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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

PORTLAND GENERAL ELECTRIC
COMPANY, an Oregon corporation,

Plaintiff,

v.

STATE OF OREGON, by and through
THE OREGON DEPARTMENT OF STATE
LANDS, and +/- FIVE ACRES OF
UNIMPROVED LAND ALONG THE
WILLAMETTE RIVER NEAR WEST
LINN, OREGON,

Defendants.

Case No.: 3:22-cv-00533

COMPLAINT
(Eminent Domain 16 U.S.C. § 814)
Jury Trial Not Requested

COMPLAINT FOR A CIVIL CASE
(Eminent Domain)

I. The Parties to this Complaint

A. The Plaintiff is:

Portland General Electric Company
(also referred to herein as “PGE”), an Oregon corporation.

Street Address: 121 SW Salmon Street, 1 WTC 1302
City and County: Portland, Multnomah
State and Zip Code: Oregon 97204-9951
Telephone Number: (503) 464-8102
Email Address: www.PortlandGeneral.com c/o mark.lindley@pgn.com

B. The Defendants are:

State of Oregon by and through its Oregon Department of
State Lands, Vicki Walker, Director and +/- Five Acres of Unimproved
Land Along the Willamette River Near West Linn, Oregon

Street Address: 775 Summer St., N.E. #100
City and County: Salem, Marion
State and Zip Code: Oregon 97301
Telephone Number: (503) 986-5200
Email Address: vicki.walker@dsl.oregon.gov

II. Basis for Jurisdiction

Federal Question

This action is authorized by and arises under the Federal Power Act, 16 U.S.C § 814.

Jurisdiction and venue are proper in this Court pursuant to 28 U.S.C. § 1331 and 28 U.S.C.

§ 1391(b)(2).

III. Statement of Claim

1. Plaintiff (“PGE”) owns real property and improvements along the Willamette River at Willamette Falls between the cities of West Linn and Oregon City, Clackamas County, depicted on attached Exhibit A. The property and facilities constitute a hydroelectric generation facility which has been operated by PGE for over a century (the “Hydroelectric Project”). The Hydroelectric Project has been and is licensed and regulated by the Federal Energy Regulatory Commission (“FERC”) pursuant to the Federal Power Act, 16 U.S.C. § 791a *et seq.* PGE is required under such regulatory authority to continuously own, control and operate the

Hydroelectric Project in order to generate electric power in the public's interest and for the benefit of the public, all as required by the FERC. *See, e.g.*, 16 U.S.C. §§ 796(11), 797(e), 803(a)(1). PGE holds FERC License No. 2233 under the most recently issued license dated December 8, 2005. *Portland Gen. Elec. Co.*, 113 FERC ¶ 62,186 (2005).

2. Section 21 of the Federal Power Act, 16 U.S.C. § 814, authorizes PGE to condemn property necessary for the Project in meeting the public interest purposes of the Federal Power Act.

3. Attached Exhibit A identifies the approximate area of the lands identified by the Project's FERC license as areas necessary to meet the public interest purposes of the Federal Power Act. Within that area is a parcel of land legally described on the attached Exhibit B (the "Property"). The Property is named as a Defendant to this Action.

4. PGE is required by FERC, pursuant to Standard Article 5 of the Project's license, to own all lands as required by its FERC license, which includes the Property. *Portland Gen. Elec. Co.*, 113 FERC ¶ 62,186 (2005) (Ordering Paragraph (G)); Form L-3, 54 F.P.C. 1817, 1818-19 (1975).

5. Defendant State of Oregon, acting through its Department of State Lands ("DSL"), has asserted a right in, or to, or ownership of the Property of indeterminate nature.

6. Ownership and control of the Property, including the inherent right through ownership to control persons seeking to access the Property, are required for PGE to meet its obligations of the FERC license. The Property is necessary and appropriate in PGE's maintenance and operation of the Hydroelectric Project, including hydroelectric power generation, public and Project safety, management of environmental resources, protection of

historic properties, and other beneficial public uses required by the Project license and the Federal Power Act.

7. In order to acquire all rights asserted by Defendant DSL and to comply with PGE's FERC license obligations, PGE has elected to exercise its rights of eminent domain so as to obtain fee title to the Property.

8. On July 28, 2021, PGE's Board of Directors adopted a resolution declaring a necessity to acquire all of Defendant DSL's right, title and interest in, and to, the Property. Such resolution was adopted pursuant to the authority granted PGE under section 21 of the Federal Power Act, 16 U.S.C. § 814.

