

FRANK A. IWAMA
Attorney at Law
67 Wessex Way
San Carlos, CA 94070-1740
Tel: (650) 591-6200
E-mail: frankiwama@gmail.com

Via Facsimile (202) 208-6677

August 9, 2005

Darrell Strayhorn
U.S. Department of the Interior
FOIA Appeals
MS-7456, MIB
1849 C Street, NW
Washington, DC 20240

Re: FREEDOM OF INFORMATION APPEAL
Freedom of Information Act (FOIA) Request – BOR-2005-00164
BOR Mid-Pacific Regional Office: MP-3005, RIM-610

Dear Ms. Strayhorn:

This FOIA Appeal is filed in behalf of Half Moon Bay Coastsides Foundation (“Requestor”), a public benefit, non-profit corporation organized under California law and qualified under Federal law as a tax-exempt, charitable 501(c)(3) organization.

A. BOR’s Letter Denying Requestor’s Request for Fee Waiver

This FOIA Appeal is in response to the Bureau of Reclamation’s (“BOR”) denial of a fee waiver communicated in the letter dated August 3, 2005 from Katherine Thompson, Regional Business Manager, Bureau of Reclamation, Mid-Pacific Regional Office, to Oscar Braun, Executive Director, Half Moon Bay Foundation, as follows:

“Your request does not contain sufficient justification to support a fee waiver. Although your request fulfills the requirements of the first factor (citing 43 CFR Part 2, Appendix D), i.e., it concerns the operations of the Bureau of Reclamation, it does not meet the second factor. Based on the information you provided in your letter, **we are unable to determine how you intend to disseminate the information to the general public or how you intend to use it to increase the level of public understanding of Reclamation’s operations that existed prior to disclosure.** Therefore, we are denying your request for a fee waiver under 43 CFR 2.19.” (Emphasis added).

B. BOR's Cited Reason for Denying Requestor's Request for Fee Waiver

This FOIA Appeal will directly address the sole and only factor cited in BOR's letter as the reason for denying a fee waiver in this case (i.e., factor #2: method of dissemination of the information to the general public or increasing public understanding of BOR's operations). BOR's letter confirms compliance with the requirement of factor #1 and did not cite non-compliance with the remaining factors (factors #s 3 and 4). [See 43 CFR 219(c)(1): "The basis for the denial, including a full explanation of why your fee waiver request did not meet DOI's fee waiver criteria..."].

As stated in BOR's fee waiver denial letter, the reason for the denial of Requestor's request for fee waiver, although based only on factor #2, is divided into two parts and is phrased as follows: 1. "we are unable to determine how you intend to disseminate the information to the general public;" and, 2. "how do you intend to use it to increase the level of public understanding of Reclamation's operations that existed prior to disclosure." (BOR letter dated August 3, 2005, denying Requestor's request for fee waiver).

C. Requestor's Response to BOR's Denial of Request for Fee Waiver

1. Dissemination of BOR Information to the General Public

As earlier noted herein and stated in the FOIA Request letter to BOR dated June 27, 2005, Requestor (Half Moon Bay Coastside Foundation) is a public benefit, non-profit 501(c)(3) tax-exempt, charitable organization. Requestor's non-profit organization is dedicated to the preservation of clean water, marine and watershed resources. Although the organization initially concentrated on sensitive environmental issues affecting the Monterey Bay National Marine Sanctuary, since its inception Requestor has expanded its advocacy and leadership role in establishing networks of private and public landowners to address water quality issues throughout California, including BOR's Lake Berryessa Recreation Area. (See www.saveourbay.org).

The primary vehicle Requestor uses to disseminate public information to the general public is through its vast Internet and publishing resources, including its informational news releases and alerts published through net links in The Pebble.US, known as the "The Voice of Rural America." Through the Pebble net link hundreds/thousands of interested residents and citizens obtain up-dated information and government alerts about the latest news and developments at BOR's Lake Berryessa Recreation Area. Requestor

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played a pivotal role in founding the Lake Berryessa Visitors Services Plan Task Force. (See links to [LBVSPT Project](#), [The Pebble](#), and [Pebble Archives](#) at www.saveourbay.org).

In addition to The Pebble, Requestor transmits and receives countless informational data on a daily basis through electronic communications with the general public, including stakeholders with property interests at BOR's Lake Berryessa Recreation Area. The subject matters relating to BOR's governance and operations at Lake Berryessa are frequently reported to the general public by the local news media in communities surrounding the Lake Berryessa area. The source of many reported news media reports is often attributed to the Requestor and members of the Lake Berryessa Visitors Services Plan Task Force.

