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403 SE Caruthers St., # 101
Portland, OR 97214
503-223-6418

March 25, 2020

Via email foia-nmp@usace.army.mil

U.S. Army
Corps of Engineers (Northwestern Division)
Freedom of Information Officer
CENWP-OC
P.O. Box 2946
Portland, OR 97208-2946

Re: Willamette River Valley Dams – FOIA Records Request and Request for Fee Waiver

Dear U.S. Army Corps of Engineers FOIA Officers:

On behalf of the 501(c)(3) nonprofit organization Willamette Riverkeeper (the “Requester”), I submit this Freedom of Information Act (FOIA) request pursuant to 5 U.S.C. § 552, and the U.S. Army Corps of Engineers regulations, 32 C.F.R. § Part 518 (reserved) and 32 C.F.R. Part 286 (Department of Defense FOIA Program). As described more particularly below, this request seeks records relating to 13 dams in the Willamette River Basin that the Corps constructed, oversees, maintains, inspects, monitors, assesses, manages for emergencies and for non-emergencies.

Willamette Riverkeeper, its members and supporters have a strong interest in records related to the federal government’s activities and operations related to the human life or property safety of the 13 Willamette River Basin dams identified below which are under the Corps’ operation, maintenance, and control. Willamette Riverkeeper has reviewed the Corps’ website, including its digital repository, engineering circulars, engineering regulations, technical letters, bulletins, best practices, pamphlets, facilities criteria, and other documents for the Risk Management Center and the Dam Safety Program, and the requested information is not currently available in the public domain. Willamette Riverkeeper prefers to receive records in electronic format, where possible.

I. Records Requested

A. Dams Subject to this FOIA Request

Pursuant to the FOIA, Willamette Riverkeeper requests copies of any and all documents, records and communications of any kind relating to the 13 dams listed below. Willamette Riverkeeper’s specific interest in this records request is for any and all records that relate to the Corps’ construction, oversight, assessment, maintenance, and management of the dams’ safety and integrity from January 1, 2009 to the present.

1. Fall Creek Dam on Fall Creek;
2. Fern Ridge Dam on the Long Tom River;
3. Cottage Grove Dam on the Coast Fork Willamette River;
4. Dorena Dam on the Row River;
5. Big Cliff Dam on the North Fork Santiam River;
6. Detroit Dam on the North Fork Santiam River;
7. Green Peter on the Middle Santiam River;
8. Foster Dam on the South Fork Santiam River;
9. Blue River Dam on the Blue River;
10. Cougar Dam on the McKenzie River;
11. Dexter Dam on the Middle Fork Willamette River;
12. Hills Creek Dam on the Middle Fork Willamette River; and
13. Lookout Point Dams on the Middle Fork Willamette River.

For purposes of this request, a “dam” includes a dam and all appurtenant structures, including but not limited to the dam, foundations, spillways, downstream channels, levees, outlet pipes, turbines, or modifications to the dam since its original construction.

B. Records Requested

Specifically, Willamette Riverkeeper seeks the following categories of records from the Corps for the 13 dams’ safety, risks, adequacy, integrity or stability for the timeframe specified above:

1. Emergency action or emergency safety plans or exemption letters;
2. Inspection or investigation records;
3. Reports or studies or assessments or investigations (including any independent consultant reports, operation or maintenance reports, construction reports, public correspondence reports or complaints relating to safety, risk, structural or operational adequacy, integrity or stability);
4. Monitoring information or data;
5. Analyses or recommendations or dissenting views relating to dam safety, risks, structural or operational adequacy, integrity or stability; and
6. Communications or correspondence relating to dam safety, risk, adequacy, integrity or stability.

