INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE REVISED APPLICATION OF THE CRESTON RECLAMATION COMPANY, LIMITED, FOR PERMISSION TO CONSTRUCT CERTAIN PERMANENT WORKS ADJACENT TO THE KOOTENAY RIVER AND ITS EAST BRANCH, FOR THE RECLAMATION OF CERTAIN FLOOD LANDS BETWEEN THE INTERNATIONAL BOUNDARY AND KOOTENAY LAKE, NEAR SIRDAR, IN THE PROVINCE OF BRITISH COLUMBIA, CANADA.

ORDER OF APPROVAL

WHEREAS the Kootenay River is a river flowing across the boundary between the United States and Canada within the meaning of Article IV of the Boundary Waters Treaty of January 11th, 1909;

AND WHEREAS the Creston Reclamation Company, Limited, under date of 12 May, 1942, made an application to the Commission for permission to construct certain permanent works adjacent to the Kootenay River and its East Branch for the reclamation of some 8,100 acres of flood lands, known as the Duck Lake area, between the international boundary and Kootenay Lake, near Sirdar, in the Province of British Columbia;

AND WHEREAS the Commission held public hearings on the matter in 1942 and in 1947;

AND WHEREAS wildlife interests opposed the application and power interests in Canada objected to the effects of the Applicant's proposal on their storage operations;

AND WHEREAS the Commission on the 6th day of August, 1949, did order and direct that the said application be and it was thereby approved subject to the conditions set forth in the Commission's Order.

AND WHEREAS one of the conditions restricted the dyking and reclamation to 3,200 acres of the southern portion of the area included in the application;
AND WHEREAS an agreement was made between the Company and His Majesty the King, in the Right of the Province of British Columbia, for a grant by the Province to the Applicant of the lands to be reclaimed under the said Order in accordance with Plans and Specifications which were duly approved by the Province;

AND WHEREAS work was commenced upon the system of dykes or levees referred to in the said Plans and Specifications;

AND WHEREAS the Applicant has made a further application, dated the 25th day of July, 1950, transmitted to the Commission by the Government of Canada on the 27th day of July, 1950, for the approval of works designed to reclaim the aforesaid 3,200 acres and to store water to elevation 1748 in the remainder of Duck Lake for wildlife purposes and winter release;

AND WHEREAS after due notice public hearings were held in the Town of Creston, in the Province of British Columbia, on 28th August, 1950, and in the Town of Bonners Ferry, in the State of Idaho, on 29th August, 1950;

AND WHEREAS no objections to the revised proposal were registered at these hearings,

NOW THEREFORE this Commission doth order and direct:

That the said Application be and is hereby approved and the Applicant is authorized to construct a dyke or levee commencing at the junction of the northern boundary of the Creston Dyking District with the east bank of the Kootenay River, and thence following along the said east bank of the Kootenay River in a general northerly direction to its confluence with the east branch of the said Kootenay River, thence following along the said east bank of that river in a general northerly and easterly direction to a point at the eastern foothills situated at or about Bench Mark 204D, Publication No. 24, Geodetic Survey of Canada, including adequate drainage outlets and pumping units at supplementary cross dyke along the northern boundary.
of the area described in an agreement between His Majesty, in the
Right of the Province of British Columbia, and the Applicant, and
dated the 4th of February, 1960, so that the area south of the said
cross dyke will be completely reclaimed for agricultural purposes
and protected from flooding, subject to the following conditions:

1. The area so reclaimed shall not exceed 3,200 acres.

2. The said Creston Reclamation Company, Limited, or its
successor shall indemnify, to the satisfaction of the
Commission, any persons or interests on the United
States side of the international boundary who may
suffer damage or injury attributable to said Company’s
dykes.

3. The Applicant shall obtain approval of the revised
proposal under the Navigable Waters Protection Act.

4. The Applicant shall obtain the approval of the appropri-
ate authorities of the Government of British Columbia in
regard to the detailed plans and specifications of the
works to be constructed.

5. The outlet and/or inlet structure at the north end of the
project shall be constructed with the invert of the discharge
pipe below elevation 1730.32.

6. The Applicant shall place a staff gauge in Duck Lake in the
vicinity of the outlet structure in a position and of a
nature satisfactory to the Water Resources Division,
Department of Resources and Development, Canada, and the
Applicant or his successor shall maintain said gauge to
the satisfaction of said Division and shall provide said
Division with daily records of Duck Lake elevations
therefrom at such intervals as the requirements of the
International Kootenay Lake Board of Control may dictate
from time to time.

7. In years of low local spring supply to Duck Lake and when
the level of that Lake is not raised thereby to elevation
1747.32 or is not maintained at or above that elevation during the period when Kootenay Lake is discharging its flood waters, the Applicant or his successor shall, while Kootenay Lake is approaching elevation 1747.32 on its falling stage, open the gates in the Duck Lake outlet structure sufficiently to permit Duck Lake to rise to a maximum of elevation 1748 and thereafter the gates may be closed until commencement of the storage drawdown period on or about January 7 of the following year.

8. The discharge control works at the outlet of Duck Lake shall be opened by the Applicant or its successor by the 7th day of January of each year and shall remain open during the Kootenay Lake storage drawdown period to permit the level of Duck Lake to recede with that of Kootenay Lake.

9. Nothing in this Order shall be construed as freeing and relieving the Applicant of any claims for injuries, damage or loss sustained by reason of its works to any person or persons or corporation or any other interest in Canada or the United States which may be affected by such works, and which are not otherwise provided for herein.

10. Any questions arising with respect to the enforcement of this Order shall be referred to the International Kootenay Lake Board of Control, previously established by this Commission. Any questions which the Board is unable to settle to the satisfaction of the interested parties or on which the Board is unable to agree shall be referred by the Board to the Commission for decision. The Board shall take such steps as may be necessary to ensure that the provisions of this Order are carried out properly
and shall make appropriate reports to the Commission as required.

Approved in the City of Ottawa, this the 12th day of October, 1950.

(Sgd) A.G.L. McNaughton
A.O. Stanley
Geo. Spons
Roger B. McWhorter
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