2. Increase the Level of Public Understanding of BOR's Operations

Requestor's purpose in educating the general public about BOR's governance and operations at Lake Berryessa is aptly stated in the mission statement of the Lake Berryessa Visitors Services Plan Task Force:

"The Mission of the Lake Berryessa Visitor Services Taskforce is to develop a Visitor Services Plan CRMP. What does CRMP mean? Answer: Coordinated Resource Management and Planning (CRMP) is a community-based process used for resource planning, problem solving, and management. The CRMP process emphasizes direct participation by everyone concerned with natural resource management in a given planning area. The concept underlying CRMP is that coordinating resource management strategies will result in improved resource management and minimized conflicts among land users, landowners, governmental agencies, and interest groups. It embodies the proposition that the best way for the public to determine how to manage the interest in the environment is through collaboration among "stakeholders", not through normal governmental processes. This idea was strongly advanced in the report of the Western Regional Team of the Natural Resources Task Force of the President's Council on Sustainable Development (PCSD). The Clinton and Bush administrations endorsed the CRMP process. Both administrations saw the CRMP process as an extension of the reinventing government, for decentralization, and place based management."

According to BOR's own public records, BOR's Commissioner prepared a written response to a published audit report issued by the Office of Inspector General, "Draft Audit Report on Concessions Managed by the Bureau of Reclamation (Assignment No.

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W-IN-BOR-003-98-R). Commissioner Eluid L. Martinez, in a Memorandum dated April 3, 2000, admitted that several deficiencies existed at Lake Berryessa concession operations, and made firm commitments to mandate processes and procedures to correct the documented deficiencies reported in the Inspector General's Audit. (See attachment, Martinez Memorandum to Office of Inspector General, dated April 3, 2000).

It is now over five years since then Commissioner Martinez issued BOR's Memorandum, responding that action would be implemented to correct documented deficiencies reported at Lake Berryessa concession operations. Today, BOR is involved in public controversies relating to the same or similar deficiencies reported five years ago by the Inspector General's audit at Lake Berryessa concession operations. The primary focus of attention at the present time involves the concession operation at Pleasure Cove Resort (Marina), although similar concerns and issues have been raised at Lake Berryessa's six other concession operations.

D. Conclusion

The FOIA request in issue meets the requirements of 43 CFR 2.19(a): "...the essential element of any fee waiver determination is whether the release of the particular documents sought is the request will likely contribute significantly to public understanding of the operations or activities of the Government."

The trust and specific purpose of the FOIA Request compels the production of BOR records and related documents addressed in the Inspector General's audit report, BOR's response, and documentation of BOR's actions, if any, in compliance with mandated corrective measures relating to Lake Berryessa concession operations.

There is substantive legal reason to support the conclusion that the FOIA Request will increase the level of public understanding of BOR's operations inasmuch as BOR has never released the requested records to the general public. The general public and taxpayers have the right to demand and receive public information about BOR's concession operations at Lake Berryessa Recreation Area, particularly in light of the fact that the Inspector General's audit report documented numerous deficiencies and failures to comply with applicable law.

Your prompt review and timely response to this FOIA Appeal is requested. For your information, BOR is in the final stages of complying with the process of submitting final reports for an environmental impact statement required by the National Environmental Policies Act (NEPA) for the Lake Berryessa Recreation Area. The general public has the

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right to access and review BOR records and documents to ensure compliance with NEPA's mandatory requirements as well as other applicable local, state and federal laws.

Thank you for your cooperation and assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Frank A. Iwama", written in a cursive style.

FRANK A. IWAMA

Cc: Oscar Braun, Executive Director
Half Moon Bay Coastside Foundation

Enclosures:

1. BOR denial of fee waiver letter dated August 3, 2005
2. Requestor's FOIA Request letter dated June 27, 2005
3. BOR Memorandum re Response to Audit Report dated April 3, 2000



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

IN REPLY
REFER TO:
MP-3005
RIM-6.10

AUG - 3 2005

Mr. Oscar Braun
Executive Director
Half Moon Bay Coastside Foundation
1589 Higgins Canyon Road
Half Moon Bay, CA 94019

Subject: Freedom of Information Act (FOIA) Request – BOR-2005-00164

Dear Mr. Braun:

This letter is in response to your June 27, 2005, FOIA request in which you requested various documents concerning the Office of Inspector General Draft Audit Report on Concessions Managed by the Bureau of Reclamation (Assignment No. W-IN-BOR-003-98-R).

