

This was the Canadian Copy of Order signed at Cornwall on 25 July, 1952, prepared under Mr MacCallum's supervision and later found to contain several typographical errors. Afterward rewritten and signed by Commissioners.

EMS

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE CONSOLIDATED MINING AND SMELTING COMPANY OF CANADA LIMITED FOR APPROVAL OF THE CONSTRUCTION, MAINTENANCE AND OPERATION OF THE WANETA DAM AND RESERVOIRS

ORDER OF APPROVAL

WHEREAS Cedar Creek is a creek flowing across the international boundary between United States and Canada, within the meaning of Article IV of the Boundary Waters Treaty of January 11th, 1909, and has its source in the State of Washington and flows north to and across the international boundary into the Province of British Columbia to its confluence with the Pend d'Oreille River, which is about one mile east of the confluence of the Pend d'Oreille River with the Columbia River; AND

WHEREAS The Consolidated Mining and Smelting Company of Canada Limited, under date of 30th April, 1951, made application to the Commission for its approval of the construction, maintenance and operation of a dam and reservoir at a location known as the Waneta site, approximately 1,500 feet east of the confluence of the Pend d'Oreille River with the Columbia River, the crest of which dam will be at elevation 1,521 feet, Geodetic Survey of Canada Datum, 1947 International Joint Adjustment; AND

WHEREAS THE Applicant is the owner of a conditional water licence granted by the Province of British Columbia in respect of the waters of the Pend d'Oreille River, which, inter-alia, authorizes the construction of a dam, penstocks and power house at the Waneta site, subject

to the plans for the construction of the works being approved by the Comptroller of Water Rights of the Province; AND

WHEREAS the Pend d'Oreille River is not navigable within the meaning of the Navigable Waters Protection Act of Canada; AND

WHEREAS after due notice, public hearings were held by the Commission at Waneta, British Columbia, on the 12th July, 1951, and at Coulee Dam, Washington, on 13th July, 1951, and the said Application was amended at the Waneta hearing; AND

WHEREAS at the hearing at Waneta, a statement was filed on behalf of the Government of the United States, stating that it does not oppose the order of approval which is sought, but asking that approval should be on conditions:

- (1) to insure the protection and indemnity against injury of all interests, public and private, in the United States which may be affected by the construction, maintenance and operation of the said storage dam, as provided by Article Vlll of the Boundary Waters Treaty, 1909; and
- (11) to provide such other relief as may be considered essential as a result of the information obtained at the hearings held at Waneta, British Columbia, on 12th July, 1951, and at Coulee Dam, Washington, on 13th July, 1951; AND

WHEREAS at the hearing at Coulee Dam, Washington, a statement was filed on behalf of the State of Washington, setting forth that the State saw no reason,

unless some unusual feature developed at the hearings, for not giving its support to the development; AND

WHEREAS at the aforesaid public hearings, a representative of the British Columbia Game Commission appeared and recommended to the Commission that the application be approved; and a representative of the United States Department of the Interior appeared and stated that construction and operation of the project in the manner proposed will not conflict with present or future plans for the development of the United States portion of the Columbia River Basin; AND

WHEREAS the Commission has been advised that the Applicant, through its affiliate the Montana Phosphate Products Company, in order to conform to legal requirements in the United States, has made application to the Federal Power Commission for the licence which is prerequisite to the utilization for power storage purposes, of public lands of the United States which are involved, and that the Federal Power Commission has that application under consideration; AND

WHEREAS the Commission has been advised that the proposed construction will not involve any difficulty in the operations of the International Boundary Commission of the United States and Canada; AND

WHEREAS the Applicant has made arrangements with all parties who have any interest in lands or mining claims in the State of Washington that may be affected by the pondage in Cedar Creek created by the said works, information in respect of which has been filed with the

Commission, whereby the Applicant has to the satisfaction of the Commission, made suitable and adequate provision for the protection and indemnification of the said parties against injury or by reason of damage resulting from the construction, maintenance and operation of the Waneta Dam and reservoir; AND

WHEREAS the Commission, after having considered the matters above recited, and after having heard all parties desiring to be heard, has determined that the said works should be approved and authority given for the construction, maintenance and operation thereof pursuant to the said Treaty, subject to the conditions hereinafter set forth:

NOW THEREFORE THIS COMMISSION ORDERS AND DIRECTS :

1. That the issuance of this Order of Approval shall not be considered or construed as waiving or otherwise impairing in any degree the right of the United States recognized in Article 11 of the Boundary Waters Treaty of January 11, 1909, to construct, maintain and operate such works as it may consider necessary or desirable for the purpose of making the most advantageous use reasonably practicable on its own side of the international boundary by diversion for power purposes or otherwise of the waters of the Pend d'Oreille River as regulated by headwater storage reservoirs lying entirely within the United States and constructed wholly at the expense of the United States, or at the expense of United States interests.
2. That the said application as amended at the hearing at Waneta be and is hereby approved and the Applicant

is authorized to construct, maintain and operate the said Waneta Dam and reservoir, and the Applicant is permitted to hold, by means of ^{the} said dam, the upstream pondage in Cedar Creek to a maximum elevation of 1,521 feet, Geodetic Survey of Canada Datum, 1947 International Joint Adjustment.

3. That the Applicant install, maintain and operate gauges of a type and at locations in the forebay and tailrace of the Waneta development, to be approved by the Water Resources Division, Department of Resources and Development of Canada, and provide records of the daily forebay and tailrace elevations to the said Water Resources Division and to the Geological Survey of the United States Department of the Interior at such intervals as may be determined as suitable and necessary.

4. And that the Applicant, and all parties having claims for injury in respect of the said Dam and reservoir other than the parties to the said arrangements, shall have the right to apply for such further order, direction or action as may seem proper in reference to any matter arising out of this Order.

APPROVED at Cornwall, Ontario, this 25th day of July, 1952.

Q.S. Thompson
John D. Palmer
Les. Palmer
Reginald McPherson
J. L. MacKellar
Eugene W. Weber