9. Following the adoption of the Board of Directors' resolution, PGE offered to acquire all of Defendant DSL's claimed right, title and interest in, and to the Property.

10. On or about January 13, 2022, more than forty (40) days prior to the commencement of this action, PGE delivered to Defendant DSL a formal offer, accompanied by an appraisal, to acquire all of Defendant DSL's claimed right, title and interest in, and to, the Property. The amount of the offer was \$150,000.00, which is full and adequate compensation to Defendant for PGE's acquisition.

11. Defendant DSL has not accepted PGE's offer described in paragraph 10 above and, upon information and belief, Defendant DSL has no intention of accepting PGE's offer to acquire the Property. To date, PGE has been unable to contract with Defendant DSL for the acquisition of title to the Property.

12. PGE, under the condemnation authority of section 21 of the Federal Power Act, elects by this Complaint to acquire all of Defendant DSL's claimed right, title and interest in, and to, the Property, including and up to fee title.

13. The full and adequate compensation to Defendant DSL for acquisition of all of Defendant DSL's claimed right, title and interest in, and to the Property, is \$150,000.00.

14. Pursuant to Federal Rule of Civil Procedure 71.1(d), the requisite notices to Defendants are attached hereto and submitted to the Clerk of Court.

IV. Relief

1. Pursuant to Rule 71.1 of the Federal Rules of Civil Procedure, grant a Judgment of this Court awarding and requiring the conveyance to PGE of all of Defendant DSL's claimed title and interest in, including any fee interest, and to the real property described in Exhibit B, attached hereto, and determining just compensation pursuant to Rule 71.1 (h)(1).

2. Such conveyance shall be effective upon PGE's delivery to the Clerk of the Court, the sum of \$150,000.00 in collected funds, designated for payment to Defendant.

3. For an award of PGE's costs and disbursements incurred herein.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information and belief, that this Complaint: (1) is not being presented for an improper purpose; (2) is supported by existing law or by a non-frivolous argument for extending, modifying or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the Complaint otherwise complies with the requirements of Rule 11.

Dated: April 8, 2022.

Plaintiff's Attorneys:

s/ Stephen T. Janik
Stephen T. Janik

s/ Jack L. Orchard

Jack L. Orchard

Oregon State Bar Nos.:

