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INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF COMINCO LTD. (FORMERLY 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 NOVEMBER 11, 1938.

ORDER OF APPROVAL

WHEREAS Cominco Ltd. (hereinafter referred to as the Applicant) is a body corporate having its head office in the City of Montreal in the Province of Quebec and its principal place of business in the municipality of Tadanac near the City of Trail in the Province of British Columbia; and

WHEREAS, by an Order dated November 11, 1938, the International Joint Commission, under authority of Article IV of the Boundary Waters Treaty of January 11, 1909, approved the Application of West Kootenay Power and Light Company, Limited, 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 the Order to have the lake drawn down to elevation 1739.32 feet by April 1, or about that date, each year; and

WHEREAS the Commission, by an Order dated June 30, 1941, approved as a temporary measure during 1941-42 storage season only, the Application of West Kootenay Power and Light Company, Limited to store two feet of water in Kootenay Lake over and above that approved 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 World War II, the last of which was dated October 23, 1942, the Commission approved the Applications of West Kootenay Power and Light Company, Limited to continue to store the said additional two feet of water in Kootenay Lake each season until April 1, 1944, or until the cessation of hostilities, whichever should occur first; and said approval expired on April 1, 1944; and

WHEREAS, by an Order dated August 5, 1949, the Commission approved the joint application of West Kootenay Power and Light Company, Limited and The Consolidated Mining and Smelting Company of Canada Limited, 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, by regulation

of the flow through the Corra Linn Dam and Power plant;
the approval to end with the storage season of 1953-54,
viz., April 1, 1954; and

WHEREAS the Applicant without prejudice to its rights
under the Commission's Order of November 11, 1938 has
forwarded to the Commission through the Government of
Canada an Application dated July 11, 1966, for approval
to store two additional feet of water in Kootenay Lake,
between elevations 1745.32 and 1747.32, during the storage
season of 1966-67 only, by regulation of the flow through
the Corra Linn dam and Power plant; and

WHEREAS it is stated in the Application that it was
prompted by a request from Kaiser Aluminum and Chemical
Corporation and associated industries in the Northwest
States of the United States that additional water be
stored in Kootenay Lake and regulated in such a way as to
avoid an interruption in their power supply which could
occur in the event of adverse water conditions during the
fall and winter of 1966-67; and the said industries propose
to arrange with Bonneville Power Administration for an
increase in their power supplies if the Application is
approved; and

WHEREAS it is stated in the Application that the pro-
posed storage and regulation during the low flow season

of 1966-67 would also result in substantial benefits in Canada, including an increase of about twenty-three megawatts in the firm capability of the Applicant's four power plants and an increase of about four megawatts in the firm capability of the Lower Bonnington power plant owned by West Kootenay Power and Light Company, Limited, which plants are located on the Kootenay River below Kootenay Lake; and

WHEREAS West Kootenay Power and Light Company, Limited has recorded its approval and support of the Application; 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 the Boundary Waters Treaty of 1909; 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, if the level of Kootenay Lake is raised two feet, from elevation 1745.32 feet to elevation 1747.32 feet, as requested by the Applicant, the levels of the Kootenay River at and above (south of) the international

boundary in the United States will 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 the Applicant has expressed its 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 and/or Canadian 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 either side of the boundary adversely affected by the said additional storage; and

WHEREAS the Applicant proposes to enter into an agreement with Kaiser Aluminum and Chemical Corporation and associated industries in the Northwest States of the United States under which the Applicant will be indemnified by them respecting all claims of interests in Canada and the United States regarding such loss or damage, or other remedial measures arising out of the two feet of additional storage; and

WHEREAS there has been eight years of experience in the storage of water on Kootenay Lake between elevations 1745.32 and 1747.32; and

WHEREAS, in order to take advantage of surplus water available during August, 1966, and in the special circumstances described herein, the Commission concluded that it would be in the public interest and not prejudicial to the right of interested persons to be heard in accordance with Article XII of the said Treaty, to conduct hearings of the Application sooner than is normally provided; and accordingly, pursuant to Rule of Procedure 19, the Commission reduced the times specified in its Rules of Procedure 15, 16 and 23;

