



SEP 2 1980

August 14, 1980

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International Joint Commission
Canadian Section
100 - Metcalfe Street
Ottawa, Ontario
K1P 5M1

[Handwritten signature]

IJC OTTAWA

SEP 20 1980

Attention: Mr. David Chance, Secretary

Dear Sir:

Re: In the matter of the application of the City of
Seattle for authority to raise the water level of
the Skagit River approximately 130 feet at the
international boundary between the United States
and Canada

Enclosed is a "Request in the Application" in the
above-captioned proceeding, made on behalf of the Government
of the Province of British Columbia requesting the Commission
to exercise its continuing jurisdiction in respect of the
Initial Application. It is self-explanatory.

Would you please take such steps as are necessary
to facilitate consideration of this Request by the Commission?

Should anything further be required in order to
proceed with the Request, please contact the Province's agent
directly:

D.M.M. Goldie, Esq., Q.C.
17th floor, 1075 W. Georgia St.
Vancouver, B.C. V6E 3C2

Yours very truly

[Handwritten signature of Allan Williams]

Allan Williams
Attorney-General

Encl.

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE CITY OF SEATTLE FOR AUTHORITY TO RAISE THE WATER LEVEL OF THE SKAGIT RIVER APPROXIMATELY 130 FEET AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND CANADA.

To: The International Joint Commission

Canadian Section
Ottawa, Canada.

United States Section
Washington, D.C., U.S.A.

REQUEST IN THE APPLICATION

A. PRELIMINARY MATTERS

1. By its Request in the Application dated the 25th day of June, 1974 (the "Initial Request"), the Province of British Columbia (the "Province") invoked the jurisdiction of the Commission under the Treaty relating to Boundary Waters and Questions along the Boundary between Canada and the United States of America signed at Washington, January 11, 1909 (the "Treaty"), in respect of the above Application (the "Application"), particularly in regard to the Commission's Order of Approval dated at the City of Montreal the 27th day of January, 1942 (the "Order").
2. The Commission has not heretofore exercised its continuing jurisdiction in respect of the Initial Application other than as hereinafter set out.

3.(a) By its letter dated 23 December 1974 the Commission informed the Province that in its view direct negotiations regarding a mutually agreeable settlement to the current dispute between the Province and the City of Seattle (the "City") concerning the future use of Skagit River constituted the most appropriate means of resolving the current differences; that these negotiations should continue to a conclusion with all due despatch; and that the results be communicated to the Commission for its comments.

(b) The Province undertook negotiations with the City and to this end meetings between representatives of the Province and the City were held on

June 30, 1975
March 8, 1976
August 18, 1976
October 20, 1976
December 8, 1976
January 26, 1977
March 2, 1977.

A proposal made by the Province in November 1975 was not favourably received by the City. A further proposal made by the Province to the City in August 1976 was referred to a Technical Committee whose meetings were concluded on March 2, 1977.

(c) By letter dated February 3, 1977 the Commission, inter alia,

(i) stated "...apparently little progress has been made by the City and the Province in their discussions." and

(ii) requested the Province to inform it by March 1, 1977 whether the Province wished to proceed with the Initial Request.

(d) The Province, by letter dated February 11, 1977, disputed the statement in (i) above and said it could not comply with the request in (ii) above within the time limited.

(e) By letter dated March 24, 1977 the Commission informed the Province that on March 12, 1977 it had

"decided, in light of the correspondence with the Province of British Columbia and Seattle City Light in which they indicated a desire to continue direct discussions and the Commission indicated that early resolution of the 'Request in the Application' is in the public interest, that the 'Request in the Application' of the Province of British Columbia dated June 25, 1974, be dismissed without prejudice to any future action in this matter by either party or by the Commission; copies of any future agreements entered into by the City of Seattle and the Province of British Columbia relating to the Commission's Order of Approval dated January 25, 1942, to be forwarded to the Commission for comment in light of its responsibilities.

