

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE WEST KOOTENAY POWER AND LIGHT COMPANY, LIMITED, AND THE CONSOLIDATED MINING AND SMELTING COMPANY OF CANADA, LIMITED, FOR PERMISSION TO STORE TWO FEET OF WATER IN KOOTENAY LAKE IN ADDITION TO THE STORAGE AUTHORIZED BY THE COMMISSION IN ITS ORDER OF APPROVAL OF NOVEMBER 11. 1938.

ORDER OF APPROVAL

OTTAWA, CANADA
August 5, 1949

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In this Order the word "Treaty" means the Treaty dated January 11, 1908, between the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the Dominions beyond the Seas, Emperor of India; the word "Commission" means the International Joint Commission; the word "Applicants" means the West Kootenay Power and Light Company, Limited, a body corporate constituted by the Legislature of the Province of British Columbia, Canada, having its head office and principal place of business in the City of Trail in said Province, and The Consolidated Mining and Smelting Company of Canada, Limited, a body corporate incorporated by letters patent issued by the Secretary of State under the Companies Act of the Dominion of Canada, having its principal place of business in the Municipality of Tadoussac, near the City of Trail, in the Province of British Columbia; the word "Application" means the Application dated August 3, 1948, transmitted to the Commission by the Canadian Government on behalf of the Applicants, and

here being considered and acted upon by the Commission; and the word "Board" means the International Kootenay Lake Board of Control heretofore created by the Commission.

WHEREAS by an Order dated November 11, 1938, the Commission, under authority of Article IV of the Treaty, ordered and directed that the West Kootenay Power and Light Company, Limited, be permitted to construct and operate certain works in and adjacent to the channel of the Kootenay River below Kootenay Lake in the Province of British Columbia, and to store water in Kootenay Lake in the said Province to a maximum elevation of 1745.32 feet, Geodetic Survey of Canada datum, 1928 adjustment; said Company being required by that Order to have the lake drawn down to elevation 1739.32 feet by April 1, or about that date, each year; and

WHEREAS as a temporary measure during the 1941-42 storage season only, the Commission by an Order dated June 30, 1941, authorized the West Kootenay Power and Light Company, Limited, to store two feet of water in Kootenay Lake over and above that authorized by the Commission in its Order of November 11, 1938, to a maximum elevation of 1747.32 feet; after which the terms of the Order of November 11, 1938, were to be in full force and effect; and

WHEREAS by Orders of Approval adopted by the Commission in 1942, during the late World War, the last of which was dated October 23, 1942,

the Commission authorized the West Kootenay Power and Light Company, Limited, to continue to store the said additional two feet of water in Kootenay Lake each storage season until April 1, 1944, or until the cessation of hostilities, whichever should occur first; and said Company's right to store the additional water expired on April 1, 1944; and

WHEREAS the West Kootenay Power and Light Company, Limited, and The Consolidated Mining and Smelting Company of Canada, Limited, by a joint Application dated August 3, 1948, have applied to the Commission for renewed permission, without prejudice to their rights under the Commission's Order of November 11, 1938, to store two additional feet of water in Kootenay Lake, between elevations 1745.32 and 1747.32 feet, by regulation of the flow through the Corra Linn dam and power plant; and

WHEREAS the Kootenay River is an international stream flowing across the boundary between the United States and Canada, within the meaning of Article IV of said Treaty; and

WHEREAS while Kootenay Lake is entirely within the Province of British Columbia, the fertile lands comprising the delta of the Kootenay River, commonly known as the Kootenay Flats, lie partly in that Province and partly in the State of Idaho; and

WHEREAS located in, across, and adjacent to the Kootenay River below Kootenay Lake are five existing dams and power plants, identified by the names of Corra Linn, Upper Bonnington, Lower Bonnington, South Sloean and

Brilliant; and the Applicants have advised the Commission that The Consolidated Mining and Smelting Company of Canada, Limited, now owns the Corra Linn, Upper Bonnington, South Slokan and Brilliant dams and power plants, and that the West Kootenay Power and Light Company, Limited, owns the Lower Bonnington dam and power plant; and

