

ORDER OF APPROVAL
OF THE
INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE WEST KOOTENAY
POWER AND LIGHT COMPANY, LIMITED, FOR PERMISSION TO
STORE ADDITIONAL WATER IN KOOTENAY LAKE BETWEEN ELEV-
ATIONS 1745.32 and 1747.32 (QUEEN'S BAY GAUGE)

June 30, 1941

To which is attached the Application of the West Kootenay Power
and Light Company, Limited, for storage of water in Kootenay Lake
in addition to the storage authorized by the Order of Approval dated
the 11th day of November, 1938.

June 7, 1941

And the Order of Approval of the Commission in the matter of the
Application of the West Kootenay Power and Light Company, Limited,
for permission to construct and operate certain works in and adjacent
to the channel of the Kootenay River in the Province of British
Columbia, and for the right to store water in Kootenay Lake in the
said Province of British Columbia.

November 11, 1938

OTTAWA - WASHINGTON

JUNE 30, 1941

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE WEST KOOTENAY
POWER AND LIGHT COMPANY, LIMITED, FOR PERMISSION TO
STORE ADDITIONAL WATER IN KOOTENAY LAKE BETWEEN
ELEVATIONS 1745.32 and 1747.32 (QUEEN'S BAY GAUGE)

ORDER OF APPROVAL

WHEREAS by an Order dated the 11th day of November, 1938, the International Joint Commission, under authority of Article IV of the Treaty of January 11th, 1909, authorized the West Kootenay Power and Light Company, Limited, to construct and operate certain works in and adjacent to the channel of the Kootenay River in the Province of British Columbia, and to store water in Kootenay Lake in the said Province of British Columbia; and

WHEREAS the said West Kootenay Power and Light Company, Limited, did on the 10th day of June, 1941, present to and file with the Commission, under the provisions of Article IV of the Treaty of January 11th, 1909, an Application dated the 7th day of June, 1941, for permission, as a temporary measure during the winter period of 1941-1942, to store two feet of water in Kootenay Lake over and above the six feet authorized by the Commission in its said Order of the 11th day of November, 1938; and

WHEREAS it appears from the said Application that because of very adverse run-off conditions during the year 1941 to date, it is highly probable that unless a portion of the high summer flow is conserved in storage, there will be a shortage of water for power purposes during the winter of 1941-1942; and

WHEREAS it is represented by the Applicant, and strongly supported by the Power Controller of Canada and the Minister of Munitions and Supply of Canada, that the additional storage applied for is essential to the carrying out of war contracts by the Consolidated Mining and Smelting Company of Canada, Limited, which uses about ninety-five per cent of the electric power produced by the West Kootenay Power and Light Company, Limited; and

WHEREAS the Application is supported by statements and petitions made on behalf of the Creston Dyking District of Creston, British Columbia, the Reclamation Farm Association of Creston, British Columbia, and the Kootenai Valley Reclamation Association of Bonners Ferry, Idaho; such support being made subject, in the case of the Creston Dyking District and the Reclamation Farm Association, to an undertaking by the Applicant to compensate the said District and the said Association for the cost of any additional pumping which may reasonably be attributed

to the proposed increase in storage on Kootenay Lake; and in the case of the Kootenai Valley Reclamation Association to an undertaking by the said Applicant to pay to the Drainage Districts in Idaho any additional expense or damage incurred by reason of the additional two feet of storage, over and above the amount of damage provided for in the Commission's Order of November 11th, 1938; and

WHEREAS the International Kootenay Lake Board of Control has investigated and supports the statement of the Applicant that there is a distinct probability of a shortage of water for power purposes in the lower Kootenay River during the storage period of 1941-1942; and

WHEREAS the Application came on for hearing in the City of Nelson, in the Province of British Columbia, on the 30th day of June, 1941, after due notice to all parties interested in both countries of the filing of the Application and of the time and place of hearing, when evidence was adduced and all parties desiring were heard.

NOW THEREFORE THIS COMMISSION DOETH ORDER AND DIRECT:

1. That the Application of the West Kootenay Power and Light Company, Limited, for permission to store temporarily two additional feet of water in Kootenay Lake, in the Province of British Columbia, between Elevations 1745.32 and 1747.32 (Queen's Bay gauge), be,

and the same is hereby, approved, under the terms of the Treaty of January 11th, 1909, subject to the conditions and regulations hereinafter set forth.

