

INTERNATIONAL JOINT COMMISSION

In the matter of the Order of Approval dated the 5th day of August, 1949, granting permission to the West Kootenay Power and Light Company, Limited and The Consolidated Mining and Smelting Company of Canada Limited to store two feet of water in Kootenay Lake in addition to the storage authorized by the Commission in its Order of Approval of the 11th day of November, 1938.

ORDER OF FINAL DETERMINATION

WHEREAS the Order of Approval of the Commission dated the 5th day of August, 1949, which granted to the West Kootenay Power and Light Company, Limited (hereinafter called "the Power Company") and The Consolidated Mining and Smelting Company of Canada Limited (hereinafter called "the Mining Company") permission to store two additional feet of water in Kootenay Lake between elevations 1,745.32 and 1,747.32 feet, provided, inter alia,

"(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.";

AND WHEREAS the said Kootenai Valley Reclamation Association presented to the Power Company and the Mining Company damage claims for crop loss: or damage, additional cultivation, pumping installations, excavation of ditches, pumping and loss of seed and fertilizer for the calendar year 1951, and resubmitted claims for the calendar year 1950, aggregating approximately \$80,000.00;

AND WHEREAS the Power Company and the Mining Company were unable to agree with the Kootenai Valley Reclamation Association that the damage claims presented arose as the result of the additional two feet of storage in Kootenay Lake authorized by the Commission's Order of Approval dated 5 August 1949;

AND WHEREAS the said claims were, in accordance with the said Order of Approval, referred for decision to the International Kootenay Lake Board of Control (hereinafter referred to as "the Board");

AND WHEREAS the Board concluded that regardless of the lack of substantive proof, damage was suffered by the members of the Association during the storage period 1950-51, but that the Board could not determine the amount of the damage or what portion of it might be attributable to the additional two feet of storage;

AND WHEREAS the said claims were referred to the Commission for final determination;

AND WHEREAS the Commission, at its semi-annual meeting in Ottawa, held on the 9th day of October, 1953, took notice of the fact that the said claims had been pending for a considerable time and delegated authority to the Hon. George Spence, Canadian Member of the Commission, and Mr. Roger B. McWhorter, United States Member of the Commission, to hold a public hearing at Bonners Ferry, Idaho;

AND WHEREAS the said public hearing was held on the 30th day of November and the first day of December, 1953, and full opportunity was afforded to all interested parties to appear and make their views known to the Commission;

AND WHEREAS representatives of the Kootenai Valley Reclamation Association and the Village of Bonners Ferry presented evidence in support of the said claims, and representatives of the Power Company and the Mining Company presented evidence in dispute of the claims arising as a result of the additional two feet of storage;

AND WHEREAS since the said hearing, the Kootenai Valley Reclamation Association has agreed with the Power Company and the Mining Company that, without determination of whether the alleged damage could be properly attributable to the additional two feet of storage, it would accept as a compromise settlement of the said matter pending before the Commission the sum of \$58,300, and the Power Company and the Mining Company have agreed that without acknowledging or being bound by the contentions of the Association

and its members, they would make a voluntary payment of that sum on the terms and conditions: (i) that the Association has represented to the Power Company and to the Mining Company that more than that sum has been expended by the drainage districts and members of the Association for the improvement of drainage and pumping facilities in the drainage or reclamation districts or other areas in the Idaho portion of Kootenai Flats during the past two and one-half years, and that an additional sum of approximately \$18,000 will be expended on pump installations in the pumping season 1954-1955; (ii) that the Association, in accepting the said settlement, confirms that the settlement will release the Power Company and the Mining Company from all claims whatsoever by all or any of the reclamation farmers in the Idaho portion of Kootenai Flats and the Village of Bonners Ferry, arising out of the said Order dated 5th August, 1949, and that none of the said farmers nor the said Village shall have any further right to compensation under that Order; and (iii) that when the Commission has adopted an Order of Final Determination in respect of the claims presented to the Commission determining that the said sum of \$58,300 be paid on the terms and conditions of the compromise settlement, and recognizing that the same constitutes suitable and adequate indemnity to all interests in Idaho which may have been injured or alleged to have been injured as a result of the additional two feet of storage which has been maintained in Kootenay Lake during

the effective period of the Order of Approval dated 5 August, 1949, without the Commission passing upon the evidence and argument presented by the respective parties, payment of the said sum of \$58,300 would be made by the Power Company and the Mining Company to the Kootenai Valley Reclamation Association by depositing the same to the Association's credit in the First National Bank of Bonners Ferry;

AND WHEREAS the Kootenai Valley Reclamation Association, as the agent of the several claimants under the terms of the Commission's Order of 5 August 1949, will exercise responsibility for apportioning the said \$58,300 equitably among the claimants, with the exception of \$171.29 thereof to be retained by said Association as a small service fee; and the Association has supplied the Commission with a statement dated 13 July 1954 showing the distribution it proposes to make of said \$58,300, with the exact amount of money to be delivered to each claimant shown thereon;

NOW, THEREFORE, THIS COMMISSION DOETH ORDER AND DIRECT:

1. That in view of the voluntary settlement referred to above it is unnecessary for the Commission to pass upon the evidence and arguments presented by the Kootenai Valley Reclamation Association, the Power Company and the Mining Company at the Public Hearing held at Bonners Ferry, Idaho, on the thirtieth day of November and the first day of December, 1953.
2. That the Commission approves the terms of the said settlement between the parties aforesaid.

3. That this Commission determines the said sum of \$58,300, together with such other sums as may have been paid to the Kootenai Valley Reclamation Association by the said companies, to be suitable and adequate indemnity to all interests in Idaho which have been injured as the result of the additional two feet of storage which has been maintained in Kootenay Lake during the effective period of the Order of Approval dated the 5th day of August, 1949, and that none of the reclamation farmers of Idaho nor the Village of Bonners Ferry shall have any claim whatsoever to compensation for any additional loss or damage allegedly suffered during such effective period.

SIGNED AT WASHINGTON, D.C. THIS 1st DAY OF SEPTEMBER,
1954.

Roger B. McWhorter
John W. Hamilton
Eugene W. Wilson
W. H. Hume
J. H. Anderson