3. Since the above decision meetings between representatives of the Province and the City have been held on

May 23, 1978
April 3, 1979
December 12, 1979

and there has been a frequent and continuous exchange of correspondence.

4. The Province has concluded there is no further prospect of the Province and the City resolving the current dispute concerning the future use of the Skagit River by direct discussions and agrees with the Commission that it is in the public interest to decide upon the merits of the Province's Initial Request. No determination of the Initial Request has been made on the merits: the dismissal of the Initial Request on March 24, 1977 was made without due notice to and opportunity of hearing being afforded to all interested parties in the United States and Canada and was expressly without prejudice to future action in this matter.

B. SUBSTANTIVE MATTERS

1. The Province hereby requests the Commission to receive and act upon the within Request in the Application according to its tenor, pursuant to the Commission's continuing jurisdiction.

2. The Order, dated at the City of Montreal the 27th day of January, 1942, was made following a hearing in the City of Seattle on 12 September, 1941.

3. The Order purports, under paragraph (2) thereof to reserve to the Commission, jurisdiction over effects on the natural water levels at and above the international boundary, and to amend the Order or issue additional orders for the protection and indemnification of the Province of British Columbia, or any affected private interests in Canada, that may be found by the Commission to have sustained damage by reason of any violation of the terms of the Order. The Order further provides that any such further Order shall be issued only after the Commission shall have received and considered a formal Application filed by the aggrieved party in accordance with the Commission's Rules of Procedure, and after due notice has been given an opportunity of hearing afforded to all interested parties in the United States and Canada.

4. The Order recites as a fact that the raising of the natural water level at the international boundary by 130 feet would result in the flooding of approximately 5475 acres of land in the Province of British Columbia, the title to approximately 4835 acres thereof being held by the Province.

5. The Province says it is an aggrieved party and an interested party within the meanings of those terms used in the Order.

C. FACTS RELIED ON AND ALLEGATIONS MADE WITH RESPECT THERETO

1. The hearing of the Application under Article VIII of the Treaty was held at the City of Seattle on September 12, 1941, before Mr. A.O. Stanley, Chairman, United States Section, (Presiding), Mr. Roger B. McWhorter, Member, United States Section and Mr. J.E. Perrault, Member, Canadian Section. The Order was made at the City of Montreal on the 27th day of January, 1942, by Mr. A.O. Stanley, Mr. Charles Stewart, Chairman, Canadian Section, Mr. Roger B. McWhorter and Mr. J.E. Perrault.

The Province will say that the said hearing was conducted by less than a majority of the Commission and that Mr. Charles Stewart, who participated in the deliberations of and who purported to be one of the majority of the Commission making the Order, did not hear the evidence at nor was he present during the hearing, all contrary to the provisions of the Treaty, the then Rules of Procedure of the Commission, the rules of natural justice and without due process of law. Accordingly the Province will say the Order (save in respect of paragraph (2) thereof, which is declaratory of the Commission's jurisdiction under the Treaty) is a nullity and that there has been no adjudication upon the Application.

2. The Province repeats the statements of fact in Paragraph 1 of this Section and says by reason thereof the whole number of the Commission did not proceed to finally consider and

determine the Application, all contrary to the provisions of the Treaty and the then Rules of Procedure of the Commission.

Accordingly the Province will say the Order (save in respect of paragraph 2 thereof) is a nullity and that there has been no adjudication upon the Application.

3. The approval of the Application by the Commission was solicited by the City and acquiesced in by the Province on the ground, inter alia, that a state of national emergency involving the security of the United States then existed and that construction of works which would raise the natural levels of the waters of the Skagit River to the elevation sought would add substantial energy to the supply available in the Northwest United States for the national defence of that country. At all times material to the purported adjudication upon the Application the United States was engaged in the production of munitions in aid of the war effort of Canada and its allies. No such works were constructed during the said period of national emergency in the United States or during the time of production of munitions used in the war effort of Canada and its allies. The Province will say that the raising of the natural level of the Skagit River was not justified on the ground alleged above, and the Order ought to be vacated and set aside.

