

APPLICATION OF THE CRESTON RECLAMATION COMPANY LIMITED and THE DUCK LAKE DYKING DISTRICT TO THE HONOURABLE THE INTERNATIONAL JOINT COMMISSION FOR AN ORDER AMENDING THE ORDER OF THE COMMISSION MADE ON THE 12TH DAY OF OCTOBER, 1950, RELATING TO THE RECLAMATION OF CERTAIN FLOOD LANDS BETWEEN THE INTERNATIONAL BOUNDARY LINE AND KOOTENAY LAKE, NEAR SIRDAR, IN THE PROVINCE OF BRITISH COLUMBIA, IN CANADA

TO THE HONOURABLE THE CHAIRMEN AND MEMBERS OF
THE INTERNATIONAL JOINT COMMISSION

The Applicants respectfully submit the following Application:

I

The Creston Reclamation Company Limited is a Company incorporated under the Companies Act of the Province of British Columbia. A Copy of the Certificate of Incorporation, Memorandum of Association, and authority to commence business is already on file with the International Joint Commission. The head office of the Company is at Creston, in the Province of British Columbia, Canada. The objects of the Company are as set forth in the said Memorandum, and more particularly to undertake, construct and maintain upon any land owned by the Company, or in which the Company has any interest, operations for the purpose of reclaiming and bringing under cultivation such lands or any part thereof.

The Directors of the Company are:

A.B. Staples
R.B. Staples
G.C. Staples

The Company in 1955, having received the approval of the International Joint Commission to its application to reclaim land in the Kootenay Flats, successfully completed the dyking and drainage of 8600 acres, being Unit No. 1 of the Company's application of October 14th, 1927. These reclaimed lands are now incorporated into the Creston Dyking District as an Improvement District under the Water Act of the Province of British Columbia.

The Duck Lake Dyking District is an Improvement District incorporated under the Water Act of the Province of British Columbia, by Letters Patent dated February 28th, 1953.

II

By virtue of an order of the Executive Council of the Government of the Province of British Columbia, being No. 141, and dated at Vancouver, British Columbia, the 3rd day of February, 1942, the Applicant, Creston Reclamation Company Limited was granted the right under the authority of Section 68 of the Land Act, being Chapter 144 of the Revised Statutes of British Columbia, 1936, to acquire partly by purchase and partly by free grant certain agricultural lands subject to submergence in greater or lesser degree at frequent intervals from the back waters of Kootenay Lake, situate and being in the north east angle of the delta of the Kootenay River, and contained in the townships and sections enumerated below:

Township 8, Sections 29, 32, 33;

Township 10, Sections 12, 13, 23, 24, 25, 26, 35, 36;

Township 11, Sections 4, 5, 6, 7, 8, 17, 18, 19, 30,

on the following conditions:

1. That the land contained in the said area be dyked, reclaimed and fully protected from flooding during an entire period between April 1st and August 1st in the same year.
2. That the said Applicant first obtain the approval of the International Joint Commission to construct and operate the necessary permanent works to fully secure and satisfy the aforementioned condition.
3. That concurrently therewith the said Applicant obtain approval of the construction and operation of the said works by the Governor General in Council under the provisions of Chapter 140, Revised Statutes of Canada, 1927, being the Navigable Waters Protection Act, so that the provisions of Section 4 thereof may be fully complied with.
4. That concurrently therewith the said Applicant make such further arrangements as may be necessary with the Department of Indian Affairs for Canada in regard to any Indian Reserve lands within the said area.

III

The said Applicant obtained the approval of the construction and operation of the said works under the Navigable Waters Protection Act under Order in Council P.C. 410 of the 3rd day of February, 1948.

The said Applicant has completed its arrangements with the Department of Indian Affairs for Canada in regard to any Indian Reserve lands within the said area, and a lease between His Majesty and the said Applicant, No. 752, has

been completed with respect to the Indian Reserve lands affected.

By order of the International Joint Commission dated the 6th day of August, 1949, and following upon the application of the said Applicant dated the 12th day of May, 1942, the International Joint Commission approved such application subject to the four conditions set out therein, of which the second condition is in the following terms:

"Pending determination by the Province of British Columbia regarding the purpose or purposes for which the said lands shall be utilized in order best to serve the public interests, the said Company shall not extend its main river dyke north of the ridge of high ground which cuts diagonally across the area of the Application from the river bank, near the junction of the east and main channels, northeasterly to the vicinity of the foothills and is intersected by north latitude $49^{\circ} 12'$; nor shall said dyke be extended north of that limit until flood control storage has been provided in the Kootenay River watershed upstream from Bonners Ferry, Idaho, sufficient in amount to more than compensate for the effects of said dykes constructed under this Order on the levels of the Kootenay River at and above the International Boundary; but said Company is hereby authorized to construct a cross dyke along or near the crest of said high ridge to make possible as soon as practicable the utilization of approximately 3,200 acres of land in the south end of said Duck Lake area for

agricultural purposes, without disturbing the outlet of Duck Creek to Kootenay Lake."

