

A HELLS CANYON STORY **An Historic Perspective**

By Brock Evans

Such a strange-sounding, mysterious place: a whisper of an echo of something ancient and far-off, forbidding even in its very name.

Springtime 1967. I had just left my law practice in Seattle take on a new position as Northwest Representative of the Sierra Club--the only paid, full-time conservationist position (we weren't called environmentalists until after Earth Day, 1970) north of San Francisco. My "territory," as it turned out (my boss, David Brower, had a rather loose management style!) was everything on the Pacific Coast from the North Pole to California, plus Wyoming, Montana, Idaho, Alberta, and the Yukon Territory--Northwest North America.

I had actually heard of Hells Canyon for the first time the year before. By a strange turn of fate, the law firm I worked for had as its major client, the Washington Public Power Supply System--one of two premier dambuilding entities in the Northwest--and mortal rivals of the other dambuilders: the private power companies, equal in numbers and political power. The struggles between these two over who got to plug up the great northwest rivers seem grotesque to us today, but those were the realities of that not-so distant past-- when the words "wild river" were subjects of scorn and derision from all the Northwest powers-that-be. It was in the struggle between these two dam-building titans that I was first introduced to Hells Canyon as a place.

"Brock, we just got our appeal to the Supreme Court approved [challenging a license recently granted by the Federal Power Commission (precursor to the the present FERC) to PNPC, a combine of private power companies, to build a big dam in Hells Canyon, flooding out the last 120 miles of its inner gorge]. We'd like you to work on the brief for us," said one of the firm's senior partners.

A brief before the Supreme Court--every young lawyer's dream! But I hated dams--the whole idea of dams--even then, and I knew I just could not do it. I begged off, wanting no part of what I considered a dirty business.

The wheel of fate turned again. A year later in my new position, I attended my first meeting of the Executive Committee of the Pacific Northwest Chapter of the Sierra Club, at a member's home on Puget Sound. Not only was the Club much smaller in those days--about 40,000 members nationwide--but its tiny membership in the Northwest was almost exclusively located in the "westside" Seattle-Portland-Eugene axis. Although knowledgeable and determined on issues there--wilderness, parks, and forests--few knew much about the vast deserts, rivers, wild mountains and forests of the Northwest interior, much less had ever visited there.

On that bright spring morning, from "Darkest Idaho," across the rivers and the deserts and the mountains, came a visitor--one Floyd Harvey, of Lewiston. Floyd, longtime boatman and guide in the Canyon, loved the great river, knew every bend and cove and cliff. His quiet earnestness,

eloquence, and passion moved us all as he told us of the loss of a great living river if the dam was built, and pleaded with us to try to save it.

“OK Brock--take a look and see what we can do,” said my ExCom. Yeah, sure, I thought. I hate this river-killing dam, the whole idea of it-- but what could be done at this late date? The license had been already granted, and the only issue before the Supreme Court was now only about who got to do the terrible deed-- not whether. I was morose and unhappy about it for weeks, and could come up with no solution to the problem, given our very few resources in those distant times.

But hope came--and from a totally-unexpected place: the Supreme Court itself (this was long before there was any such thing as “environmental law”). That June a small headline in the Lewiston Morning Tribune screamed out at me: “Hells Canyon Case Sent Back by Court for More Hearings.”

What’s this?

What happened, it turned out was a now-famous opinion of the great Justice, William O. Douglas--one which had nothing to do with any of the legal arguments presented by those who argued the case. But Supreme Court Justices don’t have to worry about such niceties; it is they who decide what the law is. Justice Douglas’ opinion (known in Latin legalese as an opinion obiter dictum-- meaning outside the parameters of the case itself) was a landmark in American environmental history. And for me and our tiny band who wanted to save the Canyon--it represented Hope, a fighting chance--if we could seize it.

Douglas said that “the Court will not now make a decision on who gets to build this dam. The first question that must be answered is whether there should be any dam at all. Therefore, we remand this case back to the FPC for a determination on this one point: should there be a dam or not.” The very words themselves amounted to a stunning legal precedent; never before had the Court--any court--ever even questioned the ‘common wisdom’ of dambuilding.

Aha, I thought: “I’m a lawyer. I know what remand means! It means a whole new hearing, new witnesses--a new trial. Yes!” At least that’s what it ought to be. (I did not know then that the FPC “Trial Judge” was not only furious about this decision, but that he was irrevocably pro-dam, determined to issue a new license no matter what. But that’s a story for later.)

So now, what to do? We weren’t parties to the previous proceeding; would there be any chance that they would let the upstart Sierra Club into it now?

Remember, no such thing then as “environmental law.” NEPA and the Clean Air Act were a full three years away; the Clean Water Act, five, the Endangered Species Act not even a gleam. There was nothing out there--no guidance, no precedents, no law review articles--nothing. Not even the word ‘environment.’

I wrote a letter to the Supreme Court. It read something like, “hey, you never heard of me before, but I just read this opinion, see, and I have a question: if the case has been remanded for a new

trial, does that mean that any new parties can intervene [get involved]?” I can only imagine the bemused contempt at such temerity from the provinces on the part of the Court official who saw the letter!

But I did get a brief response, about a month later: “well yeah sonny, I guess you can [intervene] if you want to...”

OK, here we go, I thought to myself-- “I’m a lawyer, I know how to do these things...” I did what I had always done in my (few) years of law practice-- marched right down to the King County (Seattle) Courthouse, went up to the Clerk’s desk and said: “get me the Form Book for Petitions for Intervention before the Federal Power Commission, please...”

Eyebrows raised. “Sonny, what on earth are you talking about?” It was about then that I began to realize: whatever was to be done would have to be created, in its entirety--by me. There was no body of environmental law, no cases, no procedures--no nuthin’. This was to be, in lawyerspeak, a case entirely de novo (brand new).

OK. I went back to my office, read all the materials I could find about the Canyon and its values, read some of the literature about rivers, and dictated out a Petition of my own, with a whole lot of whereases and a lot of reasons why the Sierra Club--which to my knowledge had ever been involved in any sort of legal proceeding before--was qualified to present the evidence about why the Canyon was more valuable to the public as a free-flowing river.

Then another consideration started to dawn: this is going to be more than just a legal proceeding. Given the overwhelming pro-dam climate of the times, we are certain to be fiercely attacked by politicians and media. We must demonstrate that we have local support, too. Which means I’ve got to “find” more plaintiffs. (I also had to explain--in those innocent days--just exactly what a “plaintiff” was!)

That took some doing. It was early August, and the deadline for filing the Petition was the 31st. Hurry, hurry, much to do. I tracked down the President of the Sierra Club, and the President of the Federation of Western Outdoor Clubs--which represented many local northwest groups. After obtaining their permission (how much easier then than the cumbersome processes of today), I searched Idaho for a likely “true local” candidate.

I found it in the Idaho Alpine Club--a FWOC member group, based in Idaho Falls. It turned out that I had, inadvertently, also stumbled onto some of the finest ecowarriors in the whole state: Jerry Jayne, Russ Brown, Boyd Norton, Pete Henault, and Jim Campbell.

They agreed to sign on IAC as a party---and then went on, a few months later, to form the organization that became the passionate heart and soul of our whole campaign thenceforth: the Hells Canyon Preservation Council itself.

Now time was very short. The deadline pressed in, and many other issues were simultaneously overwhelming my one-person operation. No such thing as desktop publishing in 1967! This was the age of typewriters and rotary phones, mimeograph machines and carbon paper. Everything

was cumbersome, all logistics painfully slow. The Petition somehow did get finished, the required thirty duplicate copies painfully put together. At 11:40PM on the evening of August 31, 1967, I deposited them all, duly stamped and dated, at the Post Office desk at Sea Tac Airport, for the next flight to Washington, FPC headquarters.

It was done. Now, at least we had a chance to fight for the Canyon we loved.

PS: Of course this was only the beginning of a new chapter in the story-- also a beautiful and terrible one, as they all are: a tale of joys and despairs, violent twists and turns of fortune, as the case then made its way through a three year new trial, and then five more years in the halls of Congress. The "other side," enraged at our intervention, did its best to get us and our evidence out of the case, touting the Snake as "The River that Wants to Work." We successfully escalated the whole cause into a major national issue. But all that is a story for another time, perhaps.

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