For purposes of this FOIA request, the term “records” as used herein is intended to include, but not be limited to, any and all hard-copy, printed, electronic, typed, handwritten, machine readable, electronic records and documents, whether in original, copy, or backup format (hard or electronic) if the originals have been destroyed. “Records” also includes photographs, electronic mail, database records, applications, instant messages, text messages, telephone messages, voicemails, other sound recordings, webinars, video chats, faxes, notes of conferences or meetings or conversations or discussions, presentation records (such as Powerpoint), correspondence, letters, memoranda, notes, reports, studies, projects, programs, papers, books, articles, handbooks, manuals, guidance records, methodology records, policy or procedure records, strategic planning records (including but not limited to records relating to strategies, priorities, objectives, goals, targets, standards, or consequences), tests, models, analyses, evaluations, assessments, estimates, records relating to construction properties or capacities, dam implementation, operation, monitoring,

indicators, progress, timelines, recommendations, site visit and inspection records, forms (completed or blank), summaries, data, sampling, logs, maps, figures, diagrams, drawings, schematics, surveys, graphs, charts, and any other compilation of data from which information can be obtained.

“Records” also includes records, whether in proposed, draft, pending, interim, or final form. The request also includes communications and correspondence, which is intended to include records sent, forwarded, received, or generated by or between any Corps representative, division, department, section, bureau, committee, or office management or field staff; inter or intra agency communications or correspondence; communications or correspondence with any agency or entity; communications or correspondence and third party. within the custody and control of the Corps, its departments, divisions, programs, centers, and institutes. The request also includes records provided to the Corps, or copying the Corps, between third parties, including consultants or industry representatives.

This request also covers 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 that, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

To save agency resources and the incurring duplication mailing expenses, we request electronic copies of these records whenever available. In addition, rather than waiting until all requested records have been assembled for the time period requested, we ask that you disclose responsive records as they become available to you via interim responses on a rolling basis. 32 C.F.R. § 286.9(c). To discuss prioritizing the agency’s allocation of resources for culling or releasing responsive records, please contact me directly. We are also available to speak with your FOIA public liaison. 32 C.F.R. § 286.4.

C. Keyword Search

The request covers records relating to the dams’ safety or integrity, regardless whether a threat or hazard is determined or described as “existing” or potential”. For purposes of this FOIA, an issue concerns a dams’ safety or integrity if it includes, but is not limited to, a relationship to some of the following keywords, which Willamette Riverkeeper anticipates further discussing with the Corps in framing your search for responsive records: dam construction, design, materials, techniques, or errors (whether human or computer); stability or instability (geologic, hydraulic, hydrologic, or other); evaluations; maintenance; water pressure, load, stress, sliding, or blockage; foundation or ground structural deficiencies; leak, seepage, crack, tilt, displacement, movement, settlement, erosion, breach, blowout, overturning, deterioration, or liquefaction; operation errors; flood or overspill or freeboard; dam condition; repairs or modifications or remedial or corrective actions.

II. Claims of Exemption from Disclosure

Willamette Riverkeeper requests that the records be released in unredacted form, meaning that it seeks full disclosure of all information in the requested records. If you regard any requested records or portions of records as exempt from disclosure under FOIA, we ask that you exercise your discretion to disclose the records nonetheless.

We emphasize that this request applies to all described records the disclosure of which is not expressly prohibited by law. If you should seek to prevent disclosure of any of the requested records

or you or your office has destroyed records that could reasonably be construed to be responsive to this request, we request that you describe the withholding in detail and separately state your reasons for not releasing the records in their entirety by: (1) identifying each such document with particularity (including title, subject, date, author, recipient, and parties copied); (2) explaining in full the basis on which nondisclosure is sought; (3) providing any segregable portions of the records for which you do not claim a specific exemption, and (4) providing facts and reasons for the withholding determination. After careful review for the purpose of determining whether any of the information is exempt from disclosure, please provide any reasonably segregable non-exempt portions of exempt records, as required by FOIA. Should you elect to invoke an exemption to FOIA, please provide the required full or partial denial letter and sufficient information to appeal the denial. Such statements will be helpful in deciding whether to appeal an adverse determination and in formulating arguments in the event an appeal is taken. 5 U.S.C. § 552(b).

Any delay in responding to this FOIA request or extensions sought must comply with the limited exceptions provided by the FOIA.

