

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE CRESTON RECLAMATION COMPANY, LIMITED, AND THE DUCK LAKE DYKING DISTRICT FOR AN ORDER AMENDING THE COMMISSION'S ORDER OF 12 OCTOBER 1950 RELATING TO THE RECLAMATION OF CERTAIN LANDS SUBJECT TO FLOODING BETWEEN THE INTERNATIONAL BOUNDARY AND KOOTENAY LAKE, NEAR SIRDAR, IN THE PROVINCE OF BRITISH COLUMBIA, IN CANADA.

ORDER OF APPROVAL

WHEREAS the Kootenay River is a river flowing across the boundary between the United States and Canada within the meaning of Article IV of the Boundary Waters Treaty of 11 January 1909; and

WHEREAS an area of lands subject to flooding, known as the Duck Lake area, is situated between the international boundary and Kootenay Lake, near Sirdar, in the Province of British Columbia and adjacent to the Kootenay River and its East Branch; and

WHEREAS the Creston Reclamation Company, Limited, under date of 25 July 1950, filed an application with the International Joint Commission for the approval of works designed to reclaim 3,200 acres of the southern portion of the said Duck Lake area, and to store water to elevation 1748 in the remainder of Duck Lake for wildlife purposes and winter release; and

WHEREAS the Commission on 12 October 1950 did order and direct that the said application be and it was thereby approved, subject to the conditions set forth in the Commission's Order; and

WHEREAS conditions numbered 6, 7 and 8 in the said Order of 12 October 1950 read as follows:

"6. The Applicant shall place a staff gauge in Duck Lake in the vicinity of the outlet structure in a position and of a nature satisfactory to the Water Resources Division, Department of Resources and Development, Canada, and the Applicant or his successor shall maintain said gauge to the satisfaction of said Division and shall provide said Division with daily records of Duck Lake elevations therefrom at such intervals as the requirements of the International Kootenay Lake Board of Control may dictate from time to time.

"7. In years of low local spring supply to Duck Lake and when the level of that Lake is not raised thereby to elevation 1747.32 or is not maintained at or above that elevation during the period when Kootenay Lake is discharging its flood

waters, the Applicant or his successor shall, while Kootenay Lake is approaching elevation 1747.32 on its falling stage, open the gates in the Duck Lake outlet structure sufficiently to permit Duck Lake to rise to a maximum of elevation 1748 and thereafter the gates may be closed until commencement of the storage drawdown period on or about January 7 of the following year.

- "8. The discharge control works at the outlet of Duck Lake shall be opened by the Applicant or its successor by the 7th day of January of each year and shall remain open during the Kootenay Lake storage drawdown period to permit the level of Duck Lake to recede with that of Kootenay Lake"; and

WHEREAS the Duck Lake Dyking District is an Improvement District under the Water Act of the Province of British Columbia; and

WHEREAS the designation "Water Resources Division, Department of Resources and Development", has been changed to "Water Resources Branch, Department of Northern Affairs and National Resources," since said Order of 12 October 1950 was adopted; and

WHEREAS the Creston Reclamation Company, Limited, and the Duck Lake Dyking District, have filed a joint application, dated 23 March 1954, transmitted to the Commission by the Government of Canada on 15 November 1954, for an order that the Commission's Order of Approval dated 12 October 1950, be amended by deleting therefrom conditions numbered 6, 7 and 8 on the grounds set forth in the application; and

WHEREAS at the Commission's request, the International Kootenay Lake Board of Control made an investigation respecting the effect of the changes proposed by the applicants and submitted its report thereon to the Commission under date of 17 May 1955; and

WHEREAS after due notice, public hearings were held in the Town of Creston, in the Province of British Columbia, on 7 September 1955, and in the Town of Bonners Ferry, in the State of Idaho, on 8 September 1955, at which all interested parties were given convenient opportunity to be heard; and

WHEREAS the application was opposed, in whole or in part, by various interested parties who appeared at the said public hearings, and

WHEREAS, when condition numbered 7 was adopted, Kootenay Lake was being regulated to a maximum level of elevation 1747.32 but at present it is being regulated only to elevation 1745.32.

NOW THEREFORE THIS COMMISSION DOTH ORDER AND DIRECT
that:

- (1) The Order of Approval issued by the International Joint Commission on 12 October 1950 (Docket 48) be and the same is hereby amended as follows:
 - (a) Condition numbered 6 thereof is amended to read:

The Applicant shall place a staff gauge in Duck Lake in the vicinity of the outlet structure in a position and of a nature satisfactory to the Water Resources Branch, Department of Northern Affairs and National Resources, Canada, and the Applicant or its successor shall maintain said gauge to the satisfaction of said Branch and shall provide said Branch with weekly records of Duck Lake elevations therefrom at such intervals as the requirements of the International Kootenay Lake Board of Control may dictate from time to time; provided, that when the International Kootenay Lake Board of Control determines that the water level of Kootenay Lake or the Kootenay River is at a critical stage, the said Board shall require the gauge to be read daily while critical stages persist and the Applicant or its successor shall comply with any instructions thus issued to it by the said Board.

- (b) Condition numbered 7 is amended to read as follows:

In years of low local spring supply to Duck Lake and when the level of that Lake is not raised thereby to elevation 1745.5 or is not maintained at or above that elevation during the period when Kootenay Lake is discharging its flood waters, the Applicant or its successor shall, while Kootenay Lake is approaching elevation 1745.5 on its falling stage, open the gates in the Duck Lake outlet structure sufficiently to permit Duck Lake to rise to a maximum of elevation 1745.5 and thereafter the gates may be closed until commencement of the storage drawdown period on or about January 7 of the following year.

- (2) Conditions imposed in the said Order of Approval, dated 12 October 1950, upon the Creston Reclamation Company Limited, or its successor apply jointly to the Applicants herein, the Creston Reclamation Company Limited and the Duck Lake Dyking District.
- (3) The Applicants' request for the deletion of condition numbered 8 in the said Order of Approval, dated 12 October 1950, is hereby refused.
- (4) Nothing contained in this Order shall create a vested right in anyone to a specific maximum storage level on Kootenay Lake.
- (5) The Commission retains jurisdiction over the subject matter of said Application and may, after giving public notice and affording full opportunity to all interested parties to be heard, make such further Order or Orders relating thereto as the Commission may deem warranted.

Signed at Washington, D.C. this 3rd day
of April, 1956.

(signed) Len Jordan
 A.G.L. McNaughton
 Roger B. McWhorter
 George Spence
 Eugene W. Weber
 J. Lucien Dansereau