

International Boundary Waters Treaty  
International Joint Commission  
and the  
**Kootenay Lake Order**

January 12, 2007

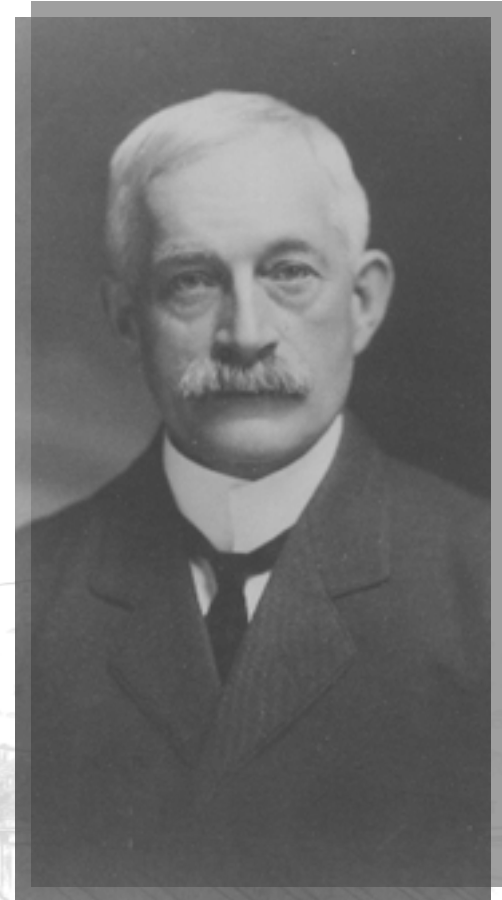
# Overview

- The International Boundary Waters Treaty
- The International Joint Commission
- The 1938 Kootenay Lake Order
- Kootenay Lake water level limits

# The International Boundary Waters Treaty (1909)

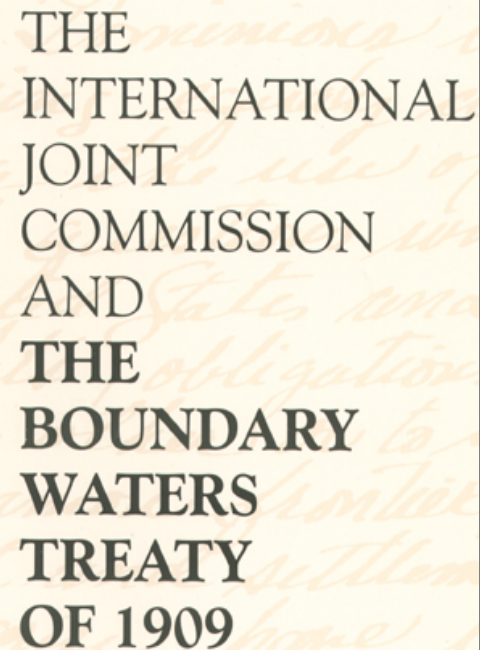
**Sir George Gibbons**

- Origin – border conflicts over water use rights on streams of international character
- Scope – more than just boundary waters; deals with the Canada-United States transboundary environment
- Purpose – provides the principles and mechanisms to help prevent and resolve disputes along the boundary



# Key Principles of the Treaty

- Equal and similar rights to the use of boundary waters
- Order of precedence of use – sanitary/domestic, navigation, power generation/irrigation
- Structures/diversions not to affect water levels and flows on the other side of **“boundary waters”**
- Structures/diversions not to increase water levels across boundary in **“transboundary”** rivers
- Must not pollute water on either side to the injury of health or property on the other side

The image shows the title page of the Boundary Waters Treaty of 1909. The text is printed in a serif font on a light-colored background with faint, cursive script in the background. The text reads: "THE INTERNATIONAL JOINT COMMISSION AND THE BOUNDARY WATERS TREATY OF 1909".

THE  
INTERNATIONAL  
JOINT  
COMMISSION  
AND  
THE  
BOUNDARY  
WATERS  
TREATY  
OF 1909

# International Joint Commission

## *IBWT Article VII:*

The Parties agree to establish and maintain an International Joint Commission...

## *IBWT Article VIII:*

The Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters...