III. Fee Waiver Request

Willamette Riverkeeper requests that the Corps waive and reduce any fees for this request because as a nonprofit public interest organization, Willamette Riverkeeper's request – and the Corps' disclosure of the requested records to Willamette Riverkeeper - is in the public interest. The FOIA requires the federal government to furnish documents to public interest groups free of charge, or at a reduced rate, "if disclosure of the information is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). As described below, disclosure "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." 5 U.S.C. § 552(a)(4)(A)(iii). FOIA carries a presumption of disclosure, and the fee waiver was designed specifically to allow nonprofit, public interest groups, such as Willamette Riverkeeper, access to government documents without the payment of fees. The statute is to be liberally construed in favor of waivers for noncommercial requesters. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it is 'liberally construed in favor of waivers for noncommercial requesters'").

As explained below, Willamette Riverkeeper is a nonprofit public interest organization and satisfies the criteria for a fee waiver and fee reduction established in FOIA, described as a multi-factor test in the applicable regulations. 5 U.S.C. § 552(a)(4)(A); 32 C.F.R. § 286.12(l). If the Corps would like additional information, or if the Corps determines that Willamette Riverkeeper should be denied in whole or in part it request for a fee waiver or reduction such that fees exceed \$25.00, please contact me to discuss the processing of this request. 32 C.F.R. § 286.12.

A. Disclosure 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 requester's commercial interest (32 C.F.R. § 286.12(l)(1)-(2))

- i. Disclosure cannot be primarily in the commercial interest of Willamette Riverkeeper because as a nonprofit organization, Willamette Riverkeeper does not have any "commercial interest". 32 C.F.R. § 286.12(l)(2)(iii).*

As a nonprofit organization, Willamette Riverkeeper does not have any commercial, trade, or profit interest in the records sought. 32 C.F.R. § 286.12(l)(2)(iii). Willamette Riverkeeper is a federal and state nonprofit organization, and focuses on protecting and restoring the Willamette River and believes ensuring public access to the river is a basic public right. Willamette Riverkeeper will not be paid for, or receive any other commercial benefit from the material requested. Willamette Riverkeeper will review and disseminate the requested records to its membership and the general public solely for the purpose of informing and educating the public and will not be used for or result in commercial gain.

Clearly, there is great public interest in the release of the materials sought because they will allow the public to learn about and evaluate the public safety of 13 dams in the Willamette River Basin. Willamette Riverkeeper's primary purpose in requesting the records is to learn more about the dams, the Corps' construction, oversight, maintenance, and management of the structures, and the structural integrity. These dams are in the Willamette River Basin – the geographic area that is the foundation of the requester's mission, and to share this information with Willamette Riverkeeper's thousands of members and supporters, most of whom live, work, and recreate in the Willamette River Basin. Therefore, the "disclosure of the information . . . is not primarily in the commercial interest of" Willamette Riverkeeper, and a fee waiver is appropriate. 5 U.S.C. § 552(a)(4)(A)(iii).

- ii. *The requested records would "shed light" on the operations or activities of the government and the connection of the requested records is "direct and clear." 32 C.F.R. § 286.12(l)(2)(i).*

Willamette Riverkeeper seeks records related to Corps' construction, oversight, management, and maintenance of 13 dams in the Willamette River Basin. The Corps maintains a lead and important role relating to these enormous civil engineering structures and the structures' safety. The records requested clearly concern the operations and activities of the federal government, and therefore satisfies the first fee waiver criterion. 32 C.F.R. § 286.12(l)(2)(i).

Congress authorized the Corps to construct, operate, and maintain these 13 dams by a series of Flood Control Acts. Collectively these dams and their associated reservoirs and infrastructure are known as the Willamette Valley Project. Through these 13 dams, the Corps controls the volume and timing of water flowing in the Willamette River Basin, reducing peak flows, increasing low flows and limiting natural flooding events, thereby reducing or eliminating critically important stream, riparian and floodplain habitats.