By Agreement dated the 4th day of February, 1950, between His Majesty the King in the Right of the Province of British Columbia, and the Applicant Creston Reclamation Company Limited, with which a further agreement dated the 31st day of December, 1949, was expressed to be incorporated, His Majesty the King in the Right of the Province of British Columbia agreed, subject to the successful reclamation of the said area from flooding, and subject to the covenants and conditions contained in the said Agreement, to grant to the Company an area of Crown Land in Townships 8, 10 and 11, Kootenay District, described as follows:

Commencing at the southwest corner of Lot 13565, Kootenay Land District, being a point on the right bank of Kootenay River; thence along said right bank in a general northerly direction to the entrance of the East Channel of Kootenay River; thence along the right bank of said East Channel in a northerly direction to a point 2,200 feet north of the Ferry Landing at the said entrance of the East Channel of Kootenay River; thence north 65° East to a point on the $49^{\circ} 12'$ parallel of North Latitude; thence North 19° East to a point on high-water-mark on the most easterly bank of Duck Lake near Control Survey Monument 82F-5; thence southerly along said high-water-mark following the westerly boundaries of Lots 9550, 9427, 9551 to the westerly boundary of Lot 14357; thence southerly to the southwest corner thereof; thence southwesterly along the northerly and

westerly boundaries of Lot 13565 to the point of commencement but excepting thereout all land forming part of any Indian Reserve.

Pursuant to the said Agreement of the 4th day of February, 1950, the Company submitted plans and specifications of the dykes and other works to be constructed in accordance with the Order of Approval of the International Joint Commission dated the 6th day of August, 1949, and such plans and specifications were duly approved by the Province, and work upon the main river dyke was duly commenced.

IV

Subsequent to the commencement of dyking under the said Agreement of the 4th day of February, 1950, and as a result of representations made by the British Columbia Game Commission, the Creston Board of Trade and other interested bodies, the said Applicant caused engineering studies to be made of an alternative method for the reclamation of the 3,200 acres of land mentioned in the Order of the International Joint Commission dated the 6th day of August, 1949, by a combined system of dykes and water storage. A copy of the Engineer's Report of these engineering studies was filed with the Application referred to in the succeeding paragraph hereof.

V

The said Applicant by a further application dated the 25th day of July, 1950, sought the approval of the International Joint Commission of a plant to reclaim the area of approximately

3,200 acres referred to in the Order of the International Joint Commission dated the 6th day of August, 1949, by the construction of a dyke or levee constructed to an elevation well above flood levels commencing at the junction of the northerly boundary of the Creston Dyking District with the East Bank of the Kootenay River, and thence following along the said East Bank of the Kootenay River in a general northerly direction to its confluence with the East Branch of the said Kootenay River, thence following along the East Bank of the said waterway in a general northerly and easterly direction to a point at the eastern foothills situate at or about Bench Mark 204D, Publication No. 24, Geodetic Survey of Canada, including adequate drainage outlets and pumping units at the outlet of Duck Lake into Kootenay Lake, and by the construction of a supplementary cross dyke along the northern boundary of the area described in the agreement between the Province and the said Applicant of the 4th day of February, 1950. The area south of the said cross dyke would be completely reclaimed for agricultural purposes and protected from flooding, while the area within the main river dyke and north of the cross dyke would be maintained as a water storage reservoir for the spring run off from the Duck Lake Drainage basin.

VI

The International Joint Commission by an order dated the 12th day of October, 1950, approved the plan of reclamation set forth in the said application, and authorized the construction of a dyke or levee as therein described, subject to the conditions set forth in the said order.

The said Applicant has complied with all such conditions, and in particular:

- (a) The said Applicant has obtained the approval of the revised proposal under the Navigable Waters Protection Act;
- (b) The said Applicant has obtained the approval of the appropriate authorities of the Government of British Columbia in regard to the detailed plans and specifications of the works to be constructed;

VIII

The said Applicant has complied with Condition No.1 imposed by the Executive Council of the Government of the Province of British Columbia, being No. 141, and dated the 3rd day of February, 1942, in that the land contained in the area therein referred to was dyked, reclaimed and fully protected from flooding during an entire period from April 1st to August 1st in the same year.

- (a) The said Applicant has received a grant from the Crown in the Right of the Province of British Columbia of all lands comprised in the reclamatin project referred to in the Order dated 12th October, 1950, and has fully completed the works of dyking and reclamation therein referred to;
- (b) The Duck Lake Dyking District has been organized as an Improvement District under the Water Act, being Chapter 361 of the Revised Statutes of British Columbia, 1948, which is charged with the maintenance of the dykes in respect of the lands referred to in the Order of the 12th day of October, 1950.

The Applicants now apply to the International Joint Commission for an order that the Order of the 12th day of October, 1950, be amended by deleting therefrom Conditions Nos. 6, 7 and 8 on the grounds hereinafter set forth.

X

The Applicants wish to be relieved of the responsibility in connection with the staff gauge in Duck Lake on the ground that the Hydrometric Branch of the Department of Resources and Development maintains a service for the purpose of reading gauges throughout the Province of British Columbia as a public service. No other Dyking District in the Kootenay Valley is saddled with this responsibility. The value of the records to the Duck Lake Dyking District is practically nil, as the District is only interested in the water levels during the growing season, while the land is being worked, and it would not be necessary to have daily readings for this purpose.

The real beneficiary of these records is the West Kootenay Power & Light Co. Ltd. who are able to use them in their storage studies. The Duck Lake Dyking District is too small a district to bear this additional expense, which ordinarily would fall on the Hydrometric Department of the Department of Resources and Development.

XI

The Applicants wish to be relieved of the responsibility imposed upon them by Condition No. 7 in the said Order, on the following grounds:

- (a) The elevation 1748 was fixed by the Applicants'

engineer as being the elevation to which the water would be allowed to rise in Duck Lake during the spring runoff, based on the high water year 1948. This decision was reached after a study of storage, dyke construction and pump installation, and was determined from an economic standpoint;

(b) The Order requires that the gates in the outlet structure be opened after the peak on the Kootenay River has occurred, and the river is being lowered along with Kootenay Lake. This requirement produces a vigorous flow from Kootenay River back into Duck Lake through the outlet structure, and is the cause of considerable erosion on the outside, and particularly on the inside of the outlet structure, as in practice there would be a 3' head, 1748' outside, 1745' inside, with a consequent silting on the inside in the excavated channels;

(c) The storage of water in Duck Lake from September until January for the benefit of the West Kootenay Power & Light Co. Ltd. is detrimental to the dykes, i.e. the main cross dyke, by setting up a condition where water action causes considerable erosion. The storage further produces seepage or saturation of the agricultural land lying to the south of the cross dyke. This saturation is not noticed at lower elevations of the water surface on Duck Lake;

(d) As a result of this, Condition 7 places an added burden on the farmers of the Duck Lake Dyking District, who can ill afford to stand it;

(e) The Duck Lake Dyking District comprises the lowest land in the reclaimed areas of the Kootenay River flats, with the result that more pumping is

required than in other Districts under normal water conditions, and without reference to the provisions of Condition 7;

(f) A comparison of length of dykes is as follows:

Duck Lake Dyking District	14 miles	Area 2700 ac. (other than Crown)
Creston Dyking District	11 "	" 7000 " + or-
Reclamation Dyking District	17 "	" 7000 " + or-
Nicks Island Dyking District	10 "	" 2000 " + or-

The above lengths of dyke, the fact that the area is lower than other Districts, and the pumping required on Duck Lake itself, puts the cost of pumping and maintenance to a point which is just about the limit the District can bear. Condition 7 of the Order is just a little too much, putting an added strain on the District;

(g) The condition presently requires that as Kootenay River is being lowered after the high water, and as this level approaches 1748, the gates to Duck Lake should be opened to allow the Duck Lake level to approach 1748. Kootenay River, however, is lowered to elevation 1745.32 after this, and then is brought back to the 1747.32 level (8 foot storage);

(h) This means that once the gates to Duck Lake are open the water flows into Duck Lake to bring it up to level 1748, then out again as Kootenay River is lowered 1745.32 then in again as the storage is put on Kootenay Lake 1747.32, and it is at this height that the Order provides that the gates may be closed. All of this it is submitted is unnecessary;

(i) The right of the West Kootenay Power & Light Co. Ltd. for 8 foot storage on Kootenay Lake terminates on April 1st, 1954, and from such date the storage will be to the 6 foot level (1745.32) and this level will not greatly affect the Duck Lake Dyking District;

(j) Actually the storage of water on Duck Lake is at present on a somewhat different situation than previously, as Duck Lake is now not (if it ever was) a part of Kootenay Lake, but a separate lake created by the dykes of the Duck Lake Dyking District. It follows that any storage now required in Duck Lake by the West Kootenay Power & Light Co. Ltd. should be the subject matter of a separate application to the Controller of Water Rights of the Province of British Columbia, and to the International Joint Commission on notice to the Duck Lake Dyking District;

(k) By Order-in-Council of the Province of British Columbia dated 13th August, 1884, the lands of the Kootenay River Flats were set aside for agricultural purposes, and the right to store water for power purposes adversely affects agriculture.

XII

The Applicants also wish to have Condition 8 in the said Order deleted as unnecessary, since it will be in the interests of Duck Lake Dyking District that Duck Lake be lowered during the months of January, February and March in each year.

XIII

WHEREFORE this application is respectfully submitted for

the consideration of the International Joint Commission,
and the Applicants hereby apply to the International
Joint Commission for an Order for amendment in the terms
herein set forth.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

CRESTON RECLAMATION COMPANY LIMITED
and
DUCK LAKE DYKING DISTRICT

By their Solicitors.

BULL HOUSSER TUPPER RAY GUY & MERRITT.

Vancouver, B.C.
23 March, 1954.