



MINISTER OF LANDS, FORESTS AND WATER RESOURCES

VICTORIA
BRITISH COLUMBIA
CANADA.

3-1-5-4
1-2-2-4 (46)

June 25, 1974

Mr. D. G. Chance, Secretary,
Canadian Section,
International Joint Commission,
151 Slater Street,
OTTAWA, Ontario K1P 5H3.

Dear Sir:

Re: Skagit Valley

I refer to my letter to the Chairman of the Canadian
Section of the Commission dated April 3rd, 1974, and his reply of
April 11th.

Pursuant to Rule 12(3) of the Commission's Rules of Pro-
cedure I now hand you two original copies and fifty photocopies of
a Request on the part of the Province of British Columbia in the
above matter.

Please acknowledge receipt of this Request.

I assume in due course you will inform the Province's agent
of the steps the Commission proposes.

Yours truly,

Robert Williams per NP.
Robert Williams,
Minister.

IJC - OTTAWA			
JUN 27 1974			
FILE No. 46-1-53			
	ACT	INFO	INIT
CHAIRMAN			
COMMISS.			
SECT'Y			
LEGAL AD.			
CHIEF ENG.			
A. ENG.			
A. SECT'Y			
STAFF			

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.

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REQUEST IN THE APPLICATION

1. The Government of the Province of British Columbia (the "Province") hereby requests the within application to the International Joint Commission (the "Commission") be received and acted upon according to the tenor of the matters hereinafter set out.
2. An Order of Approval herein dated at the City of Montreal the 27th day of January, 1942 (the "Order") was purportedly made by the Commission upon an application of the City of Seattle bearing the date of May 26, 1941 (the "Application") and which came on for hearing in the City of Seattle on September 12, 1941.
3. The Order purports to reserve to the Commission, under paragraph (2) thereof, jurisdiction under the Treaty relating to Boundary Waters and Questions along the Boundary between Canada and the United States signed at Washington, January 11, 1909, (the "Treaty") 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.

4. The Order further purports to provide 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 and opportunity of hearing afforded to all interested parties in the United States and Canada.

5. 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.

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

FACTS RELIED ON

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 and the rules of natural justice and so, 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 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 of Seattle and acquiesced in by the Province on the ground, inter alia, of a national emergency involving the security of the United States 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 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 and the Province will say that the raising of the natural level of the Skagit River is not presently justified on any such ground or at all.

4. The Province repeats the statements of fact in Paragraph 3 and says by reason thereof there was a 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 Skagit Valley to Elevation 1725" dated November 15, 1971. By reason of such failure the Province will say that the Commission, even if properly constituted, then failed to exercise the jurisdiction conferred on it and the Order (save in respect of paragraph (2) thereof) is a nullity.

5. The City of Seattle in violation of the Treaty raised the natural level of the Skagit River in 1953 before it had purported to comply with the provisions of paragraph (1) of the Order or, alternatively, without the approval of the Commission and has provided no adequate or any protection or indemnification therefor. The Province will say that no adequate protection can be afforded the interests of the Province in respect of any flooding in Canada by reason of such violation and the consequences thereof and the level of the waters of the Skagit River at the boundary should be restricted to the natural level thereat.

6. The approval contained in the Order purports to be conditional upon the City of Seattle adequately compensating

the Province, and any Canadian private interests that may be affected, for any damage caused in British Columbia and entering into a binding agreement with the Province providing for indemnifying the Province and private interests in British Columbia for any injury that may be sustained by reason of the City's operations on the Skagit River. The City of Seattle and the Province entered into interim agreements in the years 1954 to 1966 inclusive and a final agreement on the 10th day of January, 1967, (the "1967 Agreement"). The Province will say with respect to all these agreements:

- (a) 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 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 of Seattle 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 level 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 at hearings upon this Request in support of the foregoing and in respect of such additional matters relevant hereto as Counsel may advise.

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 levels thereof.

- (d) To declare the 1967 Agreement to be invalid in respect of any purported compliance with the directions of the Commission herein;
- (e) 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 25th day of June, 1974.



Attorney-General

THIS REQUEST is filed on behalf of the Province of British Columbia by the Honourable A.B. Macdonald, 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.

TO: The Secretary of State for External Affairs,
Ottawa, Canada.

AND TO: The City of Seattle,
Seattle, Washington, U.S.A.