

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE WEST KOOTENAY  
POWER AND LIGHT COMPANY LIMITED FOR PERMISSION TO  
CONTINUE STORAGE OF WATER IN KOOTENAY LAKE TO A  
MAXIMUM STAGE OF ELEVATION 1747.32 FEET AS RECORDED  
AT QUEENS 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 11, 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, on the 10th day of June, 1941, did present to and file  
with the Commission an Application dated the 7th day of June,  
1941, for permission, as a temporary measure during the winter  
period of 1941-1942, to make more extensive use of Kootenay Lake  
for storage purposes than was authorized by the Commission in  
its Order of November 11, 1938; and

WHEREAS by an Order dated the 30th day of June, 1941, the Commission authorized the West Kootenay Power and Light Company, Limited, to store water in Kootenay Lake to a maximum stage of elevation 1747.32 feet (Queens Bay gauge), instead of elevation 1745.32 feet as prescribed in said Order of November 11, 1938; and

WHEREAS the said West Kootenay Power and Light Company, Limited, did on the 15th day of June, 1942, present to and file with the Commission an Application dated the 9th day of June, 1942, for permission to store water in Kootenay Lake to a maximum elevation of 1747.32 feet (Queens Bay gauge) during each year for the duration of the war and for such period thereafter as might be authorized by the Commission in order to provide a measure of protection against a water shortage and consequent power shortage during the low water months; and

WHEREAS it is represented by the Applicant that climatic conditions in the Kootenay River drainage area frequently cause relatively low flow into Kootenay Lake during the months extending from August well into the following April; that the Company requires a flow of water from Kootenay Lake reservoir amounting to more than 12,000 cubic feet per second for full capacity operation of its power plants; that unless the Company is able to store water in Kootenay Lake for use in conjunction with the natural inflow to the

lake, a serious shortage of power may result and as a consequence production of important materials may be considerably reduced; and that all of the power which the Company can produce in its Kootenay River power plants is needed for production of materials vitally important to the war effort; and

WHEREAS the representations of the Applicant are strongly supported by the Minister of Munitions and Supply of Canada, by counsel representing the Government of Canada, by the United States War Department and by the War Production Board of the United States; and

WHEREAS the Application came on for hearing in the City of Nelson, in the Province of British Columbia, on the 20th day of August, 1942, after due notice to all interested parties in both countries of the filing of the Application and of the time and place of hearing, when evidence was adduced and all interested parties desiring to be heard were fully heard; and

WHEREAS the Commission because of the urgency of harvesting operations in Idaho had previously agreed to hear, and did hear, certain interested parties from that State at Creston, in the Province of British Columbia, on August 18, 1942;

NOW THEREFORE THIS COMMISSION DOETH ORDER AND DIRECT:

1. That the Application of the West Kootenay Power and Light Company, Limited, for permission to continue storage of water

in Kootenay Lake to a maximum elevation of 1747.32 feet (Queens Bay gauge) be and the same is hereby approved, under the terms of the Treaty of January 11, 1909, subject to the conditions and regulations hereinafter set forth.

2. That after the high water of the spring and early summer floods and when the lake level at the Queens Bay gauge on its falling stage recedes to elevation 1744.32 feet, the gates of the Corra Linn dam shall be so operated as to retain the water at said elevation 1744.32 feet until August 20, and after that date the level of the lake may be raised to elevation 1747.32 feet, which shall be the maximum storage level until January 7, and thereafter the lake level shall be progressively lowered so that it shall not exceed elevation 1745.60 on February 1, elevation 1743.20 on March 1, and elevation 1739.32 on April 1. Under conditions of extraordinary high inflow sufficient gates shall be opened and kept open throughout such period of excess inflow so as to lower the lake sufficiently, if possible, to meet the requirements of this Order.
3. That all expenses, including additional pumping and construction of additional drainage facilities by reason of the additional two feet of storage, and all damage to lands or crops in the drainage districts or other areas in Idaho adversely affected by said additional storage shall be paid by the Applicant, irrespective

of the amounts the Company is required to pay under the terms of the Commission's Order of November 11, 1938; provided, that all claims for compensation shall be submitted to and approved by the Kootenai Valley Reclamation Association, and in case of disagreement between that Association and the Applicant shall be referred for decision to the International Kootenay Lake Board of Control, and in the event of disagreement in said Board shall be referred for final determination to the International Joint Commission.

4. That the West Kootenay Power and Light Company, Limited, upon receipt of claims duly approved by the Kootenay Valley Reclamation Association for expenses and damages mentioned in paragraph 3 of this Order, shall within 30 days either pay such claims or refer them to the International Kootenay Lake Board of Control, and upon a final determination by that Board such claims shall be paid within thirty days.
5. That the Applicant shall also pay all expenses incurred and all damages sustained by the drainage districts and all other interests in British Columbia by reason of the additional two feet of storage, said expenses and damages to include additional pumping, the construction of additional drainage facilities, damage to lands and crops as well as for loss to Indian wild hay lands. In case of disagreement the claims shall be referred to the

International Kootenay Lake Board of Control for decision, and in the event of disagreement in said Board shall be referred to the International Joint Commission.

6. The West Kootenay Power and Light Company, Limited, upon receipt of claims for expenses and damages mentioned in paragraph 5 of this Order shall within 30 days either pay said claims or refer them to the International Kootenay Lake Board of Control, and upon final determination by that Board such claims shall be paid within thirty days.
7. 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 day of November, 1938, shall apply to the additional storage provided for in this Order.
8. That nothing in this Order is to be construed as repealing the Commission's Order of November 11, 1938.
9. That unless otherwise ordered by the Commission the provisions of this Order are to apply until April 1, 1944, or until the cessation of hostilities, whichever shall occur first; whereupon and thereafter the provisions of said Order of November 11, 1938, shall be in full force and effect until otherwise ordered

by the Commission.

Dated at the City of New York, this twenty-third day of  
October, 1942.

A. D. Stanley.

Chas Stewart

Roger B. McWhorter

J. E. Terrault.