Willamette Riverkeeper's requested records will shed light on the Corps' operations or activities with respect to the 13 dams, and the Corps' connection to the requested records is "direct and clear", justifying a fee waiver. In 2019, this complex system of dams turned 50 years old.¹ In 2020, the Corps released a Draft Environmental Assessment for Hills Creek and Lookout Point Dams, in which it identified these two dams as having "moderate to and high" life-safety risks, respectively, from seismic events. More broadly, the Corps' "dam safety professionals carry out a dam safety program to make sure these [dam] projects deliver their intended benefits while reducing risks to people, property and the environment through continuous assessment, communication and

¹ See, e.g., <https://www.nwp.usace.army.mil/Media/News/Article/1850424/complex-system-of-dams-turns-50-saves-oregon-1-billion-annually/>

management.”² The Corps also maintains a “Risk Management Center” (RMC), established in 2009, “to improve management controls over infrastructure decisions, serve as an independent advisor to senior leadership, maintain and develop risk competencies, and ensure consistency in processes, application of criteria, and decision-making.”³ The RMC offers support to Civil Works and Major Subordinate Command dam and levee safety activities and the Modeling, Mapping, and Consequence Production Center.⁴ The Corps is responsible for the construction, oversight, maintenance, and management of the dams’ safety. *See, e.g.*, 33 C.F.R. § 222.6, Appendix D.

Due to the Corps’ long-standing and ongoing legal responsibility for and oversight of these dams’ safety, the agency has records in its custody and control that are responsive to Willamette Riverkeeper’s request, that will shed light on the Corps’ operations and activities relating to the safety of the 13 dams in the Willamette River Basin, and the Corps’ connection to the requested is “direct and clear”, justifying a fee waiver.

iii. The disclosure is “likely to contribute significantly” to public understanding of federal government operations or activities. 32 C.F.R. § 286.12(l)(2)(ii)(A), (B).

Willamette Riverkeeper’s records request hones in on the Corps’ construction, oversight, maintenance, and management responsibilities for these 13 dams. In particular, Willamette Riverkeeper seeks records relating to the dams’ safety and integrity in light of the dams’ construction methods and materials, respective ages, stress from use, the threat of seismic events in the Willamette River Basin, and climate change. This information is clearly in the public’s interest, and is likely to contribute significantly to the public’s understanding of federal government operations or activities as they relate to public safety.

Approximately 2.5 million Oregonians live in the Willamette River Basin from Eugene through Corvallis, Salem, and Portland. Willamette Riverkeeper has thousands of members and supporters throughout the Willamette River Basin. The lives and livelihoods of our members and supporters, plus the other millions of individuals in the Willamette River Basin, are directly impacted by safety and integrity of these 13 dams on any given day, and even more so with the threat of seismic events in the Cascadian Subduction Zone that the U.S. Geological Survey and Oregon Department of Geology and Mineral Industries have recently studied, and other threats such as extreme weather events from climate change. Between 2000 and 2009, more than 200 notable dam failures happened worldwide.⁵ Approximately 14 dam failures have happened in the U.S. since 2000.⁶ Oroville, California (2017) may have been related to dam age, design flaws, and maintenance shortfalls; Brumadinho, Brasil (2019) may have been related to liquefaction, seismic activity, or heavy rainfall; the Laos Dam collapse (2018) may have been related to the dam’s inability to cope with unpredictable and extreme weather events which are becoming more frequent. With the age of the 13 Willamette River Basin dams, the threat of extreme seismic events in our region, and the documented effects of climate change in Oregon, the information will allow Willamette Riverkeeper and the public to better understand the extent of the Corps’ operations and activities as to the public safety of the 13 dams.

² See, e.g., <https://www.usace.army.mil/Missions/Civil-Works/Dam-Safety-Program/>

³ See, e.g., <https://www.iwr.usace.army.mil/About/Technical-Centers/RMC-Risk-Management-Center/>

⁴ Id.