(Paraphrased)

- Six Commissioners, equal representation from each country
- IJC is a creation of the Treaty, but not a creature of governments
  - a permanent, binational, independent, unitary body
  - operates along the entire border
- Offices in Washington, Ottawa and Windsor
- Supported by binational boards, task forces, study teams
  - members act in their personal and professional capacity

# Commissioners



**Allen Olson**

**Dennis Schornack**

**Robert Gourd**

**Jack Blaney**

**Irene Brooks**

**Herb Gray**

# IJC Boards

- International Red River Board
- International Lake Champlain Board of Control
- International Lake of the Woods Control Board
- International Lake Superior Board of Control
- International Niagara Board of Control
- International Rainy Lake Board of Control
- International St. Croix River Board
- International St. Lawrence River Board of Control
- International Lake Ontario - St. Lawrence River Study Board
- International Osoyoos Lake Board of Control
- **International Kootenay Lake Board of Control**
- International Columbia River Board of Control
- Council of Great Lakes Research Managers
- Great Lakes Science Advisory Board
- Great Lakes Water Quality Board
- International Air Quality Advisory Board
- International Rainy River Water Pollution Board
- International Souris River Board

# The Commission's Roles

- Quasi-judicial
  - Rules upon new uses, obstructions and diversions of boundary waters that affect levels and flows
- Investigative/advisory
  - Reports and provides objective advice on questions referred to it by governments
- Arbitration
  - Binding arbitration on issues referred by governments (never used)

# IBWT Article IV

The Parties agree that they will not permit any dams or other obstructions in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary, unless the construction and maintenance thereof is approved by the International Joint Commission

(paraphrased)

**In other words,  
you can't back water up  
across the border  
without an "Order of  
Approval" from the  
Commission**



In 1938, the Commission issued an Order setting out the management regime for the lake and appointed a Board of Control.



## Current membership:

### For Canada:

- Kirk Johnstone (chair)
  - Environment Canada
- Glen Davidson
  - BC Ministry of the Environment
  - Daniel Millar (sec.)

### For U.S.:

- Col. Mike McCormick (chair)
  - US Army Corps of Engineers
- Kathy Peter
  - US Geological Survey
  - Larry Merkle (sec.)



Kootenay Lake Order relates to Corra Linn Dam, owned by FortisBC.

The dam can cause backwater upstream to Bonners Ferry, Idaho.