2. That subsequent to the 1941 flood peak and when the lake level at Queen's Bay on its falling stage recedes to Elevation 1747.32, Geodetic Survey of Canada datum, 1928 adjustment, the gates of the Corra Linn dam may be so operated as to retain said lake level up to Elevation 1747.32 which shall be the maximum storage level until January 7th, 1942, and thereafter the lake level shall be progressively lowered so that it shall not exceed Elevation 1745.6 on February 1st, Elevation 1743.2 on March 1st, and Elevation 1739.32 on or about April 1st, except under extraordinary high inflow conditions when sufficient gates shall be opened and kept open throughout such period of excess inflow so as to lower the lake sufficiently to meet the requirements of this Order.
3. That any expense incurred or damage sustained by the Drainage Districts in Idaho by reason of the additional two feet of storage, irrespective of the amount of damage provided for in the Commission's Order of November 11th, 1938, shall be paid to the Drainage Districts in Idaho by the Applicant: provided that all claims for compensation

shall be submitted through and approved by the Kootenai Valley Reclamation Association; and in case of disagreement between the Association and the Applicant, shall be referred for decision to the International Kootenay Lake Board of Control.

4. That the Applicant shall compensate the drainage or other interests in British Columbia for the costs of any additional pumping, as well as for loss to Indian wild hay lands, caused by the temporarily increased storage on Kootenay Lake. In case of disagreement between the Canadian interests and the Applicant, the claims shall be referred to the International Kootenay Lake Board of Control for decision.
5. That to ensure the carrying out of the provisions of this Order the Commission shall retain jurisdiction over the regulation of the levels of Kootenay Lake through the International Kootenay Lake Board of Control, whose duties, as set out in Section (5) of the Commission's Order of the 11th November, 1938, shall apply to the additional storage provided for in the present Order.
6. That nothing in this Order is to be construed as repealing the Commission's Order of November 11th, 1938.

7. That the terms of this Order are to apply until April 1st, 1942, after which date the terms of the Order of November 11th, 1938, shall be in full force and effect.

Dated at the City of Nelson, British Columbia, this 30th day of June, 1941.

Chas Stewart
A. J. Stanley
J. L. Larrault.
Roger B. McWhorter

Application of the West Kootenay Power and Light Company,
Limited, for storage of water in Kootenay Lake in
addition to the storage authorized by the Order of
Approval dated the 11th day of November, 1938.
June 7, 1941.

APPLICATION OF WEST KOOTENAY POWER AND LIGHT COMPANY,
LIMITED TO THE INTERNATIONAL JOINT COMMISSION FOR
PERMISSION FOR STORAGE OF WATER IN KOOTENAY LAKE
IN ADDITION TO THE STORAGE AUTHORIZED BY THE ORDER
OF APPROVAL DATED THE ELEVENTH DAY OF NOVEMBER, 1938.

TO THE HONOURABLE THE INTERNATIONAL
JOINT COMMISSION, Ottawa, Canada,
and Washington, D.C.

THE UNDERSIGNED, as solicitor for West Kootenay
Power and Light Company, Limited (hereinafter called
"the Company") respectfully represents:

(1) That the Company is a corporation constituted by
a special act of the Province of British Columbia, being
Chapter 63 of the Statutes of 1897, as amended by Chapter
76 of the Statutes of 1911, and Chapter 76 of the Statutes
of 1929, (which are set out in Appendix 1 to the original
application dated the sixth day of September 1929,
presented to and filed with the International Joint
Commission) and is authorized and empowered, inter alia,
to acquire and hold water licenses to develop and supply
power, and to do all necessary or incidental things, in-
cluding the building of dams and compensating works for
the storage of water in rivers, streams or lakes within a
radius of one hundred and fifty (150) miles from the City
of Rossland in the said Province.

(2) That the said application was superseded by an amended application dated the eighth day of February, 1932, presented to and filed with the said Commission; that by an instrument in writing bearing date the seventh of September, 1938, and filed with the said Commission, the Company applied for leave to revive the said amended application of the eighth of February, 1932; and that the Commission granted the Company leave to revive the said amended application.