⁵ See, e.g., <https://sciengsustainability.blogspot.com/2019/03/dam-break-simulation-hec-ras.html>

⁶ See, e.g., https://en.wikipedia.org/wiki/Dam_failure

Because Willamette Riverkeeper, and interested members of the public know little about the Corps' operations or activities relating to the safety of the 13 dams, the requested disclosures will undoubtedly increase public understanding of these subjects by a significant extent. Without this information, interested members of the public are currently largely in the dark regarding the Corps' operations or activities as to safety. The requested records have significant informative value, and transparency with regard the Corps' construction, oversight, maintenance, and management of the 13 dams. Currently, little specific information on the subject of the request is in the public domain. To wit, the Corps' recent Draft EA specifically focusing on two dams' safety risks in light of the threat of seismic events was nebulous, at best, in its disclosure of information, standards, or meanings and only listed eight documents as its References. *See* Draft EA Willamette Basin Dams Reservoir Restrictions – Lookout Point and Hills Creek Dams (January 2020). The public was thus challenged to even begin to understand what the Corps meant in the Draft EA by “high risk” and “moderate risk”, what the Issue Evaluation Studies evaluated and concluded, what alternatives were evaluated as risk reduction measures.

This FOIA request is intended to seek any and all records to enable the public to understand the safety operations and activities the Corps undertakes, and to allow Willamette Riverkeeper to share the records with the millions of Oregonians who life and work and recreate in the Willamette River Basin. Disclosure of the requested records will provide the public with a comprehensive view of the Corps' operations or activities in the Willamette River Basin, enabling Willamette Riverkeeper and the public to evaluate the consistency and effectiveness of the Corps' activities and operations.

Willamette Riverkeeper relays information to the public through a variety of means, including meetings, social media, river education, recreational events, conservation and survey events, participating in public comments and public hearings, and where necessary, litigation. Willamette Riverkeeper also publishes a regular online newsletter called The Riverscape, and publishes a hard-copy newsletter. Willamette Riverkeeper further posts public records online and shares these records with its networks of individuals and organizations throughout the Willamette River Basin. Moreover, on this particular topic which will likely release scientific and technical records, Willamette Riverkeeper has established relationships with experts to assist in reviewing the records to assist in distilling and providing this information to the public in a digestible format. Willamette Riverkeeper is therefore prepared to analyze the information and present it to the public in a way that will most effectively increase public understanding of the subject.

Accordingly, based on the above analysis, the requested records bear directly on identifiable operations and activities of the Corps, will contribute significantly to a broad public understanding of the Corps' activities and operations regarding dam construction, operation, and maintenance in the Willamette River Basin, and will not serve any commercial interest on the part of the Requester. Under these circumstances, Willamette Riverkeeper fully satisfies the criteria for a fee waiver. If for some reason the Corps denies the fee waiver in whole or in part, please contact me before incurring any costs related to this request. If the Corps does not fully grant the fee waiver and costs are incurred prior to contacting us, Willamette Riverkeeper will not be responsible for those costs.

IV. Conclusion

Pursuant to the FOIA, access to the requested records should be granted within twenty (20) working days from the date of your receipt of this request. Please also include in your response an estimated date of completion.

Willamette Riverkeeper reserves the right to appeal any decision to wholly or partially deny the fee waiver request in this matter, or as to your release of records in whole or in part. Willamette Riverkeeper requests that should any records be denied, that such a denial comply with the FOIA and applicable regulations.

If you have any questions or if you require further information to identify the requested records, or to discuss the prioritization of your release of responsive records, or to rule on the fee waiver request, please contact me at the telephone numbers and/or email addresses provided below. Due to Coronavirus concerns and Governor Brown's Executive Order 20-12, please use telephone or email for contacting me through at least May 1, 2020 as I will only have intermittent access to U.S. Mail for the foreseeable future. Additionally, if you are not the proper recipient of this request, please identify which office(s) has information responsive to this request so that it can be processed accordingly.

Thank you in advance for your prompt reply and release of responsive records.

Sincerely, on behalf of Willamette Riverkeeper,

s/ Elisabeth A. Holmes

Elisabeth A. Holmes, Staff Attorney
Willamette Riverkeeper
P.O. Box 293
Eugene, Oregon 97440
Tel. (541) 870-7722
Email: eli@willametteriverkeeper.org