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EXHIBIT A

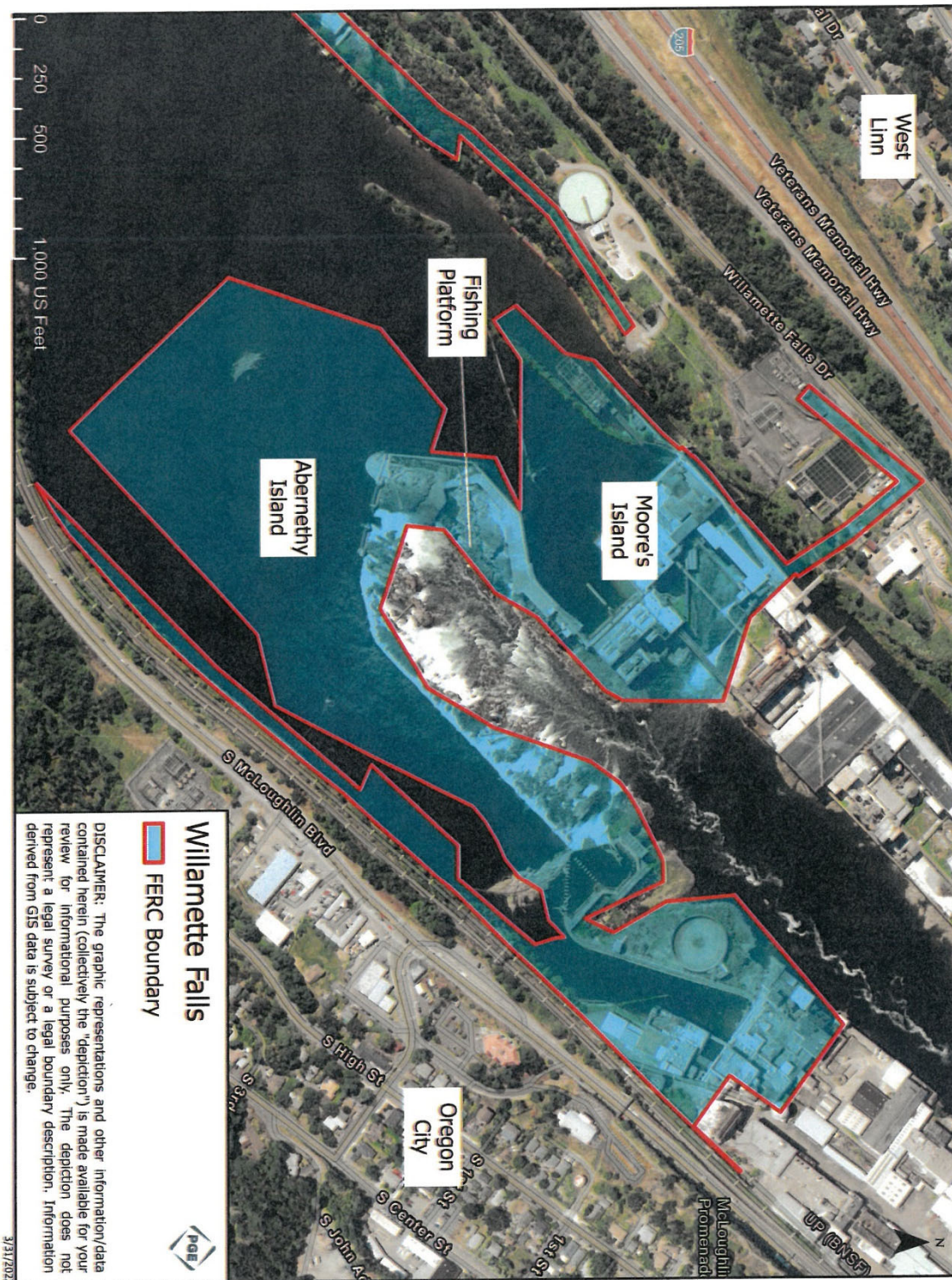


Exhibit A - Page 1 of 1

EXHIBIT B
The Property

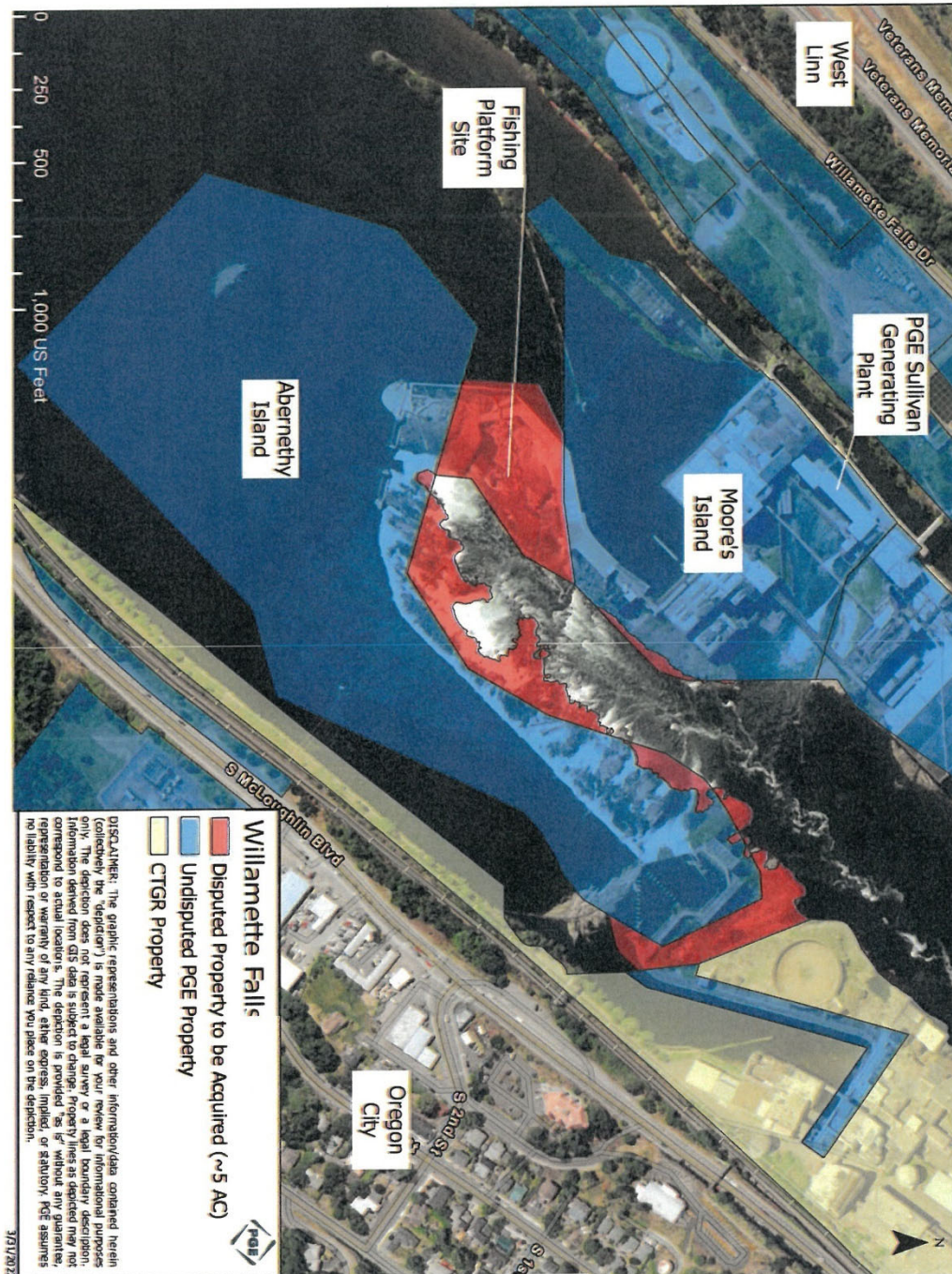


EXHIBIT B - PAGE 1 OF 3



Portland General Electric

Legal Description for Condemnation – **CONFIDENTIAL**

April 6, 2022

Tax Map 2S2E31

Tax Lots 702 and 600

Legal description for Condemnation describing the disputed area claimed by Portland General Electric Company (PGE) at Willamette Falls located in the Southeast one quarter of Section 36, Township 2 South, Range 1 East and in the Southwest one quarter of Section 31, Township 2 South Range 2 East, Willamette Meridian. The said tract being more particularly described as follows:

All that land lying above the Ordinary Low Water Line of the Willamette River at an elevation of 6.0 feet (NGVD 29 datum) and being bounded as follows:

On the left bank on the north by the outfall channel of the Sullivan Power Plant at the north end of Moore's Island

On the left bank on the west by the Robert Moore Donation Land Claim (Moore DLC) No. 67 in the area known as Moore's Island

On the left bank on the southwest by the existing Federal Energy Regulatory Commission (FERC) project boundary (Project No 2233) at the top of Willamette Falls near the existing PGE dam structure and extending between the said Moore DLC and that tract of land known as Abernethy Island described in the patent from the United States to Portland General Electric.

On the south at the center of the said falls and the right bank of the river by said Abernethy Island tract

On the right bank on the north by the south line of that tract of land granted to the Confederated Tribes of Grand Ronde deed Document No. 2019-048467, Clackamas County Deed Records.