(3) That the said amended application came on for hearing before the said Commission during the month of October, 1938, and that the Commission made its Order of Approval, dated the eleventh of November, 1938, whereby the Commission ordered and directed, inter alia, that the Company be permitted to store water in the main body of Kootenay Lake to a maximum elevation of 1745.32, Geodetic Survey of Canada datum, 1928 Adjustment.

(4) That the Commission further ordered that to ensure the carrying out of the provisions of the said Order the Commission shall retain jurisdiction over the regulation of the levels of Kootenay Lake through a joint board of engineers to be known as the International Kootenay Lake Board of Control, and that such Board may at any time make representations to the Commission in regard to any matter affecting or arising out of the terms of the said Order.

(5) That the Company has fully complied with all the conditions and regulations of the said Order on its part to be observed and performed.

(6) That the Company has consulted the said Board with respect to obtaining the permission of the Commission to store (subject to paragraph 13 of this application) an additional two feet of water above the elevation 1745.32 during the low water months of the years 1941 and 1942.

(7) That the snowfall in the Kootenay River drainage area during the winter of 1940-41 was much less than normal, and that as a consequence thereof all indications point to the probability of a very low seasonal runoff during the year 1941, and of a low flow into the Kootenay Lake storage basin during the low water months of the year 1941 and during the first four months of the year 1942.

(8) That most of the power produced by the Company is now used in the production of vital materials of war and that there is an urgent need that the supply of the said power be adequate and continuous.

(9) That unless the Company is able to maintain a sufficient supply of water in storage in Kootenay Lake the Company may be unable to maintain an adequate and continuous supply of power.

(10) That the Company therefore desires permission to store the said additional two feet of water.

(11) That in order to provide a measure of protection against a water shortage and a consequent power shortage

during the low water months of the year 1941 and the first four months of the year 1942, the Company proposes, if permission is granted for the additional storage hereby applied for, to effect such storage by commencing a regulation, in that behalf, of the flow of water through Corra Linn dam, when the level of Kootenay Lake at Queen's Bay reaches, on the falling stage, the elevation 1747.32. If the said permission is granted, but is not granted before the level of Kootenay Lake at Queen's Bay reaches, on the falling stage, an elevation lower than 1747.32, the Company proposes to effect the said storage (to such extent as may be possible) by storing surplus water whenever the same may be available, as soon as possible after the said permission has been granted.

(12) That, if the Commission grants permission for the said storage, the Company will pay the cost of any additional pumping which may be required in the drainage districts affected by the said storage and which may reasonably be attributed to such storage.

(13) That the said Board has recommended to the Company that the Kootenay Lake elevation at Queen's Bay be limited to elevation 1747.32 from the day when regulation in behalf of the said storage commences to and including the 7th day of January, 1942, and thereafter the elevation of the said Lake shall be lowered so that it shall not exceed elevation 1745.6 on the 1st day of February, 1942, elevation 1743.2 on the 1st day of March, 1942, and eleva-

tion 1739.32 on the 1st day of April, 1942, and that the Company is willing to regulate the said storage in accordance with the said Board's recommendations to the limits of its facilities for regulation.

(14) That if the flow of water through Corra Linn dam is so regulated as to create the said storage, the level of Kootenay Lake and of Kootenay River at the International Boundary Line will be raised to a slightly higher elevation during the low water months of the year 1941 and the first ~~three~~ months of the year 1942 than would result from the storage of water under the said Order of Approval.

(15) That no interests in the United States or Canada could be adversely affected by the said storage in view of the intention of the Company to pay the cost of additional pumping as mentioned in paragraph 12 of this application.

WHEREFORE the undersigned on behalf of the Company applies to the Honourable the International Joint Commission for permission for the storage in Kootenay Lake in the manner above mentioned of an additional two feet of water above the elevation 1745.32.

Respectfully submitted,

A. L. Johannson

Solicitor for West Kootenay
Power and Light Company, Limited.

Dated at Trail, B. C.,
this 7th day of June, 1941.

Order of Approval of the Commission in the matter of the Application of the West Kootenay Power and Light Company, Limited, for permission to construct and operate certain works in and adjacent to the channel of the Kootenay River in the Province of British Columbia, and for the right to store water in Kootenay Lake in the said Province of British Columbia. November 11, 1938.