In your letter, you also requested a fee waiver. The FOIA permits documents to be furnished without charge or at a reduced charge if disclosure of the information—

1. Is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the Government, and
2. Is not primarily in the commercial interest of the requestor.

The Department of Interior considers the following factors (see 43 CFR Part 2, Appendix D) in deciding whether you are entitled to a fee waiver:

1. How do the records concern the operations or activities of the Government?
2. If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?
3. If there is likely to be a contribution to public understanding, will release of the requested records contribute significantly to public understanding?
4. Would disclosure be primarily in your commercial interest?

Your request does not contain sufficient justification to support a fee waiver. Although your request fulfills the requirements of the first factor, i.e., it concerns the operations of the Bureau of Reclamation, it does not meet the second factor. Based on the information you provided in your letter, we are unable to determine how you intend to disseminate the information to the general public or how you intend to use it to increase the level of public understanding of Reclamation's operations that existed prior to disclosure. Therefore, we are denying your request for a fee waiver under 43 CFR 2.19.

We have determined that you are an "Other" requestor for the purpose of assessing fees (see 43 CFR 2.17). Based on that category, the fee for Reclamation to process your request will be \$1,052.20 (500 pages of

Subject: Freedom of Information Act (FOIA) Request – BOR-2005-00164

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duplication at \$0.13 per page; 1 hour of managerial search and review time at \$49.00/hour; 18 hours of professional search and review time at \$33.80/hour; and 17 hours of clerical time for search, review, correspondence, and forms preparation at \$19.40/hour). Please send a check or money order payable to the Bureau of Reclamation at 2800 Cottage Way, Sacramento, California 95825.

If processing your request exceeds the estimated total, you will be billed for the increased costs; if the cost is less, you will be refunded the difference. You may also modify your request, which may decrease or increase the estimated fee.

We will not proceed further with your request until we receive your payment. In accordance with our regulations (43 CFR 2.8(a)(3)), if we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request.

The official responsible for the fee waiver denial is Mr. Stephen R. Palmer, Assistant Solicitor, Pacific Southwest Region, Office of the Solicitor. In accordance with 43 CFR 2.28(a)(1), you may appeal this fee waiver denial to:

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
U.S. Department of the Interior
1849 C Street, NW.
MS-5312, MIB
Washington, D.C. 20240

Your appeal must be in writing and received no later than 30 workdays after the date of this letter or 30 workdays after the records have been made available. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" on both the envelope and the face of the letter.

Should you have any questions, please contact Alice Morgan, Regional FOIA Officer, at 916-978-5561 (TDD 916-978-5608) or amorgan@mp.usbr.gov.

Sincerely,

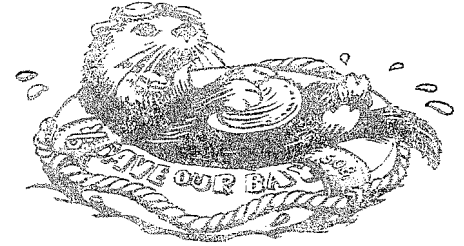


Katherine Thompson
Regional Business Manager

cc: Mr. Michael R. Finnegan
Manager, Central California Area Office
Bureau of Reclamation
7794 Folsom Dam Road
Folsom, CA 95630

Mr. Frank A. Iwama
Save Our Bay
1589 Higgins Canyon Road
Half Moon Bay, CA 94019

"Change is inevitable...
Survival is not."



Via Facsimile (916) 989-7208

June 27, 2005

Bureau of Reclamation
Department of the Interior
Central California Area Office
7794 Folsom Dam Road
Folsom, CA 95630-1799
Attn: Michael R. Finnegan, Area Manager

Re: **Freedom of Information Request (FOIA) Request**
Agency: Department of the Interior, Bureau of Reclamation ("BOR")
Mid-Pacific Region, Central California Area Office
Requestor: Half Moon Bay Coastside Foundation ("Requestor")
Requested Records: Lake Berryessa Recreation Area Concessions

Dear Mr. Finnegan:

This FOIA letter request for records is submitted by the Half Moon Bay Coastside Foundation, a public benefit corporation organized under California law and qualified under Federal law as a non-profit charitable 501(c)(3) entity. Pursuant to the U.S. Department of the Interior's FOIA regulations and guidelines, the following is submitted to substantiate the request for records:

A. Requestor Contact Information

Half Moon Bay Coastside Foundation
1589 Higgins Canyon Road
Half Moon Bay, CA 94019
Attn: Oscar Braun, Executive Director
Tel: (650) 726-3307
Fax: (650) 726-2799
E-mail: oscar@saveourbay.org

B. Records Requested

The records are requested in paper form unless BOR has the records currently available in a digital format commonly used in accepted commercial applications.

1. The following BOR records [Reference: Memorandum, dated April 3, 2000, from Eluid L. Martinez, Commissioner, to Office of Inspector General re Draft Audit Report

on Concessions Managed by the Bureau of Reclamation (Assignment No. W-IN-BOR-003-98-R) (See attachment)]:¹

- a. BOR's oversight and implementation process to ensure that concessionaires comply with existing contract provisions, referenced as Recommendation 1, which was due on October 31, 2001;
 - b. BOR's detailed guidelines and procedures to implement new concessions management policy and directives and standards, referenced as Recommendation 2, which was due on October 31, 2002;
 - c. BOR's formal action plan to assess and correct the health and safety deficiencies and degradation of land and water resources within the concessioner's (sic) area of operations at the Canyon Ferry Reservoir and Lake Berryessa, referenced as Recommendation 3, which was due on November 30, 2000;
 - d. BOR's review process to ensure that all new concessions and newly issued and reissued contracts are in compliance with BOR's policies, directives, and standards, referenced as Recommendation 4, which was due on April 30, 2001;
 - e. BOR's compliance with the directive to 1) obtain a Solicitor opinion on whether the concessioners (sic) at Lake Berryessa have the legal authority to charge entrance fees for entering the concession area and whether the fees collected are due the Government, which was due on May 31, 2000 (copy of Solicitor's opinion requested); and 2) BOR's policy or directive for taking actions based on the Solicitor's opinion, which was due on May 31, 2001, both issues are referenced as Recommendation 6.
2. BOR reports, memoranda and/or documentation reporting compliance with the Recommendations cited above (¶ 1. a through e) referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.²
3. Copies of BOR's annual reports and documentation of concessioner's (sic) operations and performance ratings, including periodic in-depth reviews, for all concessionaires located at Lake Berryessa since calendar year 1998 to the present date.³
4. BOR's copies of financial reviews and/or financial audits prepared by independent certified public accountants and submitted by all concessionaires located at Lake Berryessa since the calendar year 1998 to the present date.⁴

¹ BOR Commissioner Martinez's memorandum (Appendix 4) was in response to the U.S. Department of the Interior, Office of the Inspector General's Audit Report ("Concessions Managed by the Bureau of Reclamation") Report No. 001-I-376, May 2000. (IG Audit Report).

² See IG Audit Report "BOR Response and Office of Inspector General Reply," pg. 17: "Accordingly, the unimplemented recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementations."

³ See IG Audit Report "Operations Review and Evaluation," pg. 16.

⁴ See IG Audit Report, pg. 16.

C. Request for Waiver of FOIA Fees

Pursuant to the Department of the Interior's FOIA regulations [43 C.F.R. 2.21(a)] and guidelines for granting fee waiver requests, Requestor submits its request for a FOIA fee waiver based on the following criteria: Disclosure of the requested records is made 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 requestor." [5 U.S.C. § 552(a)(4)(A)(iii)].⁵

Please contact Oscar Braun at (650) 726-3307 or at the requestor contact information above if there are any questions regarding FOIA fee issues and any compliance with requirements for advance authorization for the production of requested BOR records.

Thank you for your cooperation and assistance. We anticipate your timely response required by the FOIA statute, and Department of the Interior's regulations and guidelines.

Very truly yours,
Half Moon Bay Coastside Foundation

By 
FRANK A. IWAMA

Cc: Oscar Braun
Enclosure

⁵ Under the Department of the Interior's FOIA regulations the following three criteria are pertinent in reviewing a fee waiver request: 1) Does the record concern the operations and activities of the government? (Yes); 2) If the record concerns the operations or activities of the government, is its disclosure likely to contribute to public understanding of these operations and activities? (Yes); and 3) If there is likely to be a contribution to public understanding, will that contribution be significant? (Yes). (See Memorandum, dated May 30, 1997, issued by the Acting Solicitor – Division of General Law (Timothy S. Elliott) re "Freedom of Information Act – Fee Waiver Guidance.")



United States Department of the Interior

BUREAU OF RECLAMATION
Washington, D.C. 20240

APR 3 2001

IN REPLY REFER TO:

D-5010

MEMORANDUM

To: Office of Inspector General
Attention: Assistant Inspector General for Audits

From: Eluid L. Martinez
Commissioner

Subject: Draft Audit Report on Concessions Managed by the Bureau of Reclamation
(Assignment No. W-IN-BOR-003-98-R)

The Bureau of Reclamation offers the following comments in response to the recommendations in the subject report:

Recommendation 1

Establish and implement an oversight process to ensure that concessioners comply with existing contract provisions, especially in the areas of building improvements, annual inspections, and prices charged by the concessioners to the public.

Response

Concur. Reclamation will establish and implement an oversight process to ensure that concessioners comply with existing contract provisions, especially in the areas of building improvements, annual inspections, and prices charged by the concessioners to the public.

The responsible official is the Director, Operations. The target date for establishing and implementing an oversight process is October 31, 2001.

Recommendation 2

Complete and issue detailed guidance and procedures to fully implement the new policies, directives, and standards.

Response

Concur. Reclamation is in the process of preparing detailed guidance and procedures to implement the new concessions management policy and directives and standards. Reclamation will issue guidance and procedures as they are completed. However, it will take at least 18 months to finalize all products, conduct necessary Reclamation-wide reviews, obtain solicitor input when necessary, and obtain required approvals.

The responsible official is the Director, Office of Policy. The target date for completion and issuance of detailed guidance and procedures is October 31, 2001.

Recommendation 3

Develop a formal action plan to assess and correct the health and safety deficiencies and degradation of land and water resources within the concessioner's area of operations at the Canyon Ferry Reservoir and Lake Berryessa.

Response

Concur. Reclamation will develop a formal action plan to assess and correct the health and safety deficiencies and degradation of land and water resources within the concessioner's area of operations at Canyon Ferry Reservoir and Lake Berryessa.

The responsible official for developing an action plan for Canyon Ferry Reservoir is the Regional Director, Great Plains Region. The responsible official for developing an action plan for Lake Berryessa is the Regional Director, Mid-Pacific Region. The target date for completion of the combined action plan is November 30, 2000.

Recommendation 4

Establish a review process to ensure that all new concessions and newly issued and reissued contracts are in compliance with BOR's policies, directives, and standards.

Response

Concur. Reclamation will establish a review process to ensure that all new concessions and newly issued and reissued contracts are in compliance with Reclamation's policy and directives and standards.

The responsible official is the Director, Operations. The target date for establishment of a review process is April 30, 2001.

Recommendation 5

Develop a formal action plan to bring the 21 BOR-managed contracts into compliance with BOR's new policies, directives, and standards.

Response

Concur. Reclamation will have an opportunity to bring the 21 Reclamation-managed contracts into compliance with the new concessions management policy and directives and standards when each contract expires. In some cases, Reclamation may have the opportunity to modify a concession contract and bring it into compliance before the contract expires. However, Reclamation cannot unilaterally open an existing concession contract for modification or renegotiation before the contract expires. Prior to replacing or modifying a concession contract, the appropriate Regional Director will develop an action plan to bring the new or modified contract into compliance with Reclamation's concessions management policy and directives and standards.

The responsible official is the Regional Director responsible for issuing the concession contract.

Recommendation 6

Obtain a Solicitor opinion on whether the concessioners at Lake Berryessa have the legal authority to charge entrance fees for entering the concession area and whether the fees collected are due the Government. Based on the opinion, actions should be taken as appropriate.

Response

Concur. Reclamation will obtain a Solicitor's opinion on whether the concessioners at Lake Berryessa have the legal authority to charge entrance fees for entering the concession area and whether the fees collected are due the Government. Appropriate actions based on the Solicitor's opinion will be taken.

The responsible official is the Director, Mid-Pacific Region. The target date for requesting a Solicitor's opinion is May 31, 2000. The target date for taking actions based on the Solicitor's opinion is May 31, 2001.

cc: Assistant Secretary - Water and Science, Attention: Laura Brown