TOGETHER WITH the following described tract on the right bank of the Willamette River:

A tract of land bounded west by the said Ordinary Low Water Line of the Willamette River; bounded on the south by the said Abernethy Island tract conveyed to Portland General Electric; bounded on the north by said deed to Confederated Tribes of Grand Ronde by Document no. 2019-048467 and by that Property Line adjustment deed to Portland General Electric by Document no. 2000-041748, Clackamas County Deed Records; bounded on the east by said existing Federal Energy Regulatory Commission (FERC) project boundary (Project No 2233) at the top of the falls.

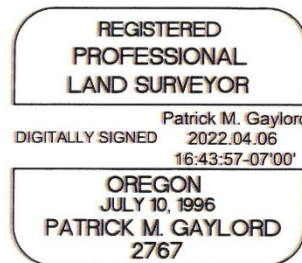
The total area of the property herein described being 4.82 acres more or less.

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EXHIBIT B – PAGE 2 OF 3



The intent of this description is to include all those portions of the said Moore DLC known as Moore's Island lying between the historically described meander line and the Ordinary Low Water Line of the left bank of the Willamette River; all of the Willamette Falls area lying between the Moore DLC and the Abernethy Island tract conveyed by patent to Portland General Electric; all the area lying between the said Ordinary Low Water Line of the right bank of the Willamette River and the combined area of the said patent from the United States to Portland General Electric and the area within the Portland General Electric Willamette Falls Operational Boundaries not previously defined, but generally depicted in Exhibit G of the Willamette Falls Development Project, Federal Energy Regulatory Commission (FERC) Project no. 2233.



RENEWS:

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EXHIBIT B - PAGE 3 OF 3