Kootenai Flats

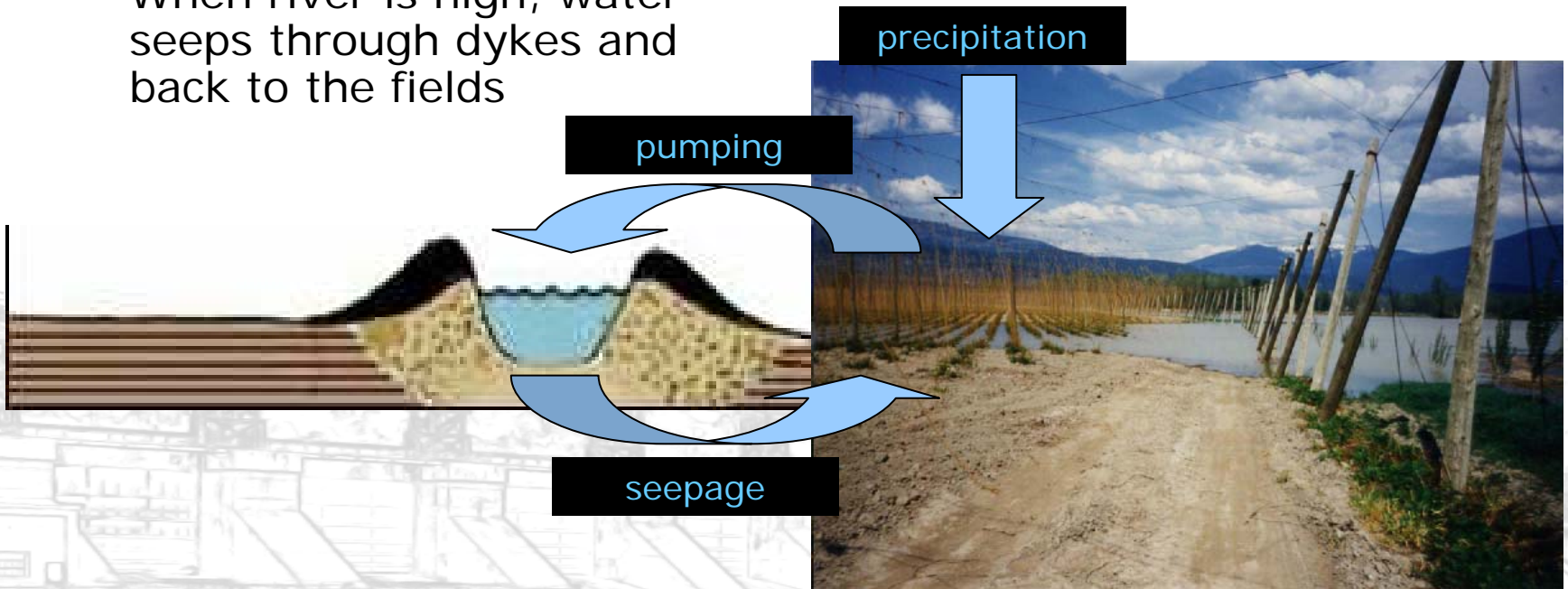


The Order allows FortisBC to store water in the lake, but specifies a “lowering” formula for the freset.

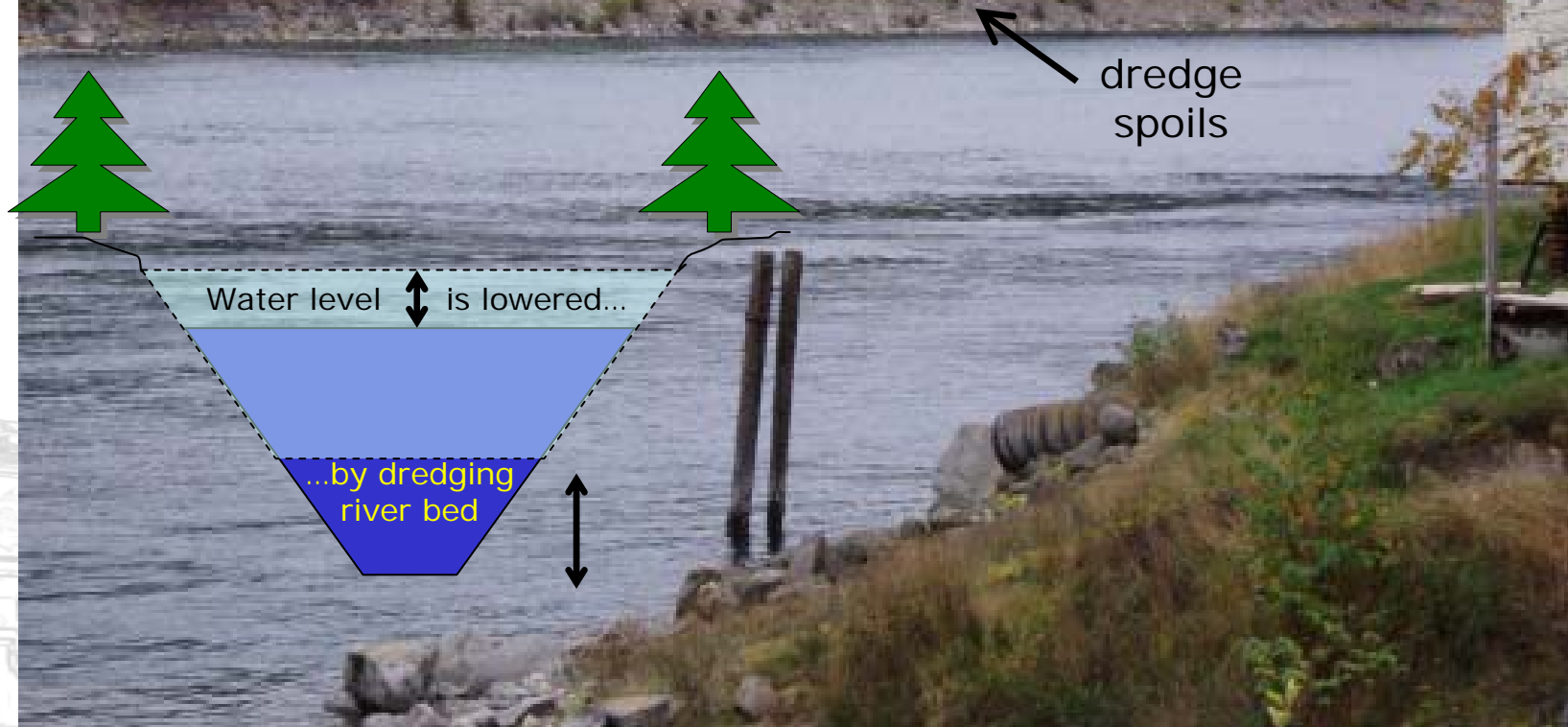
FortisBC must financially compensate Idaho farmers for increased pumping costs caused by the backwater.