WHEREAS the said Application came on for hearing in Creston, British Columbia, on August 11, and in Bonners Ferry, Idaho on August 12, 1966, when evidence was presented by the Applicant and 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

WHEREAS at the hearings it was stated that a temporary shortage of power for certain vital industries may occur in the United States portion of the Columbia

River Basin during the 1966-67 low flow season; and that the proposed storage and regulation would increase by about 400,000 kilowatt-months the power produced at hydro-electric plants on the Columbia River which are owned by the United States Government, and by about 150,000 kilowatt-months the power produced at other hydro-electric plants on the Columbia River in the United States; and

WHEREAS at the hearings, the Government of Canada, the Government of the United States and the Government of British Columbia stated, through Counsel, that the said Governments had no objection to approval of the Application subject to appropriate conditions; 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 anticipated 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; and

WHEREAS, the Minister of Mines and Technical Surveys of Canada has granted an exception under the International River Improvements Act for the two feet additional storage requested by the Applicant, subject to the approval of the Commission.

NOW THEREFORE THIS COMMISSION ORDERS AND DIRECTS:

That the Application of Cominco Ltd., dated July 11, 1966, for approval 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 the storage season of 1966-67 only, commencing on the date of this Order and expiring when the level of Kootenay Lake at the Queen's Bay gauge reaches elevation 1739.32 or April 1, 1967, whichever occurs first, unless otherwise ordered by the Commission; and the Applicant's 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 1768.77 feet, Geodetic Survey of Canada Datum, 1928 adjustment.

3. After the date of this Order, the gates of the Corra Linn dam may be so operated, as to store surplus water not immediately required for power production, so that the level of the lake may be raised to elevation 1747.32 feet.

4. Elevation 1747.32 feet shall be the maximum storage level until January 7, 1967 and thereafter the lake level shall be progressively lowered so that it will not exceed elevation 1745.6 feet on February 1, 1967, elevation 1743.2 feet on March 1, 1967 and elevation 1739.32 feet on or about April 1, 1967, except under extraordinary 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.

5. Notwithstanding the dates referred to in paragraph four, the Applicant shall, so far as practicable, withdraw the two feet of storage from the lake by December 1, 1966, and that, so far as practicable, the lake will be drawn down to zero level (1739.32 G.S.C. 1928 datum) by March 1, instead of April 1, 1967, as now required by the 1938 Order of the International Joint Commission.

6. In order to ensure the carrying out of the provisions of this Order, the Commission retains 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". 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.

7. (1) Pursuant to provisions embodied in Article VIII of the said Treaty, the Commission hereby requires that the Applicant, its successors or assigns, shall suitably 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

Applicant is 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 the 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 the said additional storage; and such payments to be irrespective of and additional to the amounts the Applicant is or may be required to pay under the terms of the Commission's Order of November 11, 1938.

(2) All damage claims which may arise in Idaho 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 Applicant. In case of disagreement between the said Association and the Applicant, 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 Applicant. 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 the said Association shall notify the Applicant of such claims within a reasonable time, but failure to do so shall not preclude the right of the said farmers to just compensation.

8. All damage claims which may arise in British Columbia as a result of the additional two feet of storage shall in the first instance, be submitted to the Applicant, and failing settlement, are subject to adjudication in accordance with the laws of Canada in a court of competent jurisdiction in British Columbia.

9. Nothing in this Order shall be construed as freeing and relieving the Applicant of any liability arising out of 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.

10. The Applicant 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.

11. 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.

12. The Commission, on the report of the Board, may determine that an emergency condition exists, and may then require the Applicant 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 may be protected so far as it is practicable so to do.

13. 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 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.

This approval will terminate thirty (30) days after the signing of this Order unless within that time the Applicant informs the Commission in writing that it accepts all the conditions set forth herein.

SIGNED this 12th day of August, 1966.

D. J. P. Henry
Matthew F. White
Rene Dupuis