4. The Province repeats the statements of fact in Paragraph 3 of this Section and says there was a resulting failure to consider other factors bearing on the merits of the Application, including but not limited to, environmental damages and consequences in Canada. The Province will refer at the hearing of this Request to the Commission's report on "Environmental and Ecological Consequences in Canada of Raising Ross Lake in the

- (a) With respect to all these agreements each is a nullity by reason of its dependence upon the validity of the Order. In this respect, the Province repeats what is set out in Paragraphs 1 to 4 inclusive of this Section and in addition will say the Order is in violation of the requirements of Article VIII of the Treaty in that it purports to delegate to the City and the Province matters within the exclusive jurisdiction of the Commission, namely, the determination of the protection and indemnity of all interests in Canada affected by the raising of the natural levels of the waters of the Skagit River at the international boundary.
- (b) The 1967 Agreement is a nullity in that it purports to usurp or, alternatively, to oust, the jurisdiction of the Commission by providing for additional flooding in Canada, a matter within the exclusive jurisdiction of the Commission as being related to "...effects on the natural water level at and above the international boundary,...", and by agreeing to submit differences arising as to any matter or thing connected with the 1967 Agreement to a tribunal having no jurisdiction over such matters, namely, a Board of Arbitration. Alternatively the 1967 Agreement is a nullity in that its provisions have not been adopted or approved by the Commission pursuant to the provisions of Article VIII of the Treaty after due notice and opportunity to be heard was afforded to all interested parties or at all.

7. The Province will adduce evidence and submit argument at hearings upon this Request as required in support of Sections A, B and C hereof and in respect of such additional matters relevant hereto as Counsel may advise.

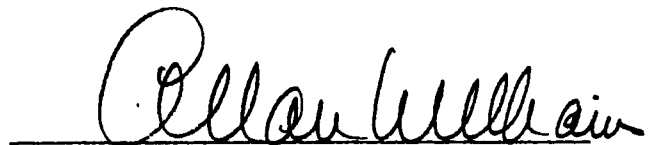
D. NATURE OF THE ORDER SOUGHT

1. After due notice has been given and opportunity of hearing afforded to all interested parties in the United States and Canada, the Province requests the Commission:

- (a) To declare the Order a nullity and to dismiss the Application;
- (b) Alternatively, to rescind the approval contained in the Order and to dismiss the Application;
- (c) Further alternatively, to declare the raising of the natural water level of the Skagit River 130 feet to elevation 1725 feet above mean sea level at the international boundary to be contrary to the public interests of Canada and the United States on the ground that no suitable or adequate provision can be made for the protection and indemnity of interests which may be injured by reason of the proposed raising and to issue a further Order limiting the level of the waters of the Skagit River at the international boundary to the natural level thereof.

- (d) Further alternatively, to declare that no suitable or adequate compensation has been determined in accordance with the principles of the Commission in respect of the raising of the natural water level of the Skagit River to its present level and to determine the same;
- (e) To declare the 1967 Agreement to be invalid in respect of any purported compliance with the directions of the Commission herein;
- (f) To direct the City of Seattle, pending the adjudication of the Commission herein, to take no steps to raise the natural levels of the Skagit River at the international boundary.

DATED at the City of Victoria, in the Province of British Columbia, this 14th day of August, 1980.

A handwritten signature in dark ink, appearing to read "Allan Williams", is written over a horizontal line.

Attorney-General

THIS REQUEST is filed on behalf of the Province of British Columbia by the Honourable Allan Williams, Q.C., Attorney-General, Legislative Buildings, Victoria, B.C.

Communications to the Province with respect to this Request may be addressed to its agent

D.M.M. Goldie, Esq., Q.C.
17th Floor
1075 West Georgia Street
Vancouver, B.C. V6E 3G2