# Reclamation Farms

- Farming on river's natural floodplain, protected by dykes
- When the river is higher than the fields, rain that falls on the fields has to be pumped up to the river
- When river is high, water seeps through dykes and back to the fields
- Recovery of increased pumping costs, along with the "lowering" of the freshet, made the Kootenay Order an acceptable arrangement for Idaho reclamation farmers



The lowering takes advantage of a late 1930s lake outlet excavation by the Applicant to prevent unnecessary flooding around Kootenay Lake and in the Kootenai and Creston valleys upstream of the lake.



Declaration of “commencement of spring rise” initiates the use of a “lowering formula” to compute maximum allowable water levels during the freshet.

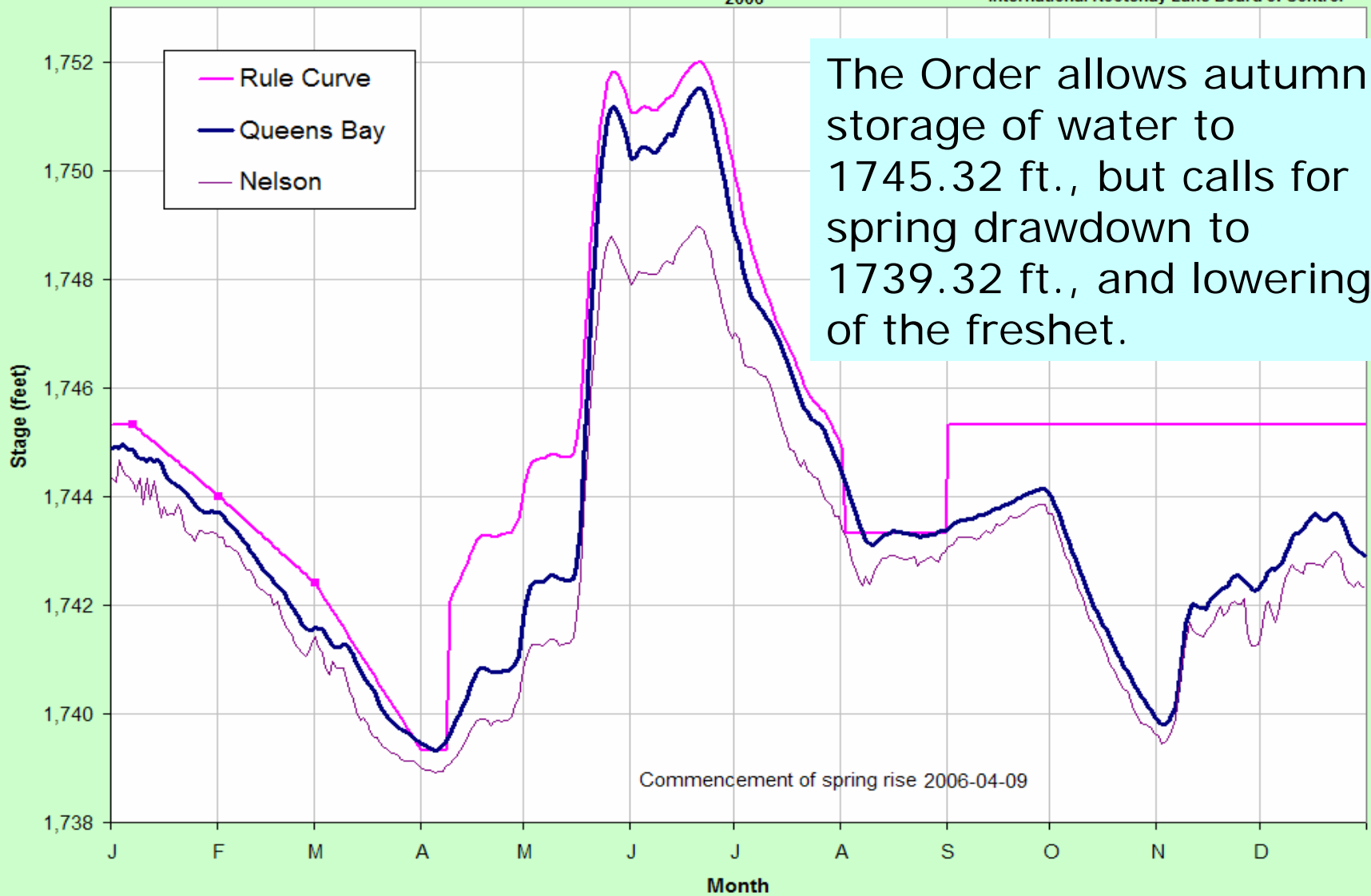


Nelson Water Level Gauge House

# Kootenay Lake Hydrograph

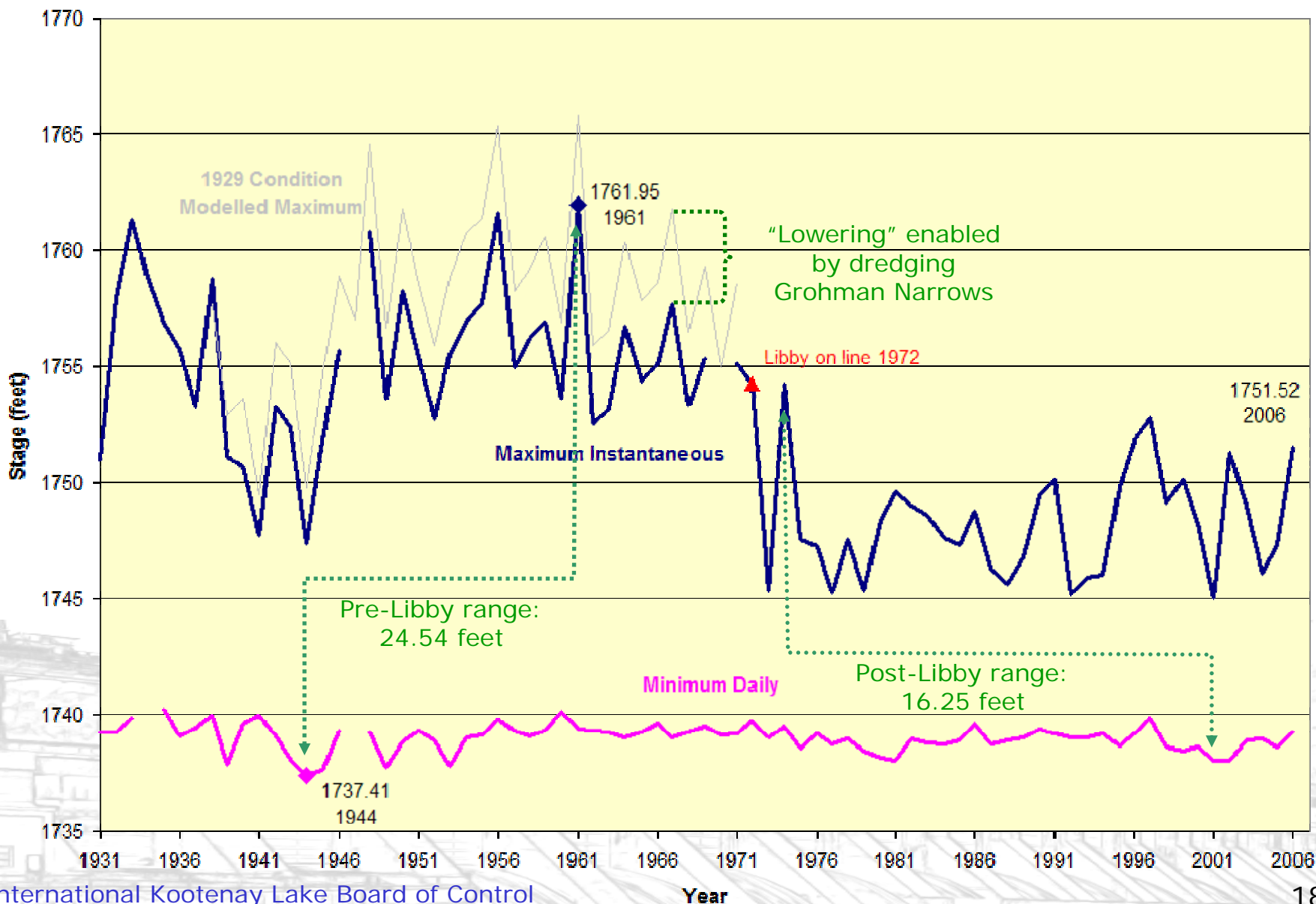