WHEREAS all of the power produced by The Consolidated Mining and Smelting Company of Canada, Limited, at its four Kootenay River plants, and a large part of that produced by the West Kootenay Power and Light Company, Limited, at its Lower Bonnington plant, is used by said The Consolidated Mining and Smelting Company of Canada, Limited, in the operation of its industrial plants in British Columbia, for the production of lead, zinc, commercial fertilizers, and other metals and chemicals, of which there are shortages; and

WHEREAS the West Kootenay Power and Light Company, Limited, supplies power to many industries, cities, communities and irrigation districts in southern British Columbia which are dependent on power from this Company's Lower Bonnington plant; and

WHEREAS it is anticipated that the increase in storage desired by the Applicants will be needed during the low flow season to increase power production at the several power plants on the lower Kootenay River in order better to supply the power markets served by the Applicants; and

WHEREAS the additional storage will also increase the firm power available at the Grand Coulee and Bonneville developments in the United

States, which produce power in a region where an acute power shortage exists; the said Grand Coulee and Bonneville developments being owned by the Government of the United States; and

WHEREAS the Applicants have expressed their willingness to be bound to pay all expenses and to be held liable for any damage or injury that may be sustained by interests on the United States side of the international boundary, as a result of the two additional feet of storage in Kootenay Lake, including the cost of additional pumping and construction of additional drainage facilities, which may arise by reason of the additional storage, and to pay for all damage to lands or crops in the drainage districts or other areas on the United States side of the boundary adversely affected by the said additional storage; and

WHEREAS if the level of Kootenay Lake were raised two feet, from elevation 1745.32 feet to elevation 1747.32 feet, as requested by the Applicants, the levels of the Kootenay River at and above (south of) the international boundary in the United States would also be raised; and under Article IV of the said Treaty this may not be done without the prior approval of the Commission; and

WHEREAS after due notice the said Application came on for hearing in Bonners Ferry, Idaho, on September 14, 1948, and in Creston, British Columbia, on September 15, 1948, where evidence was presented by the Applicants and numerous other parties, and all interested parties in both Canada and the

United States desiring to present evidence or make statements were given full opportunity to be heard and were heard; and

WHEREAS the Commission acting under the authority conferred upon it by the Treaty, having considered the Application and all of the evidence submitted, both oral and documentary, is of the opinion that, as a measure of relief from power shortages in both the United States and Canada it would be in the public interest to permit an upward deviation from the basic storage programme approved in the Order of November 11, 1938.

NOW THEREFORE THIS COMMISSION DOETH ORDER AND DIRECT:

That the Application of the West Kootenay Power and Light Company, Limited, and The Consolidated Mining and Smelting Company of Canada, Limited, dated August 3, 1948, for permission to store two additional feet of water in Kootenay Lake between elevations 1745.32 and 1747.32 feet, be and the same is hereby approved, subject to the following conditions:

(1) This approval is for a period of five storage years to commence with the storage season of 1949-50 on the falling stage of Kootenay Lake following the crest of the 1949 spring and early summer flood, and to end with the storage season of 1953-54, viz., April 1, 1954, unless otherwise ordered by the Commission; and the Applicants' regulation of the lake shall be in accordance with the formula hereinafter set forth.

(2) All lake elevations prescribed in this Order shall be determined at the Queen's Bay gauge, and shall be derived from the Queen's Bay Benchmark 1 - the top of a three-quarter inch steel plug set in bedrock - elevation 1758.77 feet, Geodetic Survey of Canada datum, 1928 adjustment, as shown in the records of the Dominion Water and Power Bureau, Canada.

(3) After the high water of the spring and early summer floods of the years 1949 to 1953, inclusive, and when the level of Kootenay Lake at Queen's Bay gauge on its falling stage reaches elevation 1745.0 feet, the gates of the Corra Linn dam may be so operated as to retain the lake at said elevation 1745.0 feet until August 9, and after that date, by storing of surplus water not immediately required for power production, the level of the lake may be raised to elevation 1747.32 feet.

