

Nathan L'Etoile, Co-Owner  
Four Star Farms, Inc.  
496 Pine Meadow Rd  
Northfield, MA 01360

SECRETARY OF THE  
COMMISSION

2013 MAR -4 A 9:54

FEDERAL ENERGY  
REGULATORY COMMISSION

February 20<sup>th</sup>, 2013

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
88 First Street, N.E.  
Washington, DC 20426

RE: Northfield Mountain Pumped Storage Project, FERC Project No.2485

Dear Secretary Bose:

My family farms roughly 275 acres in the Pioneer Valley of Western Massachusetts. For more than 25 years we have drawn water for irrigation purposes from the above referenced project area. Over the years we have made considerable efforts to comply with every governmental requirement, and many additional voluntary ones. We possess all applicable local, state, and federal permissions for our withdrawals. We have however been involved in a protracted legal struggle with First Light Power Resources and their predecessor Northeast Utilities regarding the need for us to receive permission from them for these same withdrawals. As part of the relicensing effort we request that First Light's license be amended to include language clarifying that First Light does not have authority over withdrawals for irrigation purposes.

My parents purchased the land on which the farm now operates in 1986 and have worked much of their adult life to pay off the mortgage, raise a family and create not only a world class farm, but one that is sustainable both environmentally and financially. While my parents are still the primary owners of the farm, we are currently undergoing a transition both of ownership and management to my brother and I. We grew up on this farm, we were ages 8 and 10 when it was bought, and have spent most of our lives on it. After college and brief periods off the farm, we have both returned to it, built homes and families, and hope to continue what my parents have started.

The farm has grown a variety of crops over its 25 year history. Sod has been a major crop for the entire period, but we have also grown nursery stock, and raised fish. In the last 5 years we have made a gradual transition and have begun to produce food crops, returning hops and many small grains to the valley, something that hasn't been done on the scale we have achieved here in Western Massachusetts for over 100 years. It's been a struggle, and it hasn't been inexpensive. We have however always found a way not just to get by, but to grow incredibly high quality crops in an environmentally sustainable manner and to market them at a price that sustains our family.

One of the centerpieces of our farm, one of the key factors that attracted my parents to it, was its access to water. With over a mile and a half of frontage on the Connecticut River (with existing access)

and the finest soils in the world, it was impossible to not make the leap from the small farm they operated in Rhode Island and move north those 25 years ago.

That river supplies our farm with a lifeline for the crops we grow – water. Without a reliable access to water we cannot make the investments we need to assure a viable farm in the future. Each crop we grow has required this water and its proximity and ease of withdrawal is one of the farms greatest assets.

Over the years we have taken great efforts to comply with every local, state and federal rule and voluntary program we have encountered. We have all the necessary permits and licenses to pump from the river (at a cost of over \$50,000 despite not needing to move a shovel full of dirt or cut a single branch within 100 feet of the river). Several years ago however we were approached by then “Northeast Utilities” (NU), a power generation company that operated the Northfield Mountain Pump Storage Project and were told we could no longer pump from the area of the river used as the lower reservoir of their pump storage facility. The license they held from the Federal Energy Regulatory Commission (FERC) gave rights to draw from this portion of the river to NU, and allowed them to grant permission directly to those withdrawing from the area. Further it required that NU monitor and take all lawful measures to assure that such withdrawals where in compliance with the law. We would need to obtain permission from them or they would sue us in federal court.

We strongly disagreed with their legal interpretation of the license and traded letters for many years. Our position was simple – while FERC may have granted extensive powers to NU, Congress’s grant of powers to FERC was limited and specifically did not grant FERC the power to affect state laws governing the use or distribution of water used in irrigation [see US Code Title 16, Chapter 12, Subchapter 821 – States laws and water rights unaffected]. Massachusetts has an array of laws, permitting mechanisms, water resource management plans, and constitutional provisions guaranteeing access to water for agriculture, all of which would clearly be affected by an interpretation of the project license in such a way that required permission from the utility for such withdrawals. NU eventually just stopped responding to our replies and the issue seemed dormant.

