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To <u>Max</u>	From <u>V.A.</u>
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Fax # <u>see my e-mail</u>	Fax # <u>thank's</u>

From: Liz Fortunato

Pages: 2

NSN 7540-01-317-7368 5098-101 GENERAL SERVICES ADMINISTRATION

Phone:

Date: 4-16-02

Re: meeting request

Cc:

For Review

Please Comment

Please Reply

● **Comments:**

Per my voicemail, following is a memo regarding the meeting we'd like to schedule with you for next week. I will be the point-of-contact for scheduling purposes, but Tony Williams will actually be attending the meeting.

(202/224-0950)
Thank you in advance for your assistance.

Liz

The information contained in this facsimile communication is privileged and/or confidential information intended only for the use of the individual or entity named above. If you have received this communication in error, please immediately notify us by telephone at (425) 467-6900.

MEMORANDUM

Date: April 16, 2002
To: Ms. VA Stephens
Associate Director for Transportation, Energy and Land Management
From: Tony Williams, Washington² Advocates
Re: Meeting Request

Meeting Request Regarding the Box Canyon Hydroelectric Project Relicensing

I would like to request a meeting with you to discuss the Box Canyon Hydroelectric Project Relicensing in Washington state. Members of the Pend Oreille Public Utility District (PUD) will be in Washington, DC April 22nd and 23rd, 2002 to discuss the project and the issues surrounding relicensing. In addition to me, the following representatives of the PUD will be attending the meeting: Commissioner Dan Peterson, General Manager Bob Geddes, Director of Regulatory and Environmental Affairs Mark Cauchy, and Jack Snyder, the environmental consultant on the project.

Background

The Box Canyon Project is located on the Pend Oreille River in Northeastern Washington and is owned and operated by Public Utility District No. 1 of Pend Oreille County, Washington. The Project generates up to 60 megawatts (MW) of power and is on the Pend Oreille River, which flows north from Lake Pend Oreille into Canada. Box Canyon was first licensed in 1952 for a 50-year period that expired on January 31, 2002. The PUD applied to relicense the project in 2000 after 6 years of studies, and has spent more than \$7 million on relicensing. More recently, however, state and federal agencies have recommended 59 additional license conditions that could cost in excess of \$500 million to implement.

The Problem

The authority for relicensing the Box Canyon Project is divided among a number of different federal and state agencies. Although the Federal Energy Regulatory Commission (FERC) oversees the relicensing process, other federal and State agencies have authority to impose "mandatory" license conditions that FERC must accept. Federal agencies with mandatory conditioning authority over Box Canyon include the Department of Agriculture, through the U.S. Forest Service (USFS) and the Department of the Interior, through the Fish and Wildlife Service (FWS) and Bureau of Indian Affairs (BIA).

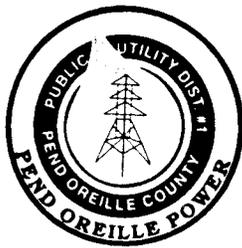
As mentioned, the 59 new license proposals set forth by these agencies have an estimated cost of approximately \$500 million, and moreover, produce questionable benefits. Many of the proposed conditions are unrelated to the Project, not scientifically justified, or are mutually exclusive. Taken together these conditions would increase the cost of Box Canyon power by as much as 400%, making the project uneconomic and likely leading to the shutdown of Ponderay Newsprint, the largest employer in the county.

Most Recent Developments

During the second week in April, several of the aforementioned PUD representatives traveled to Washington, DC to discuss this matter with agency officials. We had very constructive meetings with Undersecretary Mark Rey and Fish and Wildlife Deputy Director Marshall Jones, and will provide you with an update on their recommendations. Bob McNally recommended that we meet with you about this subject.

We would like to schedule some time with you on April 22nd or 23rd in order to discuss the Box Canyon relicensing process. In addition to a brief discussion of our most recent agency meetings, we will also provide you an update on the project in general and the efforts undertaken by the PUD to meet all necessary environmental standards.