(4) If due to exceptionally high inflow the lake has not been drawn down to elevation 1745.0 feet by August 9, storage of water to any higher elevation otherwise permissible under this Order shall not be commenced until immediately after the lake has fallen to said elevation 1745.0 feet.

(5) Elevation 1747.32 feet shall be the maximum storage level each storage season until January 7, and thereafter the lake level shall be progressively lowered so that it will not exceed elevation 1745.6 feet on February 1, elevation 1743.2 feet on March 1, and elevation 1739.32 feet on or about April 1, except under extraordinarily high inflow conditions, when a sufficient number of gates of the Corra Linn dam shall be opened and kept open throughout such period of excess inflow, so as to cause the lake to be lowered, if possible, to meet the foregoing prescribed requirements.

(6) Throughout the period of flood flow in each and every year (i.e. from the commencement of the spring rise until the level of the lake at Queen's Bay returns to elevation 1745.0 feet on the falling stage), a sufficient number of gates and sluiceways of the said Corra Linn dam shall be opened to provide, in conjunction with the flow through the turbines, for the lowering of the main body of Kootenay Lake, as a result of the excavation completed in 1939 by the Applicant, the West Kootenay Power and Light Company, Limited, by at least the amounts indicated in Table 2, page 21, of the Canadian Government Exhibit No. 1, dated June 1, 1933, on file in the offices of the Commission in Ottawa and Washington, as follows:

<u>Discharge from Kootenay Lake under original conditions (in second feet) computed at Corra Linn</u>	<u>Amount of lowering to be effected on main body of Kootenay Lake (in feet) measured at Queen's Bay</u>
10,000	1.0
25,000	1.3
50,000	1.7
75,000	2.1
100,000	2.6
125,000	3.0
150,000	3.2
175,000	3.5
200,000	3.8
225,000	4.0

(7) The Applicants, their successors or assigns, shall continue to pay the costs incurred in the State of Idaho by reason of the construction and/or operation of the Corra Linn dam and power plant, just as they have done heretofore under said Order of November 11, 1938, the amount of such payment (irrespective of and in addition to the other payments herein-after provided for) not to exceed in the aggregate in any year the sum of Three Thousand Dollars (\$3,000.00) to be paid to the Treasurer of the State of Idaho or some authority designated by that State on January 1, in each and every year; provided always, that after any payment has been made, the Applicants shall not be required to make any further payments under the said Order of November 11, 1938, until the Treasurer of the State of Idaho, or other designated Idaho authority, has produced vouchers for payment to claimants of the amounts required to cover the said costs, and has remitted the unexpended balance, if any, to the Applicants; and provided further, that the Applicants shall not be entitled to dispute the validity of any vouchers produced as aforesaid.

(8) Pursuant to provisions embodied in Article VIII of said Treaty, the Commission hereby requires that the Applicants, their successors or assigns, shall suitable and adequately protect and indemnify all interests on the United States side of the international boundary which may be injured as a result of the additional storage in Kootenay Lake above elevation 1745.32 feet. Without limiting the generality of the foregoing language the said Applicants are hereby specifically bound to pay all

expenses that may be incurred on the United States side of the international boundary, including the costs of additional pumping and of the construction of additional drainage facilities, which may arise in the State of Idaho by reason of said additional storage, and to pay for all damage to lands or crops in the drainage districts or reclamation districts or other areas in the State of Idaho adversely affected by said additional storage; any such payments to be irrespective of and additional to the amounts the Applicants are or may be required to pay under the terms of the Commission's Order of November 11, 1938, and under condition 7 of this Order.

(9) In order 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 its existing International Kootenay Lake Board of Control, hereinafter referred to as "the Board", which consists of two United States members and two Canadian members, appointed by the Commission. The Board, under the direction of the Commission, is hereby charged with the duty of securing compliance with the provisions of this Order insofar as they relate to the regulation of the levels of Kootenay Lake; and in addition to the duties above and hereinafter particularly mentioned, it shall perform and discharge such other duties as may from time to time be assigned to it by the Commission. The Board shall report to the Commission at such times as the Commission may determine. In the event of any disagreement between the members of the Board, the matter shall be referred by them to the Commission for final decision. The Board may at any time make representations to the Commission in regard to any matter affecting or arising out of the terms of this Order.