Northeast Utilities sold the Northfield Mountain Project to First Light Power Resources several years ago, and after an initial period of quiet, the letters began again, likely in preparation for First Light’s upcoming license renewal. We again tried the same tactic, with the help of an attorney showing the simple argument that while FERC may have given First Light what First Light perceives as clear instructions in its license to control all access to the river, the matter was not so simple and the license must be taken in context to the power that FERC has. This was unsuccessful, and in a simple calculation of the effect on our farm’s viability that tens of thousands of dollars for a protracted legal battle in federal court would have, we decided to acquiesce and obtain from a 100% private company the right to use a public water body that the farm had always used. That permission may be revoked with or without cause at any time by First Light with no appeal, and leaves our farm at the mercy of a private corporation.

On October 30<sup>th</sup>, 2012 First Light Power Resources submitted a combined pre-application document for relicensing of the Northfield Mountain Pumped Storage Project, FERC Project No.2485; and Turners Falls Hydroelectric Project, FERC project No.1889. It is the language of the license that has First Light convinced that they not only may, but in fact must, police and grant or deny permission for all withdrawals from the portion of the river that we draw from.

For project licensing by FERC, their rules specifically state that before approval the project "shall be such as in the judgment of the Commission will be best adapted . . . for other beneficial public uses, including irrigation . . ." [US Code Title 16, Chapter 12, subchapter 803, (a) (1) Modification of plans; factors considered to secure adaptability of project; recommendations for proposed terms and conditions].

We are seeking assistance to add language to First Light's license that clarifies that use of water within the lower reservoir for irrigation is not subject to oversight in any way by First Light. We are not seeking any exemptions or special accommodation for irrigation use of the river from the state or federal government, and possess all required permits and approvals from them for this activity. We are asking for your assistance to remove First Light as an unnecessary intermediary in an area that Congress never intended they be. Addition of such language would help make the project better adapted for irrigation use and provide the certainty necessary for our farm. The oversight of the local, state, and federal government, while challenging at times, is subject to basic elements of good governance (open meeting laws, public records request, both administrative and judicial appeals, etc . . .). We feel that these protections while not being a 100% assurance of our access to water provide greater certainty and reliability and will thus allow us to continue to invest in long term projects on our farm.

Sincerely,

Nathan L'Etoile  
Co-Owner, Four Star Farms, Inc.

Cc: Senator Elizabeth Warren, US Senate  
Senator William Cowan, US Senate  
Representative Jim McGovern, US House of Representatives  
Senate Majority Leader Stanley Rosenberg, Massachusetts Senate  
Representative Paul Mark, Massachusetts House of Representatives  
Commissioner Greg Watson, Massachusetts Department of Agricultural Resources  
Linda Dunlavy, Executive Director, Franklin Regional Council of Governments  
Richard Bonnanno, President, Massachusetts Farm Bureau Federation  
Roger Noonan, President, New England Farmer's Union  
Lenard Roberts, President, Franklin County Farm Bureau  
Jay Savage, Owner, Savage Farms, Inc.  
Donald Patterson, Owner, Patteson Farm, Inc.  
Tim Nourse, Owner, Nourse Farms, inc.  
Bernard Smiarowski, Owner, Teddy Smiarowski Farm

**Suggested language to be added to the Northfield Mountain Pumped Storage Project (No.2485) License, either as a new Article or as an addition to Article 43. Much of the language is taken from *US Code title 16, Chapter 12, subchapter 821, States laws and water rights unaffected.***

**Article XX. Nothing in this license shall be construed as affecting or intending to affect or in any way interfering with the control appropriation, use or distribution of water used in irrigation; nor does it give the Licensee authority over withdrawals from the project area for irrigation purposes; nor does it provide any exemption or prohibition for withdrawals from the project area for irrigation purposes.**

Document Content(s)

13196502.tif.....1-4