any and all NOAA Fisheries "documents" from January 1, 2000 to the present, in the possession of any NOAA Fisheries Office, Department, and/or Division, including any NOAA law enforcement division, "related to" whether any entities or individuals may have caused or did cause, or may be causing, or are causing "unauthorized take" of threatened or endangered anadromous fish in the Yuba River at, or in the vicinity of, Englebright Dam, Narrows 1 and 2 powerhouses, Daguerre Point Dam, and the Hallwood-Cordua Diversion including but not limited to any and all "documents" generated by, sent by, or received by NMFS Law Enforcement agent, Don Tanner.

15 C.F.R. section 4.6(b) requires NMFS to issue a written determination to EcoRights within twenty working days that this request was received and logged in by NMFS stating which of the requested records will, and which will not, be released and the reason for any denial of any portion of this request. As provided by 15 C.F.R. section 4.6(c), NMFS may extend this obligation by furnishing written notice to the requestor as soon as practicable stating the reasons for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension: (1) there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) there is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (3) there is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of NMFS.

EcoRights requests that to the extent that NMFS can do so, EcoRights be furnished with electronic copies of the above documents in lieu of paper copies (to minimize the expense and burden of copying). EcoRights points out that FOIA requires NMFS to provide copies of requested documents "in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." 5 U.S.C. § 552(a)(3)(B).

We request that NMFS provide electronic copies of its response to this request, as well as any responsive documents that NMFS is able to transmit via e-mail, to Christopher Hudak and Christopher Sproul and I at the following e-mail addresses:

Christopher Hudak: christopherwhudak@gmail.com
Christopher Sproul: csproul@enviroadvocates.com

Please send any documents that must be sent via regular mail to the following address:

Christopher Hudak
Christopher Sproul
Environmental Advocates
5135 Anza St.
San Francisco, California, 94121

Your staff may contact me at (510) 502-5742 or christopherwhudak@gmail.com to further discuss this request. Thank you for your prompt attention to this matter.

Sincerely,

Christopher Hudak
Attorney for Ecological Rights Foundation

Encl.: Attachment 1 (Fee Waiver Request)

Pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 15 C.F.R. section 4.11(k), EcoRights hereby requests a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents, in accord with the attached fee waiver statement.