2006

International Kootenay Lake Board of Control

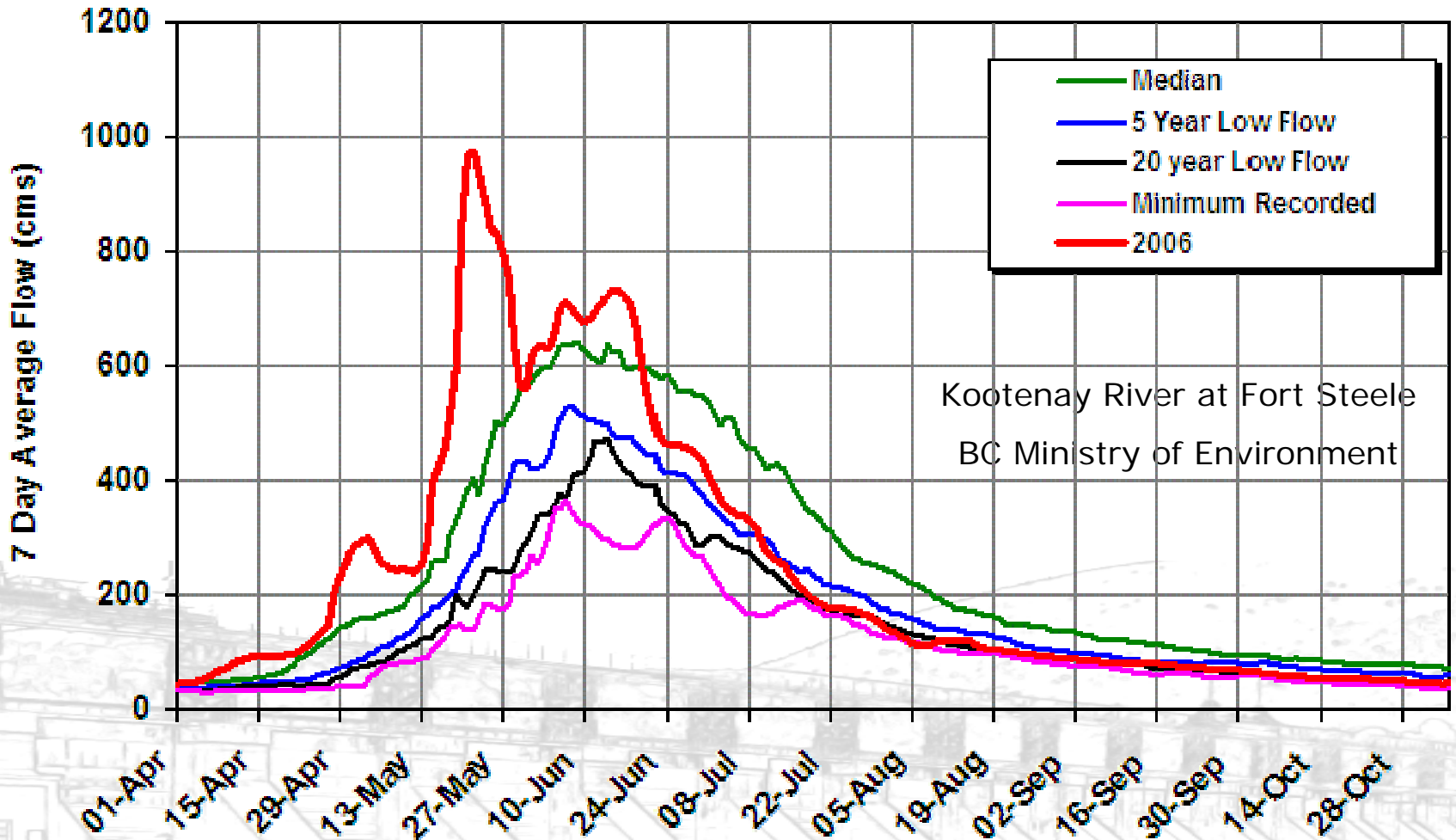


The Order allows autumn storage of water to 1745.32 ft., but calls for spring drawdown to 1739.32 ft., and lowering of the freshet.

### Water Level Extremes, Kootenay Lake at Queens Bay



While freshet runoff levels in the Kootenay basin were well above normal, summer flows fell to between a 5- and 20-year low.





Kootenay Lake  
Outlet