(10) All damage claims which may arise in the Idaho portion of the Kootenay Flats as the result of the additional two feet of storage shall in the first instance be submitted for approval to the Kootenai Valley Reclamation Association, which will act as the agent for the claimants in dealing with the Applicants, and in case of disagreement between the said Association and the Applicants, the claim or claims in question shall be referred for decision to the Board, and in the event of a disagreement in the Board such claim or claims shall be referred to the

Commission for final determination. The aggregate amount of money, determined in accordance with the above prescribed procedure to be due the Idaho reclamation farmers at any time in settlement of their claims, shall be paid promptly by the Applicants; and provided further that the reclamation farmers of Idaho shall present their claims, in accordance with the procedure hereinbefore prescribed, within a reasonable time after they become cognizant of the damages and that the said Association shall notify the Applicants of such claims within a reasonable time, but failure to do so shall not preclude the right of the said farmers from just compensation.

(11) The Applicant, The Consolidated Mining and Smelting Company of Canada, Limited, shall maintain and operate automatic gauges in a manner and at locations and of a type satisfactory to the Board, as follows:

- I. In the Kootenay River at the tailrace of the Corra Linn power plant;
- II. In the Kootenay River at the forebay of the Corra Linn power plant;
- III. In the West Arm of Kootenay Lake at Nelson, British Columbia; and
- IV. On Kootenay Lake in the vicinity of Queen's Bay, near the lake outlet, this being the gauge referred to in condition 2 of this Order;

and the records of these gauges shall be regularly made available to and filed with such authority as the Board may direct. It is hereby directed, without limiting the generality of the foregoing, that the Applicant, The Consolidated Mining and Smelting Company of Canada, Limited, shall make adequate provision to the satisfaction of the Board for the determination of the flow of the river as provided in condition 6 of this Order, and shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Board, and shall make return of such records at such time and in such form as may be required by the Board.

(12) The Applicant, The Consolidated Mining and Smelting Company of Canada, Limited, shall make available to the Board such data relating to the discharge through the Corra Linn dam and power plant, or relating to power load, as the Board may consider

to be desirable or necessary to enable it to ensure observance of the provisions of this Order.

(13) The cost of maintaining all parts of the Corra Linn dam and all sluices and log sluices and the above mentioned gauges shall be borne by the Applicant, The Consolidated Mining and Smelting Company of Canada, Limited, and this work and maintenance shall be done in a manner satisfactory to the Board.

(14) The regulation of the flow of water through the Corra Linn dam, to the extent required under the conditions of this Order, shall be subject to the supervision and control of the Board, under the direction of the Commission.

(15) The Commission, on the report of the Board during spring and early summer floods or freshets, may determine that an emergency condition exists, and may then require the Applicant, The Consolidated Mining and Smelting Company of Canada, Limited, to cooperate fully with the Board in regulating the flow of water through the said Corra Linn dam, to the end that the rights and interests of all parties will be protected so far as it is practicable so to do.

(16) The Applicants, without incurring any financial obligation or responsibility therefor, shall cooperate and assist in any measures that may be undertaken under the authority of the Governments of Canada and the United States with a view to further channel enlargement designed to improve flood water conditions in the Kootenay Flats in the Province of British Columbia and in the State of Idaho.

(17) Nothing in this Order shall be construed as freeing and relieving the Applicants of any claims for injuries, damage or loss, sustained by reason of their storage operations, by any person or persons or corporation or any other interests in Canada or the United States, which may be affected by such operations and which are not otherwise provided for herein.

(18) The provisions of the Commission's Order dated November 11, 1938, shall continue in full force and effect save insofar as such provisions are modified or extended by this Order.

The Commission reserves the right to amend or rescind
this Order.

Approved in the City of Ottawa, this the fifth day
of August, 1949.

J. Allison Kelly

A. D. Lunn

Feb. J. J. J.

Robert B. McWhorter

Eugene W. Wilson