Please contact Liz Fortunato in Washington² Advocates' Bellevue office should you have any questions or require any additional information. Thank you in advance for scheduling some time with us.



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BOX CANYON HYDROELECTRIC PROJECT RELICENSING

The relicensing of the Box Canyon Project in Pend Oreille County, Washington, is a worst-case example of the hydroelectric relicensing process. Federal and State agencies have proposed 59 new license conditions that, if imposed, will have an estimated cost of approximately \$500 million and produce questionable benefits. Many of the proposed conditions are unrelated to the Project, not scientifically justified, or are mutually exclusive. Taken together these conditions would increase the cost of Box Canyon power by as much as 400%, making the project uneconomic and likely leading to the shutdown of the largest employer in Pend Oreille County, Ponderay Newsprint. A description of the proposed conditions is attached.

Background

The Box Canyon Project is located on the Pend Oreille River in Northeastern Washington and is owned and operated by Public Utility District No. 1 of Pend Oreille County, Washington (the PUD). The Project generates up to 60 megawatts (MW) of power and is on the Pend Oreille River, which flows north from Lake Pend Oreille into Canada. Box Canyon was first licensed in 1952 for a 50-year period that expired on January 31, 2002. The PUD applied to relicense the project in 2000 after 6 years of studies, and has spent more than \$7 million on relicensing.

Box Canyon is a key source of power for the PUD. Most of the electricity from Box Canyon is provided to Ponderay Newsprint, which is located in Pend Oreille County in part due to the availability of economical power from Box Canyon. Ponderay Newsprint is the largest employer in the county, with 200 employees, a \$16 million annual payroll, and pays State and local taxes of over \$2.5 million a year.

The environmental impacts associated with Box Canyon are modest. Salmon are not affected by the project and there is no evidence that there have ever been any salmon runs on the Pend Oreille River near the Project. Box Canyon is a small "run of river" project with no usable reservoir storage so its effects on river flows are far less than those from "high dams" with large reservoirs. During annual spring flood flows, the Project spillway is opened and the river flows freely just as it did before the Project was constructed.

Box Canyon also has a modest impact on the Kalispel Indian Reservation 35 miles upstream of the dam. Originally, the PUD believed that the Project reservoir in the vicinity of the reservation was confined to the bed of the river, which is owned by the State, and therefore did not affect reservation lands. A court later determined that the boundary between the reservation and the State-owned streambed was at a lower elevation than the PUD thought, and thus the project had an impact on reservation lands. As a result, approximately 500 acres of reservation lands, which are inundated in the spring due to natural high water, are also inundated during other periods of the year due to the operations of Box Canyon. In 1998 the PUD paid the Kalispel Tribe \$3 million in damages to compensate for past occupancy of Tribal lands. In addition, in 1999 the

PUD arrived at a settlement with the Kalispel that authorized the inundation of their lands for the remaining term of the Box Canyon license for an annual payment of \$125,000 and provided for up to \$6 million in mitigation measures.

The Problem-Unreasonable Conditions Proposed by the Departments of Interior and Agriculture

The authority for relicensing the Box Canyon Project is divided among a number of different federal and state agencies. Although the Federal Energy Regulatory Commission (FERC) oversees the relicensing process, other federal and State agencies have authority to impose "mandatory" license conditions that FERC must accept. Federal agencies with mandatory conditioning authority over Box Canyon include the Department of Agriculture, through the U.S. Forest Service (USFS) and the Department of the Interior, through the Fish and Wildlife Service (FWS) and Bureau of Indian Affairs (BIA). Other federal and state agencies may also recommend license conditions to FERC.

Over the past 5 years, the PUD has spent over \$5 million on measures to enhance the natural resources affected by the Project. Furthermore, the PUD is proposing about \$40 million of enhancement/mitigation measures in the new license. However, the PUD strongly opposes unreasonable conditions proposed by federal and state agencies.

Thus far, the most troubling licensing conditions have been proposed by USFS, FWS and BIA field staff. Underlying these conditions is an apparent philosophy that it would be preferable if the Box Canyon project had never been built and therefore license conditions should be imposed that attempt to replicate natural conditions that existed "pre-project." This perspective ignores the economic benefits of Box Canyon along with the impossibility of even knowing what conditions were before the project was built 50 years ago, let alone recreating the environment that existed prior to the project. It also ignores the fact that Box Canyon by itself cannot be the remedy for all man-made environmental impacts to the Pend Oreille River over the past century.

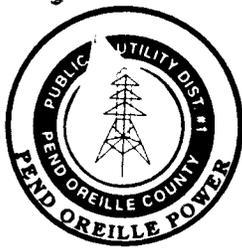
Another core problem underlying proposed USFS, FWS, and BIA conditions is that many of them are completely unrelated to the impacts of the Project, and are simply efforts to force PUD ratepayers to pay for facilities that these agencies find desirable. For example, the USFS has proposed that the PUD build a 50-mile paved trail along the river which would have a cost of about \$10 million.

Finally, the Colville National Forest recently placed a 6-page full sized color insert on Box Canyon relicensing in the local newspaper that is replete with inaccurate statements about the impacts of the Project. USFS staff appears to be more concerned with public relations than assuring that their proposed conditions are reasonable and based upon sound science.

Conclusion

The relicensing of the Box Canyon Project has reached a crisis point, with Department of Agriculture and Interior field staff poised to impose draconian license conditions that would render the project uneconomic and have devastating impacts on the people of Pend Oreille

County. However, it is not too late for the federal agencies to take a more sensible approach to Box Canyon relicensing by modifying their conditions. The PUD will make recommendations in the near future for a new path forward for the Box Canyon relicensing process that, if implemented, will protect and enhance the natural resources affected by the Project while preserving the economic benefits for the communities served by the Project.



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FOREST SERVICE ROLE IN BOX CANYON PROJECT RELICENSING

A very small portion of the Box Canyon Project reservoir (190.25 acres) occupies 0.017 percent of the 1.1 million acre Colville National Forest in Eastern Washington State. Consequently, the United States Forest Service (USFS) has authority to unilaterally impose certain “mandatory conditions” on the Box Canyon project at relicensing under Section 4(e) of the Federal Power Act (FPA). Section 4(e) provides that hydroelectric licenses shall be subject to conditions “necessary for the adequate protection and utilization” of certain federal lands.

Although the Project has a minor impact on USFS lands, the Colville National Forest has submitted 30 preliminary conditions to be included in the Box Canyon license that will have a total cost to the Project owner, Public Utility District No. 1 of Pend Oreille County, Washington (the PUD) of approximately \$55 million. To put these costs into perspective, the value of the USFS Forest Service lands within the Project boundary is less than \$500,000.

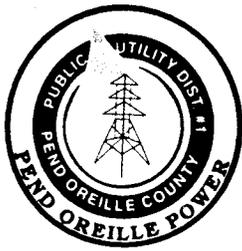
USFS field staff have been the lead proponent of the view that the baseline for the environmental analysis of Box Canyon should be “pre-project conditions” notwithstanding the recent Ninth Circuit ruling that, “it defies common sense” to require such analysis. They have also proposed numerous conditions that are beyond their authority to require because they are unrelated to the impacts of the Project on USFS lands.

USFS staff recently placed a 6-page full-sized color insert on Box Canyon relicensing in the Newport, Washington newspaper that attempts to justify their proposed conditions with a series of inaccurate and misleading statements. This public relations campaign is highly inappropriate for a federal agency responsible for making unbiased decisions regarding Box Canyon based on the facts before it. It is also a questionable use of federal funds

What follows is a brief description of just a few of the unreasonable mandatory conditions proposed by USFS staff for Box Canyon:

1. 50-Mile Paved Bike Trail: USFS rationale is that the trail is needed to mitigate for recreational opportunities “lost” when sand and gravel bars were inundated 45-years ago by the Project reservoir (Cost: Approximately \$10 million)
2. Eurasian Watermilfoil Drawdown: The purpose of drawdown would be to eradicate non-native milfoil. PUD field test has shown drawdown does not control milfoil (Cost: Approximately \$4.35 million in foregone power revenue)
3. Bald Eagle/Osprey/Cormorant/Heron Monitoring: Would include capturing five species, tagging, nest inspections, documentation of competition between species etc. USFS has no data to show any adverse Project effect on these species (Cost: Over \$1.5 million).

4. Build New Campgrounds and Operate and Maintain Existing USFS Campgrounds in Area: Existing facilities are underutilized, including three USFS campgrounds that the PUD paid \$1 million to upgrade in 1999 (Cost: More than \$1 million).
5. Riparian and Upland Habitats: Requires purchase of 156 acres of land. USFS rationale is this is needed to compensate for lands inundated 45-years ago. Ignores recent purchase by PUD of 739 acres at a cost of \$1 million as part of 1999 Settlement Agreement and annual charges paid to USFS for use of its lands. (Cost: Approximately \$400,000).



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INTERIOR DEPARTMENT ROLE IN BOX CANYON PROJECT RELICENSING

The Interior Department plays a significant role in the relicensing of Box Canyon Project through the Fish and Wildlife Service (FWS) and the Bureau of Indian Affairs (BIA). FWS has authority under Section 18 of the Federal Power Act (FPA) to unilaterally impose fishway conditions. In addition, because the Box Canyon reservoir occupies a small portion of the Kalispel Indian Reservation (493 acres), BIA has authority under Section 4(e) of the FPA to impose certain conditions "necessary for the adequate protection and utilization" of these lands.

Although the Project has a modest impact on fishery resources and Kalispel lands, the Interior Department has submitted 55 preliminary conditions to be included in the Box Canyon license that will have a total cost to the Project owner, Public Utility District No. 1 of Pend Oreille County, Washington, (the PUD) of approximately \$133 million. Many of the conditions proposed by Interior are beyond their authority because they do not relate to either fishways or Kalispel lands.

Underlying the conditions proposed by Interior is an apparent field staff philosophy that the goal of Box Canyon relicensing should be to reverse the impacts of "human use and development" on the Pend Oreille River and that the PUD and its ratepayers should bear the costs of achieving this unattainable goal. Interior staff overlook the fact that the Box Canyon Project is not the cause of "human use and development" in the Pend Oreille River area and that the PUD has no authority to regulate development outside the Project boundary. They also fail to acknowledge that Box Canyon cannot be the remedy for all "human" impacts on the river over the past century.

In support of this approach, Interior staff have argued that the baseline for environmental analysis of Box Canyon should be "pre-project conditions" notwithstanding the recent ruling by the Ninth Circuit that "it defies common sense" to require such analysis.

What follows is a brief description of just a few of the unreasonable mandatory conditions proposed by Interior staff for Box Canyon:

1. Total Dissolved Gas (TDG) Abatement: Interior seeks to impose a series of TDG requirements on Box Canyon even though it has no authority over this issue, which is the responsibility of the State of Washington under the Clean Water Act. The PUD will work to resolve this issue with the State of Washington (Total Cost: Approximately \$57 million).
2. Fishways at Box Canyon and Calispell Creek: Fishways are proposed for bull trout although there are few bull trout in the vicinity of the project. The proposed Calispell Creek fishway 38-miles upstream of Box Canyon Dam is unlikely to work because the Creek habitat is inhospitable to bull trout (Total Cost: Approximately \$39 million).

3. Trout Recovery: Program to restore trout to estimated levels of 50 years ago while other condition requires increased bass populations, ignoring that bass eat trout (Total Cost: Approximately \$5.2 million).

4. Manresa Grotto Beach, Kalispel Boat Launch and Pow Wow Grounds: Requires construction and operation/ maintenance of campgrounds, boat launch, parking, roads and toilets on Kalispel lands. Recreation surveys indicate no demand for these facilities. (Total Cost: Approximately \$4 million.)