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3-1-2-1

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE CRESTON VALLEY WILDLIFE MANAGEMENT AUTHORITY FOR APPROVAL OF THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A DYKE AND APPURtenant WORKS IN DUCK LAKE AND FOR AN ORDER AMENDING THE ORDER OF APPROVAL OF THE COMMISSION DATED 12 OCTOBER 1950, AS AMENDED BY THE ORDER OF APPROVAL OF THE COMMISSION DATED 3 APRIL 1956.

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;

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;

By an Order dated 12 October 1950 the International Joint Commission approved, subject to conditions set forth therein, an application by the Creston Reclamation Company Limited for the approval of works designed to reclaim 3,200 acres of the southern portion of the Duck Lake area, and to store water in the remainder of Duck Lake for wildlife purposes and winter release;

The Duck Lake Dyking District is an Improvement District incorporated under the Water Act of the Province of British Columbia, charged with the maintenance of the dykes in respect of the lands referred to in the said Order of 12 October 1950;

In response to a joint application by the Creston Reclamation Company Limited and the Duck Lake Dyking District, the International Joint Commission on 3 April 1956 issued an Order amending the Commission's Order of Approval dated 12 October 1950;

By the terms of an Agreement dated 13 February, 1969, the Duck Lake Dyking District conveyed to Her Majesty the Queen in the right of the Province of British Columbia the dykes separating Duck Lake from the East Branch of the Kootenay River and from the reclaimed lands referred to in the Order of 12 October 1950, together with pumping installations, and also assigned to the said Province its Conditional Water Licence No 29212; and the Province assumed full responsibility for the maintenance and operation of such dykes and pumping installations;

The Creston Valley Wildlife Management Authority, established in 1968 by an Act of the British Columbia Legislature, has made an application which was received by the Commission on 24 June 1969 for approval of construction of a dyke, and appurtenant works, to divide Duck Lake into two areas (a water fowl nesting area of approximately 850 acres and a flood control reservoir of approximately 3150 acres) and for an Order further amending the Commission's Order of Approval dated 12 October 1950 as amended by the Commission's Order of Approval dated 3 April 1956;

Notice of receipt of the Application and of a public hearing to be held on 12 August 1969 was published in accordance with the Rules of Procedure of the Commission but at the request of the Applicant the Commission postponed the hearing;

After due notice a public hearing was held in the Town of Creston, in the Province of British Columbia, on 27 February 1970, at which all persons interested were given convenient opportunity of presenting evidence to and being heard before the Commission;

At the hearing the Kootenai Valley Reclamation Association, Bonners Ferry, Idaho, opposed Commission approval of the Application if it would result in an increase in elevation of the Kootenai River during the high water period;

Commission approval of the Application was not opposed by any other persons or Governments who appeared at the public hearing or who presented statements to the Commission;

The Commission has been informed by its International Kootenay Lake Board of Control that approval of the Application would result in a negligible increase in water levels at the International Boundary, compared with levels attributable to the Duck Lake project as approved by the Order of Approval of 12 October 1950;

WHEREAS the designation "Water Resources Branch, Department of Northern Affairs and National Resources", has been changed to "Water Survey of Canada, Department of Energy, Mines and Resources", since the Order of Approval of 3 April 1956 was adopted.

NOW THEREFORE THIS COMMISSION ORDERS AND DIRECTS that:

1. Construction, maintenance and operation by The Creston Valley Wildlife Management Authority of a dyke in Duck Lake commencing at a point near latitude $49^{\circ}13'$, longitude $116^{\circ}38'$, on the West shore of Duck Lake to a point near the mouth of Duck Creek approximately 1000 feet Southwest of latitude $49^{\circ}13'$, longitude $116^{\circ}36'$, and thence South to join the existing cross dyke formerly owned by the Duck Lake Dyking District, complete with control pump and re-circulation works, as described in the Application, be and the same are hereby approved, subject to the following conditions:

- (a) The said dyke shall have a crest elevation of 1748.0.
- (b) The pump installed in the said dyke shall have a capacity of not less than 11,200 United States gallons per minute and shall discharge in either direction as required, through a 42 inch diameter pipe with invert at elevation 1740.0.

- (c) The re-circulation works installed in the said dyke near its West end shall have a pipe of not less than 42 inches in diameter, with an invert elevation of 1740.5.
- (d) Two additional pumps shall be installed at the North end of Duck Lake, adjacent to the two existing pumps formerly owned by the Duck Lake Dyking District, each having a capacity of not less than 30,000 United States gallons per minute and discharging through a 36 inch diameter pipe with an invert elevation of 1750.0.
- (e) During construction of the said dyke, the water level of Duck Lake may be reduced to elevation 1742.0 or lower to permit construction under dry conditions.
- (f) Construction of the works approved herein shall commence and be substantially completed in 1970.
- (g) Upon completion of construction, the water elevation of the portion of Duck Lake south of the said dyke, hereinafter called the nesting area, shall be raised to elevation 1744 and, subject to condition (g) herein, shall be maintained at that elevation all year round.
- (h) If required in order to control undesirable plant growth, the nesting area ~~may be completely pumped~~ out into the northerly portion of Duck Lake and may

be allowed to remain dry during the months of September to January inclusive.

(i) Upon completion of construction of the said dyke, the discharge control works at the outlet of Duck Lake shall be operated in accordance with the Order of Approval issued by this Commission on 12 October 1950, as amended by the Order of Approval issued on 3 April 1956 and as further amended by this Order.

2. The Order of Approval issued by this Commission on 12 October 1950, as amended by the Order of Approval issued on 3 April 1956, be and the same is hereby further 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 Survey of Canada, Department of Energy, Mines and Resources, and the Applicant or its successor shall maintain said gauge to the satisfaction of said Water Survey and shall provide said Water Survey 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 thereof is amended to read:

In years of low local spring supply to Duck Lake and when the level of the northerly portion of that Lake is not raised thereby to elevation 1745.0 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 1745.0 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 1745.0 and thereafter the gates may be closed until commencement of the storage drawdown period on or about January 7 of the following year.

3. All conditions imposed in the said Order of Approval, dated 12 October 1950, as amended by the said Order of Approval dated 3 April 1956 and by this Order, upon the Creston Reclamation Company Limited or its successor apply jointly to the Creston Valley Wildlife Management

Authority, the Duck Lake Dyking District and the Creston Reclamation Company Limited.

4. This approval will terminate sixty (60) days after the Applicant's receipt of this Order unless within that time the Applicant informs the Commission in writing that it accepts all of the conditions set forth herein.
5. The Commission retains jurisdiction over the subject matter of this Application and, after giving such notice and opportunity to all interested parties to make representations as the Commission deems appropriate, may make further order or orders relating thereto as may be necessary in the judgment of the Commission.

Signed this 31st day of March, 1970.

D. R. King
Eugene W. Weber
Charles R. Orr
A. D. Scott
W. W. Douglas