

## **A HELLS CANYON STORY, PART II** **A Historic Perspective of HCPC**

**By Brock Evans**

*The following is part two of Brock's series on the history of HCPC and the dams. Part I appeared in the June 1999 Falcon. It told of the small group of people, including Brock who at the time was the new regional director of the Sierra Club, who decided to take on the lost cause of challenging an approved dam permit application in Hells Canyon.*

Way back in 1967, Justice William O. Douglas said that “the [Supreme] Court will not now make a decision on who gets to build this dam [in Hells Canyon]. 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 Federal Power Commission (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, there was no such thing then as “environmental law.” The National Environmental Policy Act and the Clean Air Act were a full three years away; the Clean Water Act was five years in the future and 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?” 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...”

Okay, 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 that 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).

(Deep breath) I went back to my office, read all the materials I could find about Hells Canyon and its values, read some of the literature about rivers and dictated 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 never been involved in any sort of legal proceeding before-- was qualified to present the evidence about why the Snake River in Hells Canyon was more valuable to the public as a free-flowing river than as a plugged reservoir.

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 to the locals-- 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 August 31st. I tracked down the President of the Sierra Club and the President of the Federation of Western Outdoor Clubs (FWOC), which represented many local northwest environmental groups. After obtaining their permission (how much easier then than the cumbersome processes of today), I searched Idaho for a likely “true local” plaintiff 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 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.

Now time was very short. The deadline pressed in, and many other issues were simultaneously overwhelming my one-person operation. There was 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 11:40 PM 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, D.C., 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 new three year 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....

***Brock Evans is the Director of the Endangered Species Coalition and former Vice President for National Issues for the National Audubon Society***