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VIA EMAIL ONLY

Steve Benham  
Digital Content Producer, KATU  
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Karen Moynahan  
Chief Deputy City Attorney  
Karen.Moynahan@portlandoregon.gov

Re: Petition of Steve Benham, on behalf of KATU, seeking reports on Portland Water Bureau system seismic readiness

Dear Mr. Benham and Ms. Moynahan:

Petitioner, a reporter for KATU, made a public records request to the Portland Water Bureau (PWB) for:

1. The 2017, independently contracted, Dam Safety Inspection Reports for the Bull Run dams,
2. PWB's 2017 Water System Seismic Study,
3. PWB's 2018 Seismic Implementation Plan, and
4. PWB's 2019 Backbone Isolation Plan.

In response, PWB provided petitioner with the executive summary sections of the 2018 Seismic Implementation Plan and the 2017 Water System Seismic Study. The balance of these reports and the other two requested records were withheld. In support of its position, PWB cites ORS 192.355(8), exempting records confidential under federal law; ORS 192.355(33), which exempts information relating to review of water system security; and ORS 192.345(22) and (23), which exempt security measures and information that would reveal operational weaknesses.

PWB has made the reports available to this office and, having reviewed them, we agree that the withheld portions are exempt for the reasons discussed below.

### **DISCUSSION**

A. ORS 192.355(8) – Federal Law

ORS 192.355(8) exempts from disclosure,

Any public records or information the disclosure of which is prohibited by federal law or regulations.

PWB now only asserts the federal law exemption as to the two 2017 Dam Safety Inspection Reports. Specifically, PWB asserts that these safety inspections were prepared for the Federal Energy Regulatory Commission (FERC) and, pursuant to federal regulation, information that is submitted to the FERC and designated as “Confidential Energy Infrastructure

Information” (CEII) is not subject to public release under any otherwise applicable state law. 18 CFR Sec. 388.113(c)(1) (CEII “shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records[.]”)

These two reports are designated as CEII and are unconditionally exempt from disclosure under federal law.

B. ORS 192.355(33) – Infrastructure Security Reviews

ORS 192.355(33) exempts from disclosure,

Information about review or approval of programs relating to the security of generation, storage, or conveyance of [...] water.

The exemption in ORS 192.355(33) is an unconditional exemption, meaning that, if applicable, the public interest may not override it. Further, unlike the similar exemptions in ORS 192.345(22) and (23), release of this information need not actually impair the physical or operational security of the water system. To fall within its scope, information need only be “about” a review of any program relating to security of the water system.

In this case we readily conclude that the Water System Seismic Study, the Seismic Implementation Plan, and the Backbone Isolation Plan survey programs, in varying levels of generality, relate to the seismic security of our local water system. Petitioner is correct in his belief that there is information contained in these reports that speaks to general system risk factors, budgeting, and project management which would not compromise system security if released.

Nonetheless, these reports are information about the review of programs (in this case seismic reinforcement programs) related to the security of the water system. As such, it is unconditionally exempt from disclosure under this section without reference to any deleterious effect on the system or the public’s interest in accessing the information.

Having concluded that all the withheld records are exempt from disclosure either under federal law or ORS 192.355(33), we need not address PWB’s additional assertions of exemption under ORS 192.345(22) and (23).

**ORDER**

Accordingly, the petition is denied.

Very truly yours,



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MIKE SCHMIDT

District Attorney